

1 AN ACT relating to driving under the influence.

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 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), if the sample of the person's blood or breath that is used to determine
25 the alcohol concentration thereof was obtained more than two (2) hours after
26 cessation of operation or physical control of a motor vehicle, the results of the test
27 or tests shall be inadmissible as evidence in a prosecution under subsection (1)(a) or

1 (f) of this section. The results of the test or tests, however, may be admissible in a
2 prosecution under subsection (1)(b) or (e) of this section.

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

8 (a) If there was an alcohol concentration of less than 0.05 based upon the
9 definition of alcohol concentration in KRS 189A.005, it shall be presumed
10 that the defendant was not under the influence of alcohol; and

11 (b) If there was an alcohol concentration of 0.05 or greater but less than 0.08
12 based upon the definition of alcohol concentration in KRS 189A.005, that fact
13 shall not constitute a presumption that the defendant either was or was not
14 under the influence of alcohol, but that fact may be considered, together with
15 other competent evidence, in determining the guilt or innocence of the
16 defendant.

17 The provisions of this subsection shall not be construed as limiting the introduction
18 of any other competent evidence bearing upon the questions of whether the
19 defendant was under the influence of alcohol or other substances, in any prosecution
20 for a violation of subsection (1)(b) or (e) of this section.

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

25 (b) A laboratory test or tests for a controlled substance shall be inadmissible as
26 evidence in a prosecution under subsection (1)(d) of this section upon a
27 finding by the court that the defendant consumed the substance under a valid

1 prescription from a practitioner, as defined in KRS 218A.010, acting in the
2 course of his or her professional practice.

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

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

17 (b) For the second offense within a ten (10) year period, be fined not less than
18 three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500)
19 and shall be imprisoned in the county jail for not less than seven (7) days nor
20 more than six (6) months and, in addition to fine and imprisonment, may be
21 sentenced to community labor for not less than ten (10) days nor more than six
22 (6) months. If any of the aggravating circumstances listed in subsection (11)
23 of this section are present, the mandatory minimum term of imprisonment
24 shall be fourteen (14) days, which term shall not be suspended, probated,
25 conditionally discharged, or subject to any other form of early release;

26 (c) For a third offense within a ten (10) year period, be fined not less than five
27 hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall

1 be imprisoned in the county jail for not less than thirty (30) days nor more
2 than twelve (12) months and may, in addition to fine and imprisonment, be
3 sentenced to community labor for not less than ten (10) days nor more than
4 twelve (12) months. If any of the aggravating circumstances listed in
5 subsection (11) of this section are present, the mandatory minimum term of
6 imprisonment shall be sixty (60) days, which term shall not be suspended,
7 probated, conditionally discharged, or subject to any other form of early
8 release;

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

15 (e) For purposes of this subsection, prior offenses shall include all convictions in
16 this state, and any other state or jurisdiction, for operating or being in control
17 of a motor vehicle while under the influence of alcohol or other substances
18 that impair one's driving ability, or any combination of alcohol and such
19 substances, or while having an unlawful alcohol concentration, or driving
20 while intoxicated, but shall not include convictions for violating subsection
21 (1)(f) of this section. A court shall receive as proof of a prior conviction a
22 copy of that conviction, certified by the court ordering the conviction.

23 (6) Any person who violates the provisions of subsection (1)(f) of this section shall
24 have his driving privilege or operator's license suspended by the court for a period
25 of no less than thirty (30) days but no longer than six (6) months, and the person
26 shall be fined no less than one hundred dollars (\$100) and no more than five
27 hundred dollars (\$500), or sentenced to twenty (20) hours of community service in

1 lieu of a fine. A person subject to the penalties of this subsection shall not be
2 subject to the penalties established in subsection (5) of this section or any other
3 penalty established pursuant to KRS Chapter 189A, except those established in
4 KRS 189A.040(1).

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

9 (8) For a second or third offense within a ten (10) year period, the minimum sentence
10 of imprisonment or community labor shall not be suspended, probated, or subject to
11 conditional discharge or other form of early release. For a fourth or subsequent
12 offense under this section, the minimum term of imprisonment shall be one hundred
13 twenty (120) days, and this term shall not be suspended, probated, or subject to
14 conditional discharge or other form of early release. For a second or subsequent
15 offense, at least forty-eight (48) hours of the mandatory sentence shall be served
16 consecutively.

17 (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of
18 the penalties shall be assessed and that penalty shall not be suspended, probated, or
19 subject to conditional discharge or other form of early release.

20 (10) In determining the ten (10) year period under this section, the period shall be
21 measured from the dates on which the offenses occurred for which the judgments of
22 conviction were entered.

23 (11) For purposes of this section, aggravating circumstances are any one (1) or more of
24 the following:

25 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the
26 speed limit;

27 (b) Operating a motor vehicle in the wrong direction on a limited access highway;

- 1 (c) Operating a motor vehicle that causes an accident resulting in death or serious
2 physical injury as defined in KRS 500.080;
- 3 (d) Operating a motor vehicle while the alcohol concentration in the operator's
4 blood or breath is 0.15 or more as measured by a test or tests of a sample of
5 the operator's blood or breath taken within two (2) hours of cessation of
6 operation of the motor vehicle;
- 7 (e) Refusing to submit to any test or tests of one's blood, breath, or urine
8 requested by an officer having reasonable grounds to believe the person was
9 operating or in physical control of a motor vehicle in violation of subsection
10 (1) of this section; and
- 11 (f) Operating a motor vehicle that is transporting a passenger under the age of
12 twelve (12) years old.
- 13 (12) The substances applicable to a prosecution under subsection (1)(d) of this section
14 are:
- 15 (a) Any Schedule I controlled substance except marijuana;
- 16 (b) Alprazolam;
- 17 (c) Amphetamine;
- 18 (d) Buprenorphine;
- 19 (e) Butalbital;
- 20 (f) Carisoprodol;
- 21 (g) Cocaine;
- 22 (h) Diazepam;
- 23 (i) Hydrocodone;
- 24 (j) Meprobamate;
- 25 (k) Methadone;
- 26 (l) Methamphetamine;
- 27 (m) Oxycodone;

- 1 (n) Promethazine;
- 2 (o) Propoxyphene; and
- 3 (p) Zolpidem.

4 **(13) When a person is sentenced under subsection (5)(c) or (d) of this section, the**
5 **vehicle used in the commission of the offense may be forfeited to the state in a**
6 **manner consistent with procedures for forfeiture set forth in KRS 500.090.**