

1 AN ACT relating to contracts.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) As used in this section:

6 (a) "Covenant not to compete" means a covenant or agreement, including a
7 provision of a contract of employment, between an employer and employee
8 that restrains, prohibits, or otherwise restricts an individual's ability,
9 following the termination of the individual's employment, to compete with
10 his or her former employer. A "covenant not to compete" shall not restrict
11 an employee from providing a service to a customer or client of the
12 employer if the employee does not initiate contact with or solicit the
13 customer or client; and

14 (b) "Low-wage employee" means an employee whose average weekly earnings,
15 calculated by dividing the employee's earnings during the period of fifty-two
16 (52) weeks immediately preceding the date of termination of employment by
17 fifty-two (52), or if an employee worked fewer than fifty-two (52) weeks, by
18 the number of weeks that the employee was actually paid during the fifty-
19 two (52) week period, are less than two thousand dollars (\$2,000) and shall
20 include interns, students, apprentices, or trainees employed, with or without
21 pay, at a trade or occupation in order to gain work or educational
22 experience and an individual who has independently contracted with
23 another person to perform services independent of an employment
24 relationship.

25 (2) No employer shall enter into, enforce, or threaten to enforce a covenant not to
26 compete with any low-wage employee.

27 (3) A low-wage employee may bring a civil action against any former employer or

1 other person that attempts to enforce a covenant not to compete against him or
2 her in violation of this section.

3 (4) An action under this section shall be brought within two (2) years of the latter of
4 the date the:

5 (a) Covenant not to compete was signed;

6 (b) Low-wage employee learns of the covenant not to compete;

7 (c) Employment relationship is terminated; or

8 (d) Employer takes any step to enforce the covenant not to compete.

9 (5) The court shall have jurisdiction to void any covenant not to compete with a low-
10 wage employee and to order all appropriate relief, including an order enjoining
11 the conduct of any person or employer, awarding damages, and reasonable
12 attorney fees and costs.

13 (6) No employer may discharge, threaten, or otherwise discriminate or retaliate
14 against a low-wage employee for bringing a civil action pursuant to this section.

15 (7) Every employer shall post a copy of this section or a summary approved by the
16 commissioner in the same location where other employee notices required by
17 state or federal law are posted.

18 (8) The provisions of this section shall be apply to covenants not to compete that are
19 entered into on or after the effective date of this Act.

20 ➔Section 2. KRS 336.990 is amended to read as follows:

21 (1) Upon proof that any person employed by the Labor Cabinet as a labor inspector has
22 taken any part in any strike, lockout or similar labor dispute, the person shall forfeit
23 his or her office.

24 (2) The following civil penalties shall be imposed, in accordance with the provisions in
25 KRS 336.985, for violations of the provisions of this chapter:

26 (a) Any person who violates KRS 336.110 or 336.130 shall for each offense be
27 assessed a civil penalty of not less than one hundred dollars (\$100) nor more

1 than one thousand dollars (\$1,000);

2 (b) Any corporation, association, organization, or person that violates KRS
3 336.190 and 336.200 shall be assessed a civil penalty of not less than one
4 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each
5 offense. Each act of violation, and each day during which such an agreement
6 remains in effect, shall constitute a separate offense;

7 (c) Any employer who violates the provisions of KRS 336.220 **or subsection (7)**
8 **of Section 1 of this Act** shall be assessed a civil penalty of not less than one
9 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each
10 violation; and

11 (d) Any labor organization who violates KRS 336.135 shall be assessed a civil
12 penalty of not less than one hundred dollars (\$100) nor more than one
13 thousand dollars (\$1,000) for each offense.

14 (3) Any labor organization, employer, or other person who directly or indirectly
15 violates KRS 336.130(3) shall be guilty of a Class A misdemeanor.

16 (4) Any person aggrieved as a result of any violation or threatened violation of KRS
17 336.130(3) may seek abatement of the violation or threatened violation by
18 petitioning a court of competent jurisdiction for injunctive relief and shall be
19 entitled to costs and reasonable attorney fees if he or she prevails in the action.

20 (5) Any person injured as a result of any violation or threatened violation of KRS
21 336.130(3) may recover all damages resulting from the violation or threatened
22 violation and shall be entitled to costs and reasonable attorney fees if he or she
23 prevails in the action.

24 **(6) Any employer who violates subsection (2) or (6) of Section 1 of this Act shall for**
25 **each offense be assessed a civil penalty of not less than one thousand dollars**
26 **(\$1,000) nor more than ten thousand dollars (\$10,000) for each violation.**