

1 AN ACT relating to protection for entrepreneurs and workers.

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

3 ➔Section 1. KRS 336.010 is amended to read as follows:

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

5 (1) ~~"Secretary" means secretary of the Labor Cabinet; and~~

6 ~~(2) "Cabinet" means Labor Cabinet;~~

7 **(2) "Contractor" means a person providing goods or services through a contractual**
8 **agreement with a person;**

9 **(3) "Person" has the same meaning as in KRS 446.010;**

10 **(4) "Prime contractor" means a contractor who enters into contractual agreements**
11 **with subcontractors to provide goods or services in order to fulfill a contract**
12 **between the prime contractor and a person with whom the subcontractors have**
13 **no direct contractual agreement;**

14 **(5) "Secretary" means secretary of the Labor Cabinet; and**

15 **(6) "Subcontractor" means a person who enters into a contractual agreement with**
16 **another person to provide goods or services:**

17 **(a) Directly to the prime contractor; or**

18 **(b) To a person with whom the prime contractor has a contractual agreement,**
19 **even though the subcontractor has no contract with that person.**

20 ➔Section 2. KRS 336.040 is amended to read as follows:

21 (1) The Labor Cabinet shall exercise all administrative functions of the state concerned
22 with employer-employee relationships, including the safety of workers and workers'
23 compensation.

24 (2) The cabinet shall:

25 (a) Promote friendly and cooperative relations between employers and
26 employees;

27 (b) Accumulate and publish industrial statistics and aid and encourage the

1 development of new industries and the expansion of existing industries in
2 Kentucky;

3 (c) Encourage, promote, and develop fair practices both by employers and
4 employees; discourage and eliminate as far as practicable all unfair practices
5 by either; and enforce laws relating to unfair practices;

6 (d) Foster, promote, and develop the welfare of both wage earners and industries
7 in Kentucky;

8 (e) Improve working and living conditions of employees, and advance their
9 opportunities for profitable employment;~~and~~

10 (f) Inquire into the causes of accidental injuries and occupational diseases arising
11 out of and in the course of employment, and advance measures for the
12 prevention of accidents and occupational diseases and for the improvement of
13 sanitary conditions in places of employment;

14 (g) Be the determining authority in issues related to the determination of a
15 person as an employee or an independent contractor in accordance with the
16 following:

17 1. The cabinet shall make determinations upon the request of affected
18 employers, employees, contractors, contractees, and state agencies, or
19 may make determinations during the course of the cabinet's routine
20 work;

21 2. Requests for a determination shall be signed by the requesting party
22 and subject to the Kentucky Open Records Act, KRS 61.870 to 61.884;
23 and

24 3. Determinations shall be based upon factors specified in Section 3 of
25 this Act, except that this subsection and Section 3 of this Act shall not
26 apply to a contractor or a subcontractor performing services for
27 operating motor vehicles classified as commercial vehicles under KRS

1 186.050(3)(b); and

2 (h) Provide support, education, and assistance to new businesses created by
3 entrepreneurship.

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

6 (1) A person performing services for a contractor, prime contractor, or subcontractor
7 shall be deemed an independent contractor if:

8 (a) The person is not limited by the contractor, prime contractor, or
9 subcontractor from making his or her services available to the general
10 public or the business community on a continuing basis;

11 (b) The person has the capacity to perform similar services for others on the
12 basis and schedule he or she agrees to provide such services;

13 (c) The person may realize a profit or suffer a loss under contracts to perform
14 the service;

15 (d) If necessary, the person hires his or her own employees or subcontracts the
16 services and is directly responsible for his or her employee or subcontractor
17 compensation;

18 (e) The person demonstrates compliance with federal employment eligibility
19 verification as required by the United States Department of Homeland
20 Security; and

21 (f) The person is performing the service without the contractor's direct
22 supervision, subject only to the right of the person for whom the service is
23 provided to specify the desired result, both under the person's contract of
24 service and in fact.

25 (2) A person performing services as a direct seller shall be deemed an independent
26 contractor if:

27 (a) 1. The person is engaged in the trade or business of selling or soliciting

- 1 the sale of consumer products, including services or other intangibles,
2 to any buyer on a buy-sell basis, a deposit-commission basis, a per-
3 piece basis, or any similar basis for resale by the buyer or any other
4 person in the home or otherwise than in a permanent retail
5 establishment; or
- 6 2. The person is engaged in the trade or business of selling or soliciting
7 the sale of consumer products, including services or other intangibles,
8 in the home or otherwise than in a permanent retail establishment;
- 9 (b) Substantially all the remuneration, whether or not paid in cash, for the
10 performance of the services described in paragraph (a) of this subsection is
11 directly related to sales or other output, including the performance of
12 services, rather than to the number of hours worked; and
- 13 (c) The services performed by the individual are performed pursuant to a
14 written contract between such individual and the person for whom the
15 services are performed, and the contract provides that the individual will not
16 be treated as an employee for federal and state tax purposes.
- 17 (3) A prime contractor shall not be responsible or in any manner liable for any
18 subcontractor's failure to properly classify persons performing services as
19 employees, and a subcontractor shall not be responsible or in any manner liable
20 for any lower-tier subcontractor's failure to properly classify persons performing
21 services as employees.
- 22 (4) Notwithstanding any other chapter of the Kentucky Revised Statutes to the
23 contrary, any person found to have met the requirements for determination as an
24 independent contractor shall not be eligible for employee benefits or wages
25 provided under KRS Chapter 337, 341, or 342 from any other contractor or
26 subcontractor, or the insurance carrier of another contractor or subcontractor.
- 27 (5) Notwithstanding KRS 131.190, when it is determined that a misclassification has

1 occurred, the cabinet shall notify other government agencies with jurisdiction
2 pertaining to workers' rights, wages, and withholdings, including but not limited
3 to:

4 (a) The Kentucky Department of Workers' Claims;

5 (b) The Kentucky Unemployment Insurance Commission; and

6 (c) The Kentucky Department of Revenue.

7 (6) Any person aggrieved by a determination by the cabinet may appeal the
8 determination to the Circuit Court of the county where the person resides or
9 where the person has his or her principal office.

10 ➔ Section 4. KRS 336.050 is amended to read as follows:

11 (1) The secretary in person or by representative shall:

12 (a) Investigate and ascertain the wages of all employees employed in this state;

13 (b) Enter the place of business or employment of any employer of employees to
14 examine and inspect all books, registers, payrolls, and other records that have
15 a bearing upon the question of wages of employees and to ascertain whether
16 the orders of the secretary are complied with; and

17 (c) Require from the employer a full and correct statement in writing when the
18 secretary or the secretary's representative considers it necessary, of the wages
19 paid to all employees in his or her employment.

20 (2) The secretary in person or by representative may prosecute any violation of any of
21 the provisions of any law which it is his or her duty to administer or enforce. The
22 secretary may enter into reciprocal agreements with the corresponding labor agency
23 or official of any other state to collect in the other state claims assigned to the
24 secretary. To the extent allowed by a reciprocal agreement, the secretary may
25 maintain actions in the courts of another state to collect claims and judgments for
26 wages and assign claims and judgments to the agency or official of another state for
27 collection. If a reciprocal agreement extends a like comity to cases arising in the

1 Commonwealth, the secretary may maintain actions in the courts of the
2 Commonwealth to collect claims and judgments for wages arising in the other state
3 in the same manner and to the same extent that actions are authorized when arising
4 in the Commonwealth.

5 **(3) The secretary shall develop a training program to educate entrepreneurs and the**
6 **public on the determination of persons as employees or independent contractors**
7 **based upon the criteria established in Section 3 of this Act. The training program**
8 **shall:**

9 **(a) Be made available to entrepreneurs, employers, employees, and contractors**
10 **throughout the state;**

11 **(b) Be publicized to entrepreneurs through the One Stop Business Portal on the**
12 **Web site of the Secretary of State; and**

13 **(e) Begin no later than July 1, 2021.**

14 ➔Section 5. KRS 336.990 is amended to read as follows:

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

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

20 (a) Any person who violates KRS 336.110 or 336.130 shall for each offense be
21 assessed a civil penalty of not less than one hundred dollars (\$100) nor more
22 than one thousand dollars (\$1,000);

23 (b) Any corporation, association, organization, or person that violates KRS
24 336.190 and 336.200 shall be assessed a civil penalty of not less than one
25 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each
26 offense. Each act of violation, and each day during which such an agreement
27 remains in effect, shall constitute a separate offense;

1 (c) Any employer who violates the provisions of KRS 336.220 shall be assessed a
2 civil penalty of not less than one hundred dollars (\$100) nor more than one
3 thousand dollars (\$1,000) for each violation;~~and~~

4 (d) Any labor organization who violates KRS 336.135 shall be assessed a civil
5 penalty of not less than one hundred dollars (\$100) nor more than one
6 thousand dollars (\$1,000) for each offense; and

7 (e) 1. Any employer or contractor who is determined to have misclassified
8 employees under Section 2 or 3 of this Act shall be assessed a civil
9 penalty of not less than one hundred dollars (\$100) nor more than one
10 thousand dollars (\$1,000) per determination. Each determination, and
11 each day during which the individual was misclassified, shall
12 constitute a separate offense.

13 2. Penalties assessed under this paragraph shall be assessed in addition
14 to any back taxes and interest owed.

15 3. As used in this paragraph, "determination" means determination
16 made under subsection (2)(q) of Section 2 of this Act and shall refer to
17 each individual misclassified within a determination.

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

21 (4) Any person aggrieved as a result of any violation or threatened violation of KRS
22 336.130(3) may seek abatement of the violation or threatened violation by
23 petitioning a court of competent jurisdiction for injunctive relief and shall be
24 entitled to costs and reasonable attorney fees if he or she prevails in the action.

25 (5) Any person injured as a result of any violation or threatened violation of KRS
26 336.130(3) may recover all damages resulting from the violation or threatened
27 violation and shall be entitled to costs and reasonable attorney fees if he or she

1 prevails in the action.

2 ➔Section 6. In order to allow for the education of entrepreneurs, employers, and
3 employees throughout the Commonwealth, Sections 1 to 3 and 5 of this Act take effect
4 January 1, 2022.