

1 AN ACT relating to the operation of a motor vehicle.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 189A.010 is amended to read as follows:

- 4 (1) A person shall not operate or be in physical control of a motor vehicle anywhere in
5 this Commonwealth[state]:
- 6 (a) Having an alcohol concentration of 0.08 or more as measured by a
7 scientifically reliable test or tests of a sample of the person's breath or blood
8 taken within two (2) hours of cessation of operation or physical control of a
9 motor vehicle;
 - 10 (b) While under the influence of alcohol;
 - 11 (c) While under the influence of any other substance or combination of
12 substances which impairs one's driving ability;
 - 13 (d) While the presence of a controlled substance listed in subsection (12) of this
14 section is detected in the blood, as measured by a scientifically reliable test, or
15 tests, taken within two (2) hours of cessation of operation or physical control
16 of a motor vehicle;
 - 17 (e) While under the combined influence of alcohol and any other substance which
18 impairs one's driving ability; or
 - 19 (f) Having an alcohol concentration of 0.02 or more as measured by a
20 scientifically reliable test or tests of a sample of the person's breath or blood
21 taken within two (2) hours of cessation of operation or physical control of a
22 motor vehicle, if the person is under the age of twenty-one (21).
- 23 (2) With the exception of the results of the tests administered pursuant to KRS
24 189A.103(7):
- 25 (a) If the sample of the person's blood or breath that is used to determine the
26 alcohol concentration thereof was obtained more than two (2) hours after
27 cessation of operation or physical control of a motor vehicle, the results of the

1 test or tests shall be inadmissible as evidence in a prosecution under
2 subsection (1)(a) or (f) of this section. The results of the test or tests, however,
3 may be admissible in a prosecution under subsection (1)(b) or (e) of this
4 section; or

5 (b) If the sample of the person's blood that is used to determine the presence of a
6 controlled substance was obtained more than two (2) hours after cessation of
7 operation or physical control of a motor vehicle, the results of the test or tests
8 shall be inadmissible as evidence in a prosecution under subsection (1)(d) of
9 this section. The results of the test or tests, however, may be admissible in a
10 prosecution under subsection (1)(c) or (e) of this section.

11 (3) In any prosecution for a violation of subsection (1)(b) or (e) of this section in which
12 the defendant is charged with having operated or been in physical control of a
13 motor vehicle while under the influence of alcohol, the alcohol concentration in the
14 defendant's blood as determined at the time of making analysis of his or her blood
15 or breath shall give rise to the following presumptions:

16 (a) If there was an alcohol concentration of less than 0.04~~[based upon the~~
17 ~~definition of alcohol concentration in KRS 189A.005]~~, it shall be presumed
18 that the defendant was not under the influence of alcohol; and

19 (b) If there was an alcohol concentration of 0.04 or greater but less than 0.08~~[~~
20 ~~based upon the definition of alcohol concentration in KRS 189A.005]~~, that
21 fact shall not constitute a presumption that the defendant either was or was not
22 under the influence of alcohol, but that fact may be considered, together with
23 other competent evidence, in determining the guilt or innocence of the
24 defendant.

25 ~~[The provisions of]~~This subsection shall not be construed as limiting the
26 introduction of any other competent evidence bearing upon the questions of
27 whether the defendant was under the influence of alcohol or other substances, in

1 any prosecution for a violation of subsection (1)(b) or (e) of this section.

2 (4) (a) Except as provided in paragraph (b) of this subsection, the fact that any person
3 charged with violation of subsection (1) of this section is legally entitled to
4 use any substance, including alcohol, shall not constitute a defense against
5 any charge of violation of subsection (1) of this section.

6 (b) A laboratory test or tests for a controlled substance shall be inadmissible as
7 evidence in a prosecution under subsection (1)(d) of this section upon a
8 finding by the court that the defendant consumed the substance under a valid
9 prescription from a practitioner, as defined in KRS 218A.010, acting in the
10 course of his or her professional practice. However, a laboratory test for a
11 controlled substance may be admissible as evidence in a prosecution under
12 subsection (1)(c) or (e) of this section.

13 (5) Any person who violates the provisions of paragraph (a), (b), (c), (d), or (e) of
14 subsection (1) of this section shall:

15 (a) For the first offense within a ten (10) year period, be fined not less than two
16 hundred dollars (\$200) nor more than five hundred dollars (\$500), or be
17 imprisoned in the county jail for not less than forty-eight (48) hours nor more
18 than thirty (30) days, or both. Following sentencing, the defendant may apply
19 to the judge for permission to enter a community labor program for not less
20 than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or
21 imprisonment, or both. If any of the aggravating circumstances listed in
22 subsection (11) of this section are present while the person was operating or in
23 physical control of a motor vehicle, the mandatory minimum term of
24 imprisonment shall be four (4) days, which term shall not be suspended,
25 probated, conditionally discharged, or subject to any other form of early
26 release;

27 (b) For the second offense within a ten (10) year period, be fined not less than

1 three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500)
2 and shall be imprisoned in the county jail for not less than seven (7) days nor
3 more than six (6) months and, in addition to fine and imprisonment, may be
4 sentenced to community labor for not less than ten (10) days nor more than
5 six (6) months. If any of the aggravating circumstances listed in subsection
6 (11) of this section are present, the mandatory minimum term of
7 imprisonment shall be fourteen (14) days, which term shall not be suspended,
8 probated, conditionally discharged, or subject to any other form of early
9 release;

10 (c) For a third offense within a ten (10) year period, be fined not less than five
11 hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall
12 be imprisoned in the county jail for not less than thirty (30) days nor more
13 than twelve (12) months and may, in addition to fine and imprisonment, be
14 sentenced to community labor for not less than thirty (30) days nor more than
15 twelve (12) months. If any of the aggravating circumstances listed in
16 subsection (11) of this section are present, the mandatory minimum term of
17 imprisonment shall be sixty (60) days, which term shall not be suspended,
18 probated, conditionally discharged, or subject to any other form of early
19 release;

20 (d) For a fourth or subsequent offense within a ten (10) year period, be guilty of a
21 Class D felony. If any of the aggravating circumstances listed in subsection
22 (11) of this section are present, the mandatory minimum term of
23 imprisonment shall be two hundred forty (240) days, which term shall not be
24 suspended, probated, conditionally discharged, or subject to any other form of
25 release; and

26 (e) For purposes of this subsection, prior offenses shall include all convictions in
27 this Commonwealth~~[state]~~, and any other state or jurisdiction, for operating or

1 being in control of a motor vehicle while under the influence of alcohol or
2 other substances that impair one's driving ability, or any combination of
3 alcohol and such substances, or while having an unlawful alcohol
4 concentration, or driving while intoxicated, but shall not include convictions
5 for violating subsection (1)(f) of this section. A court shall receive as proof of
6 a prior conviction a copy of that conviction, certified by the court ordering the
7 conviction.

8 (6) Any person who violates the provisions of subsection (1)(f) of this section shall be
9 fined no less than one hundred dollars (\$100) and no more than five hundred dollars
10 (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A
11 person subject to the penalties of this subsection shall not be subject to the penalties
12 established in subsection (5) of this section or any other penalty established
13 pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1) and
14 KRS 189A.070.

15 (7) If the person is under the age of twenty-one (21) and there was an alcohol
16 concentration of 0.08 or greater ~~[based on the definition of alcohol concentration in~~
17 ~~KRS 189A.005]~~, the person shall be subject to the penalties established pursuant to
18 subsection (5) of this section.

19 (8) (a) For a second or third offense within a ten (10) year period, the minimum
20 sentence of imprisonment or community labor shall not be suspended,
21 probated, or subject to conditional discharge or other form of early release.

22 (b) For a fourth or subsequent offense under this section, the minimum term of
23 imprisonment shall be one hundred twenty (120) days, and this term shall not
24 be suspended, probated, or subject to conditional discharge or other form of
25 early release.

26 (c) For a second or subsequent offense, at least forty-eight (48) hours of the
27 mandatory sentence shall be served consecutively.

- 1 (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of
2 the penalties shall be assessed and that penalty shall not be suspended, probated, or
3 subject to conditional discharge or other form of early release.
- 4 (10) In determining the ten (10) year period under this section, the period shall be
5 measured from the dates on which the offenses occurred for which the judgments of
6 conviction were entered.
- 7 (11) For purposes of this section, aggravating circumstances are any one (1) or more of
8 the following:
- 9 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the
10 speed limit;
- 11 (b) Operating a motor vehicle in the wrong direction on a limited access highway;
- 12 (c) Operating a motor vehicle that causes an accident resulting in death or serious
13 physical injury as defined in KRS 500.080;
- 14 (d) Operating a motor vehicle while the alcohol concentration in the operator's
15 blood or breath is 0.15 or more as measured by a test or tests of a sample of
16 the operator's blood or breath taken within two (2) hours of cessation of
17 operation of the motor vehicle;
- 18 (e) Refusing to submit to any test or tests of one's blood~~[,]~~ or breath~~[, or urine]~~
19 requested by an officer having reasonable grounds to believe the person was
20 operating or in physical control of a motor vehicle in violation of subsection
21 (1) of this section, except it shall not be considered an aggravating
22 circumstance for a first offense under subsection (5)(a) of this section; and
- 23 (f) Operating a motor vehicle that is transporting a passenger under the age of
24 twelve (12) years old.
- 25 (12) The substances applicable to a prosecution under subsection (1)(d) of this section
26 are:
- 27 (a) Any Schedule I controlled substance except marijuana;

- 1 (b) Alprazolam;
 2 (c) Amphetamine;
 3 (d) Buprenorphine;
 4 (e) Butalbital;
 5 (f) Carisoprodol;
 6 (g) **Clonazepam**;
 7 **(h)** Cocaine;
 8 **(i)**~~(h)~~ **Cyclobenzaprine**;
 9 **(j)** Diazepam;
 10 **(k)**~~(i)~~ **Fentanyl**;
 11 **(l)** Hydrocodone;
 12 **(m)**~~(j)~~ Meprobamate;
 13 **(n)**~~(k)~~ Methadone;
 14 **(o)**~~(l)~~ Methamphetamine;
 15 **(p)**~~(m)~~ Oxycodone;
 16 **(q)**~~(n)~~ Promethazine;
 17 **(r)**~~(o)~~ Propoxyphene; and
 18 **(s)**~~(p)~~ Zolpidem.

19 ➔Section 2. KRS 189A.100 is amended to read as follows:

- 20 (1) **(a)** Law enforcement agencies may administer preliminary breath tests using
 21 devices or equipment which will ensure an accurate determination of blood
 22 alcohol content. **Preliminary breath**~~Such~~ tests may be administered in the
 23 field to a person suspected of violation of KRS 189A.010 before the person is
 24 arrested. This test may be administered in addition to any other blood alcohol
 25 level test authorized by law.

26 **(b)** **1.** A person's refusal to take a preliminary breath test shall not:

- 27 **a.** Be used against him **or her** in a court of law or in any

1 administrative proceeding; or

2 **b. Result in the suspension of his or her license by the court at the**
 3 **time of arraignment.**

4 **2. Prior to the administration of preliminary breath test, a person**
 5 **suspected of violating Section 1 of this Act shall be informed of the**
 6 **provisions of subparagraph 1. of this paragraph.**

7 (2) (a) Law enforcement agencies may record on film or videotape or by other visual
 8 and audible means:

- 9 1. The pursuit of a violator or suspected violator;
- 10 2. The traffic stop; or
- 11 3. a. Field sobriety tests administered at the scene or such tests at a
 12 police station, jail, or other suitable facility; or
- 13 b. The refusal of a violator or suspected violator to submit to tests
 14 under KRS 189A.103;

15 for a suspected violation of KRS 189A.010.

16 (b) Recordings made under paragraph (a) of this subsection shall be subject to the
 17 following conditions:

- 18 1. The testing is recorded in its entirety, ~~{except for blood alcohol~~
 19 ~~analysis testing}~~;
- 20 2. The entire recording of the field sobriety tests or refusal and the entire
 21 recording of the pursuit and traffic stop is shown in court unless the
 22 defendant waives the showing of any portions not offered by the
 23 prosecution;
- 24 3. The entire recording is available to be shown by the defense at trial if
 25 the defendant ~~so~~ desires regardless of whether it was introduced by the
 26 Commonwealth;
- 27 4. The defendant or his or her counsel is afforded an opportunity to view

- 1 the entire recording a reasonable time before the trial in order to prepare
2 an adequate defense;
- 3 5. Recordings shall be used for official purposes only, which shall include
4 viewing:
- 5 a. ~~Viewing~~ In court;
- 6 b. ~~Viewing~~ By the prosecution and defense in preparation for a
7 trial; and
- 8 c. ~~Viewing~~ For purposes of administrative reviews and official
9 administrative proceedings. Recordings shall otherwise be
10 considered as confidential records;
- 11 6. The videotape or film taken in accordance with this section shall, upon
12 order of the sentencing court, be destroyed after the later of the
13 following:
- 14 a. Fourteen (14) months, if there is no appeal of any criminal or
15 traffic case filed as a result of the videotape or film, or if the
16 videotape or film does not record the actual happening of an
17 accident involving a motor vehicle;
- 18 b. Fourteen (14) months after a decision has been made not to
19 prosecute any case upon which an arrest has been made or a
20 citation issued as a result of the videotape or film, if the videotape
21 does not record the actual happening of an accident involving a
22 motor vehicle;
- 23 c. Twenty-six (26) months, if there is no appeal of any criminal or
24 traffic case filed as a result of the videotape or film, if the
25 videotape or film records the actual happening of an accident
26 involving a motor vehicle;
- 27 d. After all appeals have been exhausted arising from any criminal or

- 1 traffic case filed as a result of the videotape;
- 2 e. At the conclusion of any civil case arising from events depicted on
- 3 the videotape or film; or
- 4 f. At the conclusion of the exhaustion of all appeals arising from any
- 5 law enforcement agency administrative proceedings arising from
- 6 events depicted on the videotape or film; and
- 7 7. Public officials or employees utilizing or showing recordings other than
- 8 as permitted in this chapter or permitting others to do so shall be guilty
- 9 of official misconduct in the first degree.
- 10 (3) When a peace officer makes a videotape or film recording of any transaction
- 11 covered by subsection (2) of this section and a citation is issued or an arrest is
- 12 made, the peace officer shall note on the uniform citation that a videotape has been
- 13 made of the transaction.
- 14 ➔Section 3. KRS 189A.105 is amended to read as follows:
- 15 (1) A person's refusal to submit to tests under KRS 189A.103 shall result in suspension
- 16 of his or her driving privilege as provided in this chapter.
- 17 (2) (a) At the time a breath~~[,]~~ or blood~~[, or urine]~~ test is requested, the person shall be
- 18 informed *that*:
- 19 1. ~~[That,]~~If the person refuses to submit to *a breath test*~~[such tests]~~:
- 20 a. The fact of this refusal may be used against him or her in court as
- 21 evidence of violating KRS 189A.010 and will result in suspension
- 22 of his or her driver's license by the court at the time of
- 23 arraignment; and
- 24 b. *If the person* is subsequently convicted of violating KRS
- 25 189A.010(1):
- 26 i. For a second or third time within a ten (10) year period, he or
- 27 she will be subject to a mandatory minimum jail sentence

1 which is twice as long as the mandatory minimum jail
2 sentence imposed if he or she submits to the tests; and

3 ii. His or her license will be suspended by the Transportation
4 Cabinet;

5 2. **If the person refuses to submit to a blood test:**

6 **a. The fact of this refusal will result in suspension of his or her**
7 **driver's license by the court at the time of arraignment; and**

8 **b. If the person is subsequently convicted of violating subsection (1)**
9 **of Section 1 of this Act, his or her license will be suspended by**
10 **the Transportation Cabinet;**

11 3. ~~That,~~ If a test is taken:

12 a. The results of the test may be used against the person in court as
13 evidence of violating KRS 189A.010(1); and

14 b. The person has the right to have a test or tests of his or her blood
15 performed by a person of his or her choosing described in KRS
16 189A.103 within a reasonable time of his or her arrest at the
17 expense of the person arrested; and

18 4. ~~3. That~~ Although his or her license will be suspended, he or she may be
19 eligible immediately for an ignition interlock license allowing him or
20 her to drive during the period of suspension and, if he or she is
21 convicted, he or she will receive a credit toward any other ignition
22 interlock requirement arising from this arrest.

23 (b) ~~Nothing in~~ This subsection shall **not** be construed to prohibit a judge of a
24 court of competent jurisdiction from issuing a search warrant or other court
25 order requiring a blood ~~for urine~~ test ~~or a combination thereof,~~ of a
26 defendant charged with a violation of KRS 189A.010, or other statutory
27 violation arising from the incident. However, if the incident involves a motor

1 vehicle accident in which there was a fatality, the investigating peace officer
2 shall seek ~~[such]~~ a search warrant for blood testing unless the testing has
3 already been done by consent. If testing done pursuant to a warrant reveals the
4 presence of alcohol or any other substance that impaired the driving ability of
5 a person who is charged and convicted of a violation of KRS 189A.010(1),
6 the sentencing court shall require, in addition to any other sentencing
7 provision, that the defendant make restitution to the Commonwealth~~[state]~~ for
8 the cost of the testing.

- 9 (c) 1. When directed by a peace officer pursuant to a search warrant or other
10 court order issued under this subsection, a qualified medical professional
11 shall withdraw the sample of blood as soon as practicable and shall
12 deliver the sample to the requesting peace officer, or other peace officer
13 as directed by the requesting peace officer, ~~if provided that~~ the
14 collection of the sample does not jeopardize the person's life, cause
15 serious injury to the person, or seriously impede the person's medical
16 assessment, care, or treatment.
- 17 2. The qualified medical professional authorized to withdraw the blood
18 sample and the medical care facility where the blood sample is drawn
19 shall be considered as acting in good faith once presented with a search
20 warrant or other court order issued under this subsection. The qualified
21 medical professional shall not require the person that is the subject of
22 the test or tests to provide any additional consent.
- 23 3. A qualified medical professional who administers any test under this
24 paragraph upon the request of a peace officer, and a medical care facility
25 where any test under this paragraph may be performed, shall not be
26 criminally liable solely for administering the requested test or civilly
27 liable for damages to the person tested solely for administering the

1 requested test except in cases of gross negligence or willful or wanton
2 misconduct.

3 **(d) If the person is not informed of the provisions of paragraph (a) of this**
4 **subsection prior to the request for a breath or blood test, the person shall**
5 **not have his or her:**

6 **1. Refusal to submit to a breath or blood test used:**

7 **a. Against him or her in court as evidence of violating Section 1 of**
8 **this Act; or**

9 **b. As an aggravating circumstance under subsection (11) of**
10 **Section 1 of this Act; or**

11 **2. License suspended by the court at the time of arraignment.**

12 (3) During the period immediately preceding the administration of any test, the person
13 shall be afforded an opportunity of at least ten (10) minutes but not more than
14 fifteen (15) minutes to attempt to contact and communicate with an attorney and
15 shall be informed of this right. Inability to communicate with an attorney during
16 this period shall not be deemed to relieve the person of his or her obligation to
17 submit to the tests and the penalties specified by KRS 189A.010 and 189A.107
18 shall remain applicable to the person upon refusal. ~~Nothing in~~ This section shall
19 **not** be deemed to create a right to have an attorney present during the
20 administration of the tests, but the person's attorney may be present if the attorney
21 can physically appear at the location where the test is to be administered within the
22 time period established in this section.

23 (4) Immediately following the administration of the final test requested by the officer,
24 the person shall again be informed of his or her right to have a test or tests of his or
25 her blood performed by a person of his or her choosing described in KRS 189A.103
26 within a reasonable time of his or her arrest at the expense of the person arrested.
27 He or she shall then be asked, "Do you want such a test?" The officer shall make

1 reasonable efforts to provide transportation to the tests.

2 ➔Section 4. KRS 186.018 is amended to read as follows:

- 3 (1) For purposes of maintaining driving history records of operators of motor vehicles
4 of the Commonwealth, the files of the Transportation Cabinet shall be used to
5 ascertain the driving history record of each person who is licensed to operate a
6 motor vehicle within the Commonwealth.
- 7 (2) Except as provided in subsections (3) and (4) of this section, the Transportation
8 Cabinet shall destroy, and shall not maintain, records of moving traffic convictions
9 that are more than ten (10)~~five (5)~~ years old.
- 10 (3) For any licensee who now holds, who has applied for, or has ever held a
11 commercial driver's license or commercial learner's permit issued pursuant to KRS
12 281A.120 or 281A.170, the cabinet shall keep conviction records indefinitely.
- 13 (4) The Transportation Cabinet shall not release information on the driving history
14 record of a person under the age of twenty-one (21) whose operator license has
15 been suspended pursuant to KRS 189A.010(6). The cabinet shall destroy, and shall
16 not maintain, the record of the suspension of a person's operator's license if the
17 license was suspended pursuant to KRS 189A.010(6), within five (5) working days
18 of the person's operator's license being reinstated. This subsection shall not apply to
19 a person who holds, or is required to hold, a commercial driver's license or
20 commercial learner's permit.
- 21 (5) The cabinet shall charge a fee of three dollars (\$3) for any driving history record,
22 ten cents (\$0.10) of which shall be deposited in a special account within the road
23 fund to be used exclusively by the Transportation Cabinet for the state driver
24 education program as designated in KRS 186.535.