

**KRS CHAPTER 189A
DRIVING UNDER THE INFLUENCE
(Selected Sections)**

KRS 189A.005 Definitions for chapter – License suspensions

As used in this chapter, unless the context requires otherwise:

- (1) **"Alcohol concentration"** means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath;
- (2) **"Ignition interlock device"** means a device that connects a motor vehicle ignition system or motorcycle ignition system to a breath alcohol analyzer and prevents a motor vehicle ignition or motorcycle ignition from starting, and from continuing to operate, if a driver's breath alcohol concentration exceeds 0.02, as measured by the device;
- (3) **"License"** means any driver's or operator's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this state including:
 - (a) Any temporary license or instruction permit;
 - (b) The privilege of any person to obtain a valid license or instruction permit, or to drive a motor vehicle whether or not the person holds a valid license; and
 - (c) Any nonresident's operating privilege as defined in KRS Chapter 186 or 189;
- (4) **"Limited access highway"** has the same meaning as "limited access facility" does in KRS 177.220;
- (5) **"Refusal"** means declining to submit to any test or tests pursuant to KRS 189A.103. Declining may be either by word or by the act of refusal. If the breath testing instrument for any reason shows an insufficient breath sample and the alcohol concentration cannot be measured by the breath testing instrument, the law enforcement officer shall then request the defendant to take a blood or urine test in lieu of the breath test. If the defendant then declines either by word or by the act of refusal, he shall then be deemed to have refused if the refusal occurs at the site at which any alcohol concentration or substance test is to be administered;
- (6) When age is a factor, it shall mean age at the time of the commission of the offense; and
- (7) Unless otherwise provided, license suspensions under this chapter shall be imposed by the court. The court shall impose the applicable period of license suspension enumerated by this chapter and shall include in its order or judgment the length and terms of any suspension imposed. The license suspension shall be deemed effective on the date of entry of the court's order or judgment. The role of the Transportation Cabinet shall be limited to administering the suspension period under the terms and for the duration enumerated by the court in its order or judgment.

KRS 189A.010 Operating motor vehicle with alcohol concentration of or above 0.08, or of or above 0.02 for persons under age twenty-one, or while under the influence of alcohol or other substance which impairs driving ability prohibited – Admissibility of alcohol concentration test results – Presumptions – Penalties – Aggravating circumstances

- (1) A person shall not operate or be in physical control of a **motor vehicle** anywhere in this state:

EDITOR'S NOTE: See 189.520 for DUI of a vehicle that is not a motor vehicle and KRS 281A.210 for DUI of a Commercial Motor Vehicle.

 - (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
 - (b) While under the influence of alcohol;
 - (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
 - (d) While the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
 - (e) While under the combined influence of alcohol and any other substance which impairs one's

- driving ability; or
- (f) Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle, if the person is under the age of twenty-one (21).
- (2) With the exception of the results of the tests administered pursuant to KRS 189A.103 (7), if the sample of the person's blood or breath that is used to determine the alcohol concentration thereof was obtained more than two (2) hours after cessation of operation or physical control of a motor vehicle, the results of the test or tests shall be inadmissible as evidence in a prosecution under subsections (1) (a) and (1) (f) of this section. The results of the test or tests, however, may be admissible in a prosecution under subsections (1) (b) and (1) (e).
- (3) In any prosecution for a violation of subsection (1) (b) or (e) of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood or breath shall give rise to the following presumptions:
- (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and
- (b) If there was an alcohol concentration of 0.05 or greater but less than 0.08 based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

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

- (4) (a) Except as provided in paragraph (b) of this subsection, the fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.
- (b) A laboratory test or tests for a controlled substance shall be inadmissible as evidence in a prosecution under subsection (1)(d) of this section upon a finding by the court that the defendant consumed the substance under a valid prescription from a practitioner, as defined in KRS 218A.010, acting in the course of his or her professional practice.
- (5) Any person who violates the provisions of paragraphs (a), (b), (c), (d) or (e) of subsection (1) of this section shall:
- (a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
- (b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
- (c) For a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand (\$1,000) and shall be imprisoned in the county jail for not