

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):
- 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 fact
21 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 introduction
26 of any other competent evidence bearing upon the questions of whether the
27 defendant was under the influence of alcohol or other substances, in any

1 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 state, and any other state or jurisdiction, for operating or being in control

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

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

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

18 (8) For a second or third offense within a ten (10) year period, the minimum sentence
19 of imprisonment or community labor shall not be suspended, probated, or subject to
20 conditional discharge or other form of early release. For a fourth or subsequent
21 offense under this section, the minimum term of imprisonment shall be one hundred
22 twenty (120) days, and this term shall not be suspended, probated, or subject to
23 conditional discharge or other form of early release. For a second or subsequent
24 offense, at least forty-eight (48) hours of the mandatory sentence shall be served
25 consecutively.

26 (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of
27 the penalties shall be assessed and that penalty shall not be suspended, probated, or

1 subject to conditional discharge or other form of early release.

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

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

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

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

10 (c) Operating a motor vehicle that causes an accident resulting in death or serious
11 physical injury as defined in KRS 500.080;

12 (d) Operating a motor vehicle while the alcohol concentration in the operator's
13 blood or breath is 0.15 or more as measured by a test or tests of a sample of
14 the operator's blood or breath taken within two (2) hours of cessation of
15 operation of the motor vehicle;

16 (e) Refusing to submit to any test or tests of one's blood, breath, or urine
17 requested by an officer having reasonable grounds to believe the person was
18 operating or in physical control of a motor vehicle in violation of subsection
19 (1) of this section, except it shall not be considered an aggravating
20 circumstance for a first offense under subsection (5)(a) of this section; and

21 (f) Operating a motor vehicle that is transporting a passenger under the age of
22 twelve (12) years old.

23 (12) The substances applicable to a prosecution under subsection (1)(d) of this section
24 are:

25 (a) Any Schedule I controlled substance except marijuana;

26 (b) Alprazolam;

27 (c) Amphetamine;

- 1 (d) Buprenorphine;
- 2 (e) Butalbital;
- 3 (f) Carisoprodol;
- 4 (g) Cocaine;
- 5 (h) Diazepam;
- 6 (i) Hydrocodone;
- 7 (j) Meprobamate;
- 8 (k) Methadone;
- 9 (l) Methamphetamine;
- 10 (m) Oxycodone;
- 11 (n) Promethazine;
- 12 (o) Propoxyphene; and
- 13 (p) Zolpidem.