

STATE: **KENTUCKY**  
 General Reference: Kentucky Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the Influence of Alcohol §189A.010(1)(b) <sup>479</sup>
Illegal Per Se Law (BAC/BrAC):	≥ <b>.08</b> <sup>480and481</sup> §§189A.010(1)(a) and 189A.005(1) <u>Persons Under 21 Years Old. ≥ .02</u> §189A.010(1)(e) <sup>482</sup> and (6)
Presumption (BAC):	<b>None</b> <sup>483</sup>
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Substance or (2) a combination of alcohol and any substance which may impair one’s driving ability §189A.010(1)(c) and (d)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>Yes</b> §§189A.100 and 281A.230 (Commercial Motor Vehicle Operators)
Implied Consent Law: Arrest Required (Yes/No):	<b>No</b> §189A.103(1) and (3) Only reasonable grounds that a drunk-driving offense has been committed are needed in order to request that a person submit to a chemical test.
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> §189A.103(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes</b> (Criminal Cases) §189A.105(2)(a)(1) and <i>Commonwealth v. Hager</i> , 702 S.W.2d 431 (Ky. 1986)
Other Information:	If a person has been arrested for <u>any</u> drunk driving offense related to either a death or physical injury, the law allows a court to issue a search warrant requiring that either a blood or a urine sample be obtained for chemical testing. §189A.105 and <i>Combs v. Commonwealth</i> , 965 S.W.2d 161 (Ky. 1998), <i>Commonwealth v. Morris</i> 70 S.W.3d 419 (Ky. 2002) If a person has an alcohol concentration > .15, that person must be detained at least 4 hours following the arrest. §189A.110

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	<b>Yes</b> §189A.103(1)
Urine:	<b>Yes</b> §189A.103(1)
Other:	<b>None</b>

<sup>479</sup>The DWI provisions of Chapter 189A apply only to the operation of “motor vehicles.” For DWI offenses concerning the operation of certain vehicles that are “not motor vehicles,” see §§186.010, 186.560(1)(b) and (5), 189.520 and 189.990(1).  
<sup>480</sup>This State’s illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.  
<sup>481</sup> Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§189.005(1) and 189A.005(1)  
<sup>482</sup> Prior law that also established a special offense against persons < 21 years old who operate a motor vehicle with BAC/BrAC ≥ .02 was held not to violate a persons’ Federal or State constitutional rights to equal protection of the law. *Commonwealth v. Howard*, 969 S.W.2d 700 (Ky. 1998)  
<sup>483</sup> Sec. 189.520(3)(c) establishes a statutory presumption of operating a vehicle that is “not a motor vehicle” while under the influence of alcohol if the operator has a BAC/BrAC ≥ .080.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea-Bargaining Statute (Yes/No):

**No**

**Yes** Plea bargaining is not allowed if any one of the three following conditions exist: (1) a defendant  $\geq$  21 years old has a BAC/BrAC  $\geq$  **.08**, (2) a defendant < 21 years old has a BAC/BrAC  $\geq$  **.02** or (3) a defendant refused to submit to a chemical test under the implied consent law. Does not apply if the State's witnesses are unavailable for trial or the chemical test results are in error. The court must record the reasons for any change in the original charges. §189A.120

Pre-Sentencing Investigation Law (PSI)  
(Yes/No):

**No** A DWI offender must undergo an alcohol assessment as part of the mandatory alcohol education or treatment program. §189A.040

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

Administrative Licensing Action

(Susp/Rev):

Other:

**None**

**None**

**None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

Administrative Licensing Action

(Susp/Rev):

**None**

If a person is **NOT** convicted of a drunk driving offense but refused to submit to a chemical test under the implied consent law, that person is subject to the same administrative licensing sanctions as if they had been convicted of such offense. §§189A.070(1) and 189A.107(2)

The court shall suspend the license of a person who refuses during the pending of the action. 189A.107(a)

Sanctions following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

First offense (Class B misdemeanor) – **48 hours to 30 days**<sup>484</sup>; second offense within 5 years (Class A misdemeanor) – **7 days to 6 months**; third offense within 5 years (Class A misdemeanor) – **30 days to 12 months**;

Fourth and subsequent offense within 5 years (Class D felony) – **1 to 5 years**

§§189A.010(5), 532.020 and 532.060

Persons Under 21 Years Old. BAC  $\geq$  .02 but < .08 – **None**; if BAC is  $\geq$  .08, then sanctions of 189A.010(5) apply. 189A.010(7)

<sup>484</sup> **Weekend Confinement.** For either a first or second offense, a defendant, except for any mandatory 48-hour jail term that has to be served, may be allowed to serve the imprisonment term on weekends provided they spend at least 24 hours in confinement. §189A.030.

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Mandatory Minimum Term:

First offense – **48 hours/2 days**<sup>485</sup> (4 days if there are aggravating circumstances); second offense (within 5 years) – **7 days** (with 48 con hrs; 14 days if there are aggravating circumstances); third offense – **30 days** (with 48 con hrs; 60 days if there are aggravating circumstances); fourth and subsequent offenses – **120 days** (with 48 con hrs; 240 days if there are aggravating circumstances)

§189A.0105(a) – (e)

**Home Incarceration.** A person convicted of a misdemeanor may be able to serve the mandatory jail sanction via “home incarceration”. §532.210

**Aggravating Circumstances.** A person who has been convicted of a drunk driving offense is subject to enhanced mandatory incarceration by committing one or more of the following aggravating circumstances during the offense: (1) Driving >30 MPH over the speed limit; (2) driving in the wrong direction on a limited access highway; (3) causing an accident that resulted in either a death or a serious bodily injury; (4) driving with a **BAC ≥ .18**; (4) refusing to submit to a chemical test under the implied consent law; or, (5) transporting a child <12 years old (**child endangerment**).

§189A.010(11). But a first time DUI offender is not subject to enhancement where the aggravating circumstance is refusal to submit to a chemical test. *Commonwealth v. Gaitherwright* 70 S.W.3d 411 (Ky. 2002)

Fine:

Amount (\$ Range):

First offense – **\$200 to \$500**; second offense (within 5 years) – **\$350 to \$500**; third offense – **\$500 to \$1,000**; fourth and subsequent offenses – **\$1,000 to \$10,000** §§189A.010(5) and 534.030  
Persons Under 21 Years Old. ≥ .02 but < .08 – **\$100 to \$500** §189A.010(6)

Mandatory Minimum Fine (\$):

**None**

Other Penalties:

Community Service:

First offense – **48 hours to 30 days**; second offense (within 5 years) – **10 days to 6 months**<sup>486</sup>; third offense (within 5 years) – **10 days to 12 months** §189A.010(5)

Persons Under 21 Years Old. ≥ .02 but < .08 – **20 hours** in lieu of a fine 189A.010(6)

Restitution (e.g., Victim’s Fund)

**Yes** – Victim’s compensation board (§346.010 et seq.) Also, the court shall order a defendant to pay

<sup>485</sup> For a first offense, a defendant must be sentenced to one of the following sanctions: (1) 48 hours in jail; (2) a \$200 fine; or (3) 48 hours of community service. §189A.010(5)(a) and (9)

<sup>486</sup> For second or third offenses not related to aggravating circumstances, the law seems to provide for discretionary community service as a sentencing option which is in addition to incarceration. However, there appears to be some ambiguity in the law and, therefore, it may be possible to substitute 10 days of community service for the mandatory term of incarceration. §189A.010(8)

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Other:

restitution directly to a victim as a condition of probation. §§532.358 and 533.030(3)  
**Service Fee.** A DWI offender must pay a **\$250** service fee in addition to any other fine. §189A.050.  
**Ignition Interlock.** At the conclusion of an offender’s license revocation period, the court may require that person to operate only motor vehicles equipped with ignition interlock devices (with the exception of an employer’s vehicles). This requirement lasts for the following periods following license revocation: first offense – **6 months**; second offense (within 5 years) – **12 months**; third or subsequent offense (within 5 years) – **30 months**. Second or subsequent offenders must wait at least 1 year from the start of the license revocation period before applying to the court for permission to use an ignition interlock device. This requirement may be used as an alternative to impounding the license plates of a second or subsequent drunk driving offender. §189A.340

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:  
Other:

**None**  
At arraignment, the court shall suspend the driver’s license of a person who (1) has refused to submit to a chemical test, (2) has either a prior DWI offense conviction or a prior refusal or (3) was involved in an accident that resulted in death or physical injury to another person. This suspension remains in effect until a judgment of conviction or acquittal is entered or until the court terminates such suspension on its own order. However, no such suspension can last longer than the applicable licensing action for a drunk driving offense/refusal to submit to a chemical test under the implied consent law. §189A.200

Post DWI Conviction Licensing Action:  
Type of Licensing Action  
(Susp/Rev):

First and subsequent offenses – Revocation §189A.070(1)<sup>487</sup>

Persons Under 21 Years Old. > .02 but < .08– suspension §189A.010(6)

Term of License Withdrawal  
(Days, Months, Years, etc.):

First offense – 30 to 120 days; second offense – 12 to 18 months; third offense – 24 to 36 months; fourth and subsequent offense – 60 months §189A.070

Persons Under 21 Years Old. ≥ .02 but < .08-30 days to 6 months §189A.010(6)

Mandatory Minimum Term

<sup>487</sup> Under §189A.070(4), a person under 18 years old convicted of a regular drunk driving offense has the license revoked until age 18 or as otherwise provided under §189A.070, whichever sanction is longer.

of Withdrawal:

First offense – **30 days**; second offense – **12 months**; third offense – **24 months**<sup>488</sup>; fourth and subsequent offense – **60 months** §189A.070  
Persons Under 21 Years Old. ≥ .02 but < .10-30 days<sup>489</sup> §189A.010(5)

**Hardship Driving Privileges.** The court may grant hardship driving privileges for the purpose of employment, education, medical care, alcohol/substance abuse education programs or other court ordered counseling programs. This privilege may be conditioned on the offender operating motor vehicles equipped with ignition interlock devices. This privilege may ONLY be granted after the expiration of any mandatory license revocation period; and is NOT available to a person subject to licensing action because of refusal to submit to a chemical test under the implied consent law. §189A.410

A driver’s license cannot be reinstated following a revocation for a DWI offense until the defendant completes the required alcohol education or treatment program under §189A.040. §189A.070(3)

Other:

Rehabilitation:

Alcohol Education:

**Yes** first offense – Participation in either an alcohol education or treatment program for 90 days is mandatory. §189A.040(1) costs to be paid by offender up to his ability.

Alcohol Treatment:

For subsequent DWI offense convictions, the defendant must be sentenced to an alcohol or substance abuse treatment program for 1 year. §189A.040(2) and (3)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

**Impoundment.** For either a second or subsequent offense, if the court **does not** order the installation of ignition interlock devices on all the vehicles owned by an offender, it **MUST** impound the license plates of such vehicles for a period of time not exceeding the period of license action. A hardship

<sup>488</sup> It may be possible for this offender to obtain hardship driving privileges after only 1 year provided that person agrees to operate motor vehicles equipped with ignition interlock devices. §189A.340(2)(b)(4)

<sup>489</sup> This sanction appears to be mandatory but the law is not clear on this point.

**Double Jeopardy:** Based upon the same factual situation, a person who has been convicted of a drunk driving offense may also be subsequently subjected to a license revocation via administrative action by the Transportation Cabinet. The courts have held that such licensing action does not violate the constitutional prohibition against double jeopardy. See, for example, *Transportation Cabinet v. Feige*, 889 S.W.2d 52 (Ky. App. 1994). In addition, based upon the same factual situation, a person subjected to judicially ordered licensing prior to a DWI trial could be subsequently prosecuted for a drunk driving offense without violating the constitutional prohibition against double jeopardy. *Hourigan v. Com.*, 962 S.W.2d 860 (Ky. 1998)

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exemption is available to other family members allowing only them to use the affected vehicles. §189A.085

**Reimbursement.** If a person is placed on probation or given conditional release from incarceration, the court may require payment to either an education or treatment program for drug or alcohol abuse or for periodic testing. The amount of this payment is not to exceed the amount of any fine that could have been imposed for the offense. §533.030

**Incarceration Costs.** An offender may be required to reimburse the State or local government for incarceration costs. §§532.352 and 532.358

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC  $\geq$  .04, (2) is under the influence of alcohol or a controlled substance or (3) has refused to submit to a chemical test for either alcohol or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the “disqualification” is for life (10 years mand). A person who operates a CMV with a BAC/BrAC  $\geq$  .04 but  $\leq$  .08 is subject to a fine of not less than \$20 and not more than \$50. However, if the BAC/BrAC is  $>$  .08, that person is subject to the same fines as for a regular drunk driving offense. In addition, a CMV operator who has any measurable (or detectable) amount of alcohol or controlled substance in the system must be placed “out-of-service” for 24 hours. If a CMV operator refuses to submit to a chemical test (for an alcohol concentration or for the presence of other drugs) under the CMV implied consent law provisions, the operator’s privilege to operate a CMV can be either suspended or revoked. For first refusal, the CMV privilege is suspended for one year (mand) and, for a subsequent refusal, the privilege is suspended for life (mand). However, if the operator fails to appear at the implied consent hearing, which is automatically scheduled in refusal situations, the CMV privilege is revoked; the length of this revocation is not specified. The pre-trial and implied consent provisions of Ch. 189A also apply to CMV operators (§281A.220(2)). §§281A.010(2), (8), (10) and (11), 281A.190, 281A.210, 281A.220 and 281A.2102 A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. §281A.090(2) However, neither this section nor any other provision of Chapter 281A provides a sanction for this prohibition. However, except as noted above for driving while suspended or revoked for a drunk driving offense, it is a Class B misdemeanor for a person to operate a motor vehicle while the license is either suspended, revoked or withdrawn; the sanctions for this offense are a jail term of not more than 90 days and/or a fine of not more than \$250. §§186.620(2), 186.990(3), 532.090(2) and 534.040(2)(b)

### Other Criminal Actions Related to DWI:

#### Homicide by Vehicle:

State Has Such a Law:

**No**

But “a person is guilty of manslaughter in the second degree when, including, but not limited to, the operation of a motor vehicle, he wantonly causes the death of another person.” §507.040(1)

Manslaughter in the second degree is a Class C felony. §507.040(2) The sanctions for this felony are imprisonment from **5 to 10 years** and/or a fine of **\$1,000 to \$10,000**. §§532.060(2)(c) and 534.030(1)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):  
Mandatory Minimum Fine:

Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

Even though this State does not have vehicle homicide statute, it nevertheless provides for mandatory license revocation for not less than 5 years for a conviction of manslaughter<sup>490</sup> resulting from the operation of a motor vehicle. §186.560(1)(a) and (4)

Length of Term of  
Licensing Withdrawal:  
Mandatory Action--Minimum  
Length of License  
Withdrawal:  
Other:

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

§189A.090

Sanction:  
Criminal:  
Imprisonment (Term):

I. First offense (Class B misdemeanor) – Not more than **90 days**<sup>491</sup>; second offense within 5 years – (Class A misdemeanor) – Not more than **12 months**; third and subsequent offense within 5 years – (Class D felony) **1 to 5 years** §§189A.090(2), 532.060 and 532.090  
II. Also in Violation of the Drunk Driving Laws. First offense (Class A misdemeanor) – Not more than **12 months**; second offense within 5 years – (Class D felony) – **1 to 5 years**; third and subsequent offense within 5 years – (Class D felony) – **1 to 5 years** §§189A.090(2), 532.060 and 532.090

Mandatory Minimum  
Term of Imprisonment:  
Fine (\$ Range):

**None**  
First offense – Not more than **\$250**; second offense (within 5 years) – Not more than **\$500**; third and subsequent offenses (within 5 years) – **\$1,000 to \$10,000** §§534.030 and 534.040  
Also in Violation of the Drunk Driving Laws. First offense – Not more than **\$500**; second offense (within 5 years) – **\$1,000 to \$10,000**; third and subsequent offenses (within 5 years) – **\$1,000 to \$10,000** §§534.030 and 534.040

<sup>490</sup> This could include either (1) manslaughter in the second degree (§507.040) or reckless homicide (§507.050). “Reckless homicide” is a Class D felony. The sanctions for a Class D felony are an imprisonment term of 1 to 5 years and a fine of \$1,000 to \$10,000. §§532.060(2)(d) and 534.030

<sup>491</sup> Under §50.095, a defendant may be assigned community service in lieu of incarceration.

Mandatory Minimum Fine:  
 Administrative Licensing Actions:  
 Type of Licensing Action  
 (Susp/Rev):  
 Length of Term of License  
 Withdrawal Action:

**None**

ALL offenses – Revocation §189A.090(2)

I. First offense – 6 months; second offense (within 5 years) – **1 year**; third and subsequent offenses (within 5 years) – **2 years** §189A.090(2)

II. Also in Violation of the Drunk Driving Laws. First offense – 1 year; second offense (within 5 years) – **2 years**; third and subsequent offenses (within 5 years) – **5 years** §189A.090(2)

**None**

Mandatory Minimum Fine:  
 Mandatory Term of License  
 Withdrawal Action:

**Yes** As indicated above. After 1 year of revocation, second or subsequent offenders may move the court to have an ignition interlock device installed for the balance of the revocation §189A.090(4)

Habitual Traffic Offender Law:  
 State Has Such a Law (Yes/No):

**No**

Other State Laws Related To Alcohol Use:  
Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):  
 BAC Chemical Test Is Given  
 to the Following Persons:

**Possible**<sup>492</sup>

Driver:  
 Vehicle Passengers:  
 Pedestrian:

**Possible**  
**Possible**  
**Possible**

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:  
 Minimum Age (Years) Possession:  
  
 Minimum Age (Years) Consumption:

**21** §§244.080 and 244.085  
**21** §244.085 There is a limited employment exemption. §244.087  
**None**

Dram Shop Laws and Related Legal Actions:  
 State Has a Dram Shop Law (Yes/No):  
 “Dram Shop Law” Concept Has Been  
 Adopted Via a Change to the Common  
 Law Rule by Action of the Highest  
 Court of Record in the State (Case  
 Citation):

**Yes**<sup>493</sup> §413.241

**Yes** *Pike v. George*, 434 S.W.2d 626 (Ky. 1968).  
*Grayson v. Frat. Order of Eagles*, 736 S.W.2d 328

<sup>492</sup> Language in §189.590 requiring coroners to report on the circumstances surrounding fatal accidents may impliedly require such test, *Woosley v. Central Uniform Rental*, 463 S.W. 2d 345 (1971) or at least allow them. See OAG 82-590

<sup>493</sup> This law limits liability if the service of alcoholic beverages was to a person over the legal drinking age. A licensee or any employee thereof is not liable for the actions of a patron “unless a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving.” The law does not appear to have abrogated the holding in the *Pike* case since it concerned the damages caused if the service of alcoholic beverages was to a minor.

(Ky. 1987), and *Watts v. K, S and H*, 957 S.W.2d 233 (Ky. 1997)<sup>494and495</sup>

Dram Shop Actions-Social Hosts:  
Other:

**No**<sup>496</sup>  
**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to intoxicated Patrons:

Type of Criminal Action:

First offense – Class B Misdemeanor; second and subsequent offense – Class A Misdemeanor  
§§241.010(2), 244.080(2) and 244.990(1)

Term of Imprisonment: First offense – Not more than 90 days; second and subsequent offense – Not more than 12 months §532.090

Fine (\$ Range):

First offense – Not more than \$250; second and subsequent offense – Not more than \$500 §534.040

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes Suspension or Revocation**<sup>497</sup> §§243.480, 243.490 and 243.500

Length of Term of License Withdrawal:

**2 years** §243.100(1)(e)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

First offense – Class B Misdemeanor; second and subsequent offense – Class A Misdemeanor §§241.010(2), 244.080(1)<sup>498</sup> and 244.990(1)

Term of Imprisonment: First offense – Not more than 90 days; second and subsequent offense – Not more than 12 months §532.090

Fine (\$ Range):

First offense – Not more than \$250; second and subsequent offense – Not more than \$500 §534.040

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

<sup>494</sup> In *Watts*, the court held that a licensee may be held liable for actions of a minor who consumed alcoholic beverages that were purchased by another underage person if it can be shown that it was reasonably foreseeable that such beverages would be consumed by the non-purchasing minor who could become intoxicated and injure a third party.

<sup>495</sup> A licensee is not liable for an injury caused by an intoxicated patron if such injury was caused by shooting. The court felt that such an event was not foreseeable. *Isaacs v. Smith*, 5 S.W.3d 500 (Ky. 1999)

<sup>496</sup> See the “caveat” in the *Grayson* case 736 S.W.2d at 335.

<sup>497</sup> For a first violation, in lieu of revocation, the State may suspend a license. The licensee, however, as an alternative to this suspension, may at his/her discretion pay a fine. For retail licensees and all others, the fine is \$50 per day the license would have been suspended; §243.480(1) For a second violation within 2 years, the license must be revoked or suspended. §243.500(4)

<sup>498</sup> This statute, which prohibits the sale of alcoholic beverages by “retail licensees” to persons under the legal drinking age, was also applied to an employee of a licensee who sold alcoholic beverages to such a person. *Com. v. White*, 3 S.W.3d 353 (Ky. 1999)

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes – Suspension or Revocation** §§243.480,  
243.490 and 243.500

Length of Term of License Withdrawal:

**2 years** §243.100(1)(e)

Anti-Happy Hour Laws/Regulations:

**No**

Laws Prohibiting (1) the Possession of  
Open Containers of Alcoholic Beverages  
and (2) the Consumption of Alcoholic Beverages  
in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes** – Driver and passengers except passengers riding in vehicles used for compensation (e.g., buses, taxis and limousine), recreational vehicles, motor homes or motor coaches. §189.530(2)