

1 AN ACT relating to driving under the influence of marijuana.

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, **including intoxicating hemp**
13 **products**;
- 14 (d) While the presence of a controlled substance listed in subsection (12) of this
15 section is detected in the blood, as measured by a scientifically reliable test, or
16 tests, taken within two (2) hours of cessation of operation or physical control
17 of a motor vehicle;
- 18 (e) While under the combined influence of alcohol and any other substance which
19 impairs one's driving ability, **including intoxicating hemp products**; or
- 20 (f) Having an alcohol concentration of 0.02 or more as measured by a
21 scientifically reliable test or tests of a sample of the person's breath or blood
22 taken within two (2) hours of cessation of operation or physical control of a
23 motor vehicle, if the person is under the age of twenty-one (21).
- 24 (2) With the exception of the results of the tests administered pursuant to KRS
25 189A.103(7):
- 26 (a) If the sample of the person's blood or breath that is used to determine the
27 alcohol concentration thereof was obtained more than two (2) hours after

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

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

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

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

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

26 The provisions of this subsection shall not be construed as limiting the introduction
27 of any other competent evidence bearing upon the questions of whether the

1 defendant was under the influence of alcohol or other substances, in any
2 prosecution for a violation of subsection (1)(b) or (e) of this section.

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

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

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

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

- 1 (b) For the second offense within a ten (10) year period, be fined not less than
2 three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500)
3 and shall be imprisoned in the county jail for not less than seven (7) days nor
4 more than six (6) months and, in addition to fine and imprisonment, may be
5 sentenced to community labor for not less than ten (10) days nor more than
6 six (6) months. If any of the aggravating circumstances listed in subsection
7 (11) of this section are present, the mandatory minimum term of
8 imprisonment shall be fourteen (14) days, which term shall not be suspended,
9 probated, conditionally discharged, or subject to any other form of early
10 release;
- 11 (c) For a third offense within a ten (10) year period, be fined not less than five
12 hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall
13 be imprisoned in the county jail for not less than thirty (30) days nor more
14 than twelve (12) months and may, in addition to fine and imprisonment, be
15 sentenced to community labor for not less than thirty (30) days nor more than
16 twelve (12) months. If any of the aggravating circumstances listed in
17 subsection (11) of this section are present, the mandatory minimum term of
18 imprisonment shall be sixty (60) days, which term shall not be suspended,
19 probated, conditionally discharged, or subject to any other form of early
20 release;
- 21 (d) For a fourth or subsequent offense within a ten (10) year period, be guilty of a
22 Class D felony. If any of the aggravating circumstances listed in subsection
23 (11) of this section are present, the mandatory minimum term of
24 imprisonment shall be two hundred forty (240) days, which term shall not be
25 suspended, probated, conditionally discharged, or subject to any other form of
26 release; and
- 27 (e) For purposes of this subsection, prior offenses shall include all convictions in

1 this state, and any other state or jurisdiction, for operating or being in control
2 of a motor vehicle while under the influence of alcohol or other substances
3 that impair one's driving ability, or any combination of alcohol and such
4 substances, or while having an unlawful alcohol concentration, or driving
5 while intoxicated, but shall not include convictions for violating subsection
6 (1)(f) of this section. A court shall receive as proof of a prior conviction a
7 copy of that conviction, certified by the court ordering the 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) For a second or third offense within a ten (10) year period, the minimum sentence
20 of imprisonment or community labor shall not be suspended, probated, or subject to
21 conditional discharge or other form of early release. For a fourth or subsequent
22 offense under this section, the minimum term of imprisonment shall be one hundred
23 twenty (120) days, and this term shall not be suspended, probated, or subject to
24 conditional discharge or other form of early release. For a second or subsequent
25 offense, at least forty-eight (48) hours of the mandatory sentence shall be served
26 consecutively.

27 (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of

1 the penalties shall be assessed and that penalty shall not be suspended, probated, or
2 subject to conditional discharge or other form of early release.

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

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

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

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

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

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

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

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

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

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

27 (b) Alprazolam;

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