

1 AN ACT relating to worker fairness in the construction industry.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) The General Assembly finds and declares that:*

6 *(a) Commercial construction projects often involve use of local, state, and*
7 *federal funding through government contracts, grants, and incentives. It is*
8 *imperative that these commercial construction projects are undertaken by*
9 *employers that are properly classifying the workers completing these*
10 *projects and that the bidding process is fair and equal to all prime*
11 *contractors;*

12 *(b) Commercial construction industry fraud reduces government revenue,*
13 *shifts tax and workers' compensation insurance costs to law-abiding*
14 *employers, lowers working conditions, and steals jobs from legitimate*
15 *employers and their employees. Misclassification in the commercial*
16 *construction industry has a negative financial impact on individual*
17 *workers, Kentucky state government, and the private sector in Kentucky;*

18 *(c) Testimony presented to the Kentucky General Assembly in 2014 estimated*
19 *that construction employers who misclassify employees as independent*
20 *contractors could reduce payroll costs by approximately thirty percent*
21 *(30%), thereby creating a significant unfair competitive advantage over*
22 *construction employers who abide by the law;*

23 *(d) It is estimated that the unemployment insurance system lost an average of*
24 *one million seven hundred fifty thousand dollars (\$1,750,000) each year in*
25 *the construction sector for the period 2007-2010 in unemployment*
26 *insurance taxes that were not levied as a result of misclassification; and*

27 *(e) Based on Internal Revenue Service estimates that thirty percent (30%) of*

1 the income of misclassified workers in Kentucky is not reported, it is
2 estimated that six million one hundred thirty thousand dollars (\$6,130,000)
3 annually of state income tax revenues from the construction sector were lost
4 in Kentucky for the period 2007-2010 as a result of employee
5 misclassification.

6 (2) Therefore, the General Assembly finds it necessary to enact legislation
7 similar to legislation that has been enacted in several states to address the
8 problem of misclassification of employees in the commercial construction
9 industry.

10 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
11 READ AS FOLLOWS:

12 As used in Sections 1 to 10 of this Act, unless the context otherwise requires:

13 (1) "Agent of the contractor" means a corporate officer, a member of the board of
14 directors of the contractor or subcontractor, or any other person having
15 management authority or enforcement powers with respect to a practice or policy
16 of the contractor or subcontractor regarding the classification of an employee;

17 (2) "Construction" means building, altering, maintaining, moving, rehabilitating,
18 repairing, renovating, or demolishing of any commercial or industrial building,
19 structure, or improvement or activities relating to the excavation of or other
20 commercial or industrial development or improvement to land;

21 (3) "Contractor" means any sole proprietor, partnership, firm, corporation, limited
22 liability company, association, or other legal entity permitted by law to do
23 business within the Commonwealth of Kentucky who engages in construction by
24 providing goods or services through a contractual agreement;

25 (4) "Employer" means any contractor that employs individuals;

26 (5) "Performing services" means the performance of commercial construction;

27 (6) "Prime contractor" means a contractor who enters into contractual agreements

1 with subcontractors to provide goods or services in order to fulfill a contract
 2 between the prime contractor and a person with whom the subcontractors have
 3 no direct contractual agreement;

4 (7) "Subcontractor" means a person who enters into a contractual agreement with
 5 another person to provide goods or services either directly to a prime contractor
 6 or to a person with whom the prime contractor has a contractual relationship
 7 even though the subcontractor has no contract with that person.

8 (8) "Successor contractor" means an employer that has established a successor firm,
 9 corporation, or partnership if the two (2) entities share at least three (3) of the
 10 following characteristics or capabilities:

11 (a) Perform similar work;

12 (b) Occupy the same premises;

13 (c) Share the same telephone or facsimile number;

14 (d) Share the same e-mail address or Web site address;

15 (e) Perform work in the same geographic area;

16 (f) Employ substantially the same workforce;

17 (g) Utilize the same tools and equipment;

18 (h) Employ or engage the services of any person or persons involved in the
 19 direction or control of the other; or

20 (i) List substantially the same work experience.

21 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
 22 READ AS FOLLOWS:

23 (1) The misclassification of an employee as an independent contractor or the failure
 24 to properly classify an individual as an employee shall be a violation of this
 25 section, and a subcontractor that violates this section shall be assessed a civil
 26 penalty under Section 11 of this Act.

27 (2) A person performing services for a contractor or a prime contractor is presumed

1 to be an employee of the contractor or prime contractor and not an independent
2 contractor unless the person is engaged in a distinct occupation or business and
3 meets all the following criteria:

4 (a) The person is performing the services free from the direction or control of
5 the contractor or prime contractor over the details of the services provided,
6 subject only to the right of the contractor or prime contractor for whom the
7 service is provided, to specify the desired result;

8 (b) The person has the right to perform similar services and make those
9 services available to the general public or the business community on a
10 continuing basis;

11 (c) The person hires, if necessary, his or her own employees without approval
12 of the contractor, prime contractor, or subcontractor and pays the
13 employees without reimbursement from the contractor, prime contractor, or
14 subcontractor;

15 (d) The person furnishes the tools and equipment necessary to perform the
16 services;

17 (e) The person gains the profits and bears the losses of the distinct occupation
18 or business; and

19 (f) The contractor, prime contractor, or subcontractor does not represent to its
20 customers that the person or the distinct business or occupation is an
21 employee of the contractor, prime contractor, or subcontractor.

22 (3) The failure to withhold federal or state income taxes or to pay unemployment
23 compensation contributions or workers' compensation premiums with respect to
24 an individual's wages shall not be considered in making a determination under
25 this section, except as set forth in subsection (2) of this section.

26 (4) An individual's act of securing workers' compensation insurance with a carrier
27 as a sole proprietor, partnership, or otherwise shall not be binding on any

1 determination under this section.

2 (5) When a person meets the criteria set forth in subsection (2) of this section, he or
3 she shall be considered a subcontractor subject to Sections 1 to 10 of this Act in
4 regard to the classification of individuals performing services for the person.

5 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) Any affected employer, employee, contractor, prime contractor, subcontractor,
8 stage agency, law enforcement agency, labor management cooperative committee,
9 or the person receiving the benefit of the services provided, who has a reasonable
10 belief, based on good faith and without malicious intent, that the subcontractor
11 or the agent of the subcontractor is in violation of or has violated Section 3, 5, or
12 7 of this Act, may file a complaint with the department.

13 (2) (a) Upon receipt of a complaint filed pursuant to subsection (1) of this section,
14 the department shall conduct an investigation to ascertain the facts relating
15 to an alleged violation. The investigation may be made by written or oral
16 inquiry, field visit, conference, or any method or combination of methods
17 the department deems appropriate. Upon request of the department, the
18 contractor shall ensure that payroll records are open to inspection by the
19 department.

20 (b) If the commissioner determines that a subcontractor has violated a
21 provision of Section 3, 5, or 7 of this Act, the commissioner may:

22 1. Issue and cause to be served an order to cease and desist from further
23 violation to the offending contractor;

24 2. Initiate actions to collect the amount of any wages, salary,
25 employment benefits, or other compensation denied or lost to any
26 person adversely affected by the violation;

27 3. In the case of unlawful retaliation, initiate actions to provide all legal

- 1 or equitable relief as appropriate;
- 2 4. Assess civil penalties provided in Section 11 of this Act; and
- 3 5. Take affirmative or other action as deemed reasonable to eliminate the
- 4 effect of a violation pursuant to the authority granted in KRS
- 5 Chapters 336 and 337.
- 6 (3) All orders or decisions of the commissioner may be appealed, and upon appeal,
- 7 an administrative hearing shall be conducted in accordance with KRS Chapter
- 8 13B. The secretary shall conduct the hearing as soon as practicable and shall
- 9 give notice of the hearing to the parties not less than twenty (20) days in advance
- 10 of the date set for the hearing. A hearing officer shall preside over the conduct of
- 11 the administrative hearing. All final orders of the secretary shall be subject to
- 12 judicial review instituted by the filing of a petition in Franklin Circuit Court or
- 13 the Circuit Court in which the appealing party resides or operates a place of
- 14 business.
- 15 (4) A subcontractor who prevails against any agency in any action regarding a
- 16 violation of Section 3 of this Act may, upon a finding that the department
- 17 initiated an investigation against the subcontractor without having received a
- 18 complaint pursuant to subsection (1) of this section, may be awarded costs,
- 19 including reasonable attorney's fees, incurred in connection with the action.
- 20 (5) Complaints received by the department pursuant to subsection (1) of this section
- 21 shall be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884.
- 22 (6) The department shall provide a copy of the complaint that initiated the
- 23 investigation to the subcontractor who is the subject of the investigation upon
- 24 request of that subcontractor.
- 25 (7) If the commissioner determines that a complaint filed pursuant to subsection (1)
- 26 of this section was filed in bad faith or with malicious intent, the person filing the
- 27 complaint shall be subject to the civil penalties under Section 11 of this Act.

1 (8) The department shall maintain a list of subcontractors who have received a final
 2 determination of a third violation of Section 3 of this Act and provide that list to
 3 the Finance and Administration Cabinet upon request. The secretary shall also
 4 make the list available to the public and display the list on the Internet Web site
 5 of the Labor Cabinet.

6 (9) A prime contractor shall not be responsible or in any manner liable under
 7 Sections 1 to 10 of this Act for any subcontractor's failure to properly classify
 8 persons performing services as employees.

9 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
 10 READ AS FOLLOWS:

11 (1) A contractor or subcontractor, or any agent of any contractor or subcontractor
 12 shall not retaliate through discharge or in any other manner against any person
 13 with regard to the terms or conditions of his or her employment for taking any of
 14 the following actions:

15 (a) Making or threatening to make a complaint to a contractor, subcontractor,
 16 prime contractor, a coworker, or a state or federal agency that rights
 17 guaranteed under Sections 1 to 10 of this Act have been violated;

18 (b) Causing to be instituted any proceeding under Section 4 or 6 of this Act; or

19 (c) Providing information to investigators or testifying before any public body
 20 conducting an investigation, hearing, or inquiry into any violation of a law,
 21 rule, or administrative regulation by the employer.

22 (2) Any act of retaliation under this section shall subject a contractor to the civil
 23 penalties under Section 11 of this Act.

24 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
 25 READ AS FOLLOWS:

26 If the department fails to take action within one hundred twenty (120) days following
 27 the filing of a complaint, the complaint shall be dismissed without prejudice. Nothing

1 shall preclude the filing of the same or a similar complaint following the dismissal of a
2 complaint without prejudice.

3 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) (a) Each contractor, prime contractor, or subcontractor shall post in a
6 prominent and accessible place on the site where the construction is
7 performed a legible statement, provided by the commissioner, that describes
8 the:

9 1. Responsibility of independent contractors, prime contractors, or
10 subcontractors to pay taxes required by state and federal law;

11 2. Rights of employees to workers' compensation, unemployment
12 benefits, minimum wage, overtime, and other federal and state
13 workplace protections;

14 3. Protections against retaliation in Section 5 of this Act; and

15 4. Penalties in Section 11 of this Act if the contractor or subcontractor
16 fails to properly classify an individual as an employee.

17 (b) The notice shall also contain contact information for individuals to file
18 complaints or inquire with the commissioner about employment
19 classification status.

20 (c) The posted statement shall be constructed of materials capable of
21 withstanding adverse weather conditions.

22 (2) Within thirty (30) days of the effective date of this Act, the commissioner shall
23 create the notice described in this section and post the notice on the cabinet's
24 Web site for downloading by contractors, prime contractors, or subcontractors.

25 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
26 READ AS FOLLOWS:

27 The commissioner shall promulgate administrative regulations as deemed necessary to

1 implement and administer Sections 1 to 10 of this Act.

2 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
3 READ AS FOLLOWS:

4 Upon the issuance of an order, decision, or determination that a subcontractor has
5 misclassified employees as independent contractors, the commissioner shall provide a
6 copy of the order, decision, or determination to the commissioner of the Department of
7 Revenue, the commissioner of the Department of Workers' Claims, and the Office of
8 Unemployment Insurance no later than sixty (60) days after the issuance of the order,
9 decision, or determination. Information provided to agencies shall be confidential and
10 shall not be published or open to public inspection.

11 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
12 READ AS FOLLOWS:

13 Sections 1 to 10 of this Act shall not be interpreted or construed to alter, supersede, or
14 repeal other provisions of the Kentucky Revised Statutes, including those relating to
15 wages and hours, occupational safety and health, workers' compensation, and
16 unemployment insurance, but shall be held to be ancillary and supplemental thereto.

17 ➔Section 11. KRS 337.990 is amended to read as follows:

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

20 (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be
21 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
22 one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the
23 wages when due him under KRS 337.020 shall constitute a separate offense.

24 (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not
25 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

26 (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not
27 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)

- 1 for each offense and shall make full payment to the employee by reason of the
2 violation. Each failure to pay an employee the wages as required by KRS 337.055
3 shall constitute a separate offense.
- 4 (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not
5 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
6 and shall also be liable to the affected employee for the amount withheld, plus
7 interest at the rate of ten percent (10%) per annum.
- 8 (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil
9 penalty of not less than one hundred dollars (\$100) nor more than one thousand
10 dollars (\$1,000) for each offense and shall make full payment to the employee by
11 reason of the violation.
- 12 (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty
13 of not less than one hundred dollars (\$100) nor more than one thousand dollars
14 (\$1,000) for each offense and each day that the failure continues shall be deemed a
15 separate offense.
- 16 (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS
17 337.345, ~~and~~ KRS 337.385 to 337.405, **Section 7 of this Act, or subsection (7) of**
18 **Section 4 of this Act,** or willfully hinders or delays the commissioner or the
19 commissioner's authorized representative in the performance of his or her duties
20 under KRS 337.295, or fails to keep and preserve any records as required under
21 KRS 337.320 and 337.325, or falsifies any record, or refuses to make any record or
22 transcription thereof accessible to the commissioner or the commissioner's
23 authorized representative shall be assessed a civil penalty of not less than one
24 hundred dollars (\$100) nor more than one thousand dollars (\$1,000). A civil penalty
25 of not less than one thousand dollars (\$1,000) shall be assessed for any subsequent
26 violation of KRS 337.285(4) to (9) and each day the employer violates KRS
27 337.285(4) to (9) shall constitute a separate offense and penalty.

- 1 (8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable
2 under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be
3 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
4 one thousand dollars (\$1,000).
- 5 (9) Any employer who discharges or in any other manner discriminates against any
6 employee because the employee has made any complaint to his or her employer, to
7 the commissioner, or to the commissioner's authorized representative that he or she
8 has not been paid wages in accordance with KRS 337.275 and 337.285 or
9 regulations issued thereunder, or because the employee has caused to be instituted
10 or is about to cause to be instituted any proceeding under or related to KRS
11 337.385, or because the employee has testified or is about to testify in any such
12 proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,
13 and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than
14 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- 15 (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not
16 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- 17 (11) A person shall be assessed a civil penalty of not less than one hundred dollars
18 (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or
19 in any other manner discriminates against an employee because the employee has:
- 20 (a) Made any complaint to his or her employer, the commissioner, or any other
21 person; or
- 22 (b) Instituted, or caused to be instituted, any proceeding under or related to KRS
23 337.420 to 337.433; or
- 24 (c) Testified, or is about to testify, in any such proceedings.
- 25 **(12) (a) Upon a final determination of a violation of Section 3 of this Act, the**
26 **subcontractor shall be assessed a civil penalty not to exceed two hundred**
27 **fifty dollars (\$250) per each improperly classified person for the first**

1 violation. A subcontractor shall be assessed a civil penalty not to exceed
2 three thousand dollars (\$3,000) per each improperly classified person for
3 each subsequent final determination of a violation within a five (5) year
4 period. Any subcontractor who receives a final determination of a third
5 violation within the five (5) year period following the initial violation shall
6 be ineligible to contract to provide services to the Commonwealth or to
7 respond to or perform work awarded to any person pursuant to a request for
8 proposals or invitation to bid pursuant to KRS Chapters 45A, 56, 162, 164,
9 176, 425, or any other provision of the Kentucky Revised Statutes which
10 governs the awarding of bids or contracts for construction funded in any
11 way by local or state funds or financed through tax increment financing
12 pursuant to KRS Chapter 65.

13 (b) 1. Any contractor or subcontractor who willfully violates Section 3 of
14 this Act, or obstructs the commissioner, the commissioner's authorized
15 representative, or any other person authorized to inspect places of
16 employment, shall be liable for civil penalties up to double the amount
17 provided in paragraph (a) of this subsection.

18 2. The increased civil penalty shall be imposed in cases in which a
19 contractor's or subcontractor's conduct is proven by a preponderance
20 of the evidence to be willful.

21 3. For the purposes of this paragraph, the term "willfully violates"
22 means a contractor or subcontractor knew or should have known that
23 his or her conduct was prohibited.

24 (c) The civil penalties imposed in this subsection shall be in addition to any
25 other penalties provided or recovered under other provisions of the
26 Kentucky Revised Statutes or federal law.

27 (13) A contractor or subcontractor shall be assessed a civil penalty of not less than

1 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for a
 2 violation of Section 5 of this Act.

3 (14) A subcontractor that is a corporation, any officer of the corporation, or any
 4 shareholder who owns or controls at least ten percent (10%) of the outstanding
 5 stock of the corporation who knowingly permits the corporation to willfully
 6 violate Section 3 or 5 of this Act shall also be in violation of and subject to the
 7 civil penalties issued in the commissioner's order, decision, or determination.

8 (15) Any penalties imposed under this section by the commissioner may be appealed,
 9 and upon appeal, an administrative hearing shall be conducted in accordance
 10 with KRS Chapter 13B.

11 (16) Any willful violation of Section 3 of this Act shall be a Class A misdemeanor.

12 ➔Section 12. KRS 45A.145 is amended to read as follows:

13 (1) Unless otherwise provided in the statute making appropriations therefor, multiyear
 14 contracts for supplies and services may be entered into for periods not extending
 15 beyond the end of the biennium in which the contract was made, if funds for the
 16 first fiscal year of the contemplated contract are available at the time of contracting.
 17 Payment and performance obligations for succeeding fiscal years shall be subject to
 18 the availability of funds therefor.

19 (2) Prior to the utilization of a contract as described in subsection (1) of this section, it
 20 shall be determined in writing by the chief purchasing officer:

21 (a) That estimated requirements cover the period of the contract and are
 22 reasonably firm and continuing; and

23 (b) That such contract will serve the best interests of the Commonwealth by
 24 encouraging effective competition or otherwise promoting economies in state
 25 procurement.

26 (3) When funds are not appropriated or otherwise made available to support
 27 continuation of performance in a subsequent year of a contract as described in

1 subsection (1) of this section, the contract for such subsequent year may be canceled
 2 and the contractor shall be reimbursed for the reasonable value of any nonrecurring
 3 costs incurred but not amortized in the price of the supplies or services delivered
 4 under the contract. The cost of cancellation may be paid from:

- 5 (a) Appropriations currently available for performance of the contract; or
- 6 (b) Appropriations currently available for procurement of similar supplies or
 7 services and not otherwise obligated; or
- 8 (c) Appropriations made specifically for the payment of such cancellation costs.

9 **(4) Notwithstanding subsections (1), (2), and (3) of this section, any subcontractor or**
 10 **any corporate officer or shareholder who owns or controls at least ten percent**
 11 **(10%) of the outstanding stock of the corporation that has two (2) or more final**
 12 **determinations of violations of Section 3 or 5 of this Act within a five (5) year**
 13 **period shall not be awarded a contract under this chapter or KRS Chapter 175,**
 14 **176, 177, or 180 for a period of two (2) years from the date of the last final**
 15 **determination of a violation.**

16 ➔Section 13. KRS 131.190 is amended to read as follows:

17 (1) No present or former commissioner or employee of the department, present or
 18 former member of a county board of assessment appeals, present or former property
 19 valuation administrator or employee, present or former secretary or employee of the
 20 Finance and Administration Cabinet, former secretary or employee of the Revenue
 21 Cabinet, or any other person, shall intentionally and without authorization inspect or
 22 divulge any information acquired by him of the affairs of any person, or information
 23 regarding the tax schedules, returns, or reports required to be filed with the
 24 department or other proper officer, or any information produced by a hearing or
 25 investigation, insofar as the information may have to do with the affairs of the
 26 person's business.

27 (2) The prohibition established by subsection (1) of this section shall not extend to:

- 1 (a) Information required in prosecutions for making false reports or returns of
2 property for taxation, or any other infraction of the tax laws;
- 3 (b) Any matter properly entered upon any assessment record, or in any way made
4 a matter of public record;
- 5 (c) Furnishing any taxpayer or his or her properly authorized agent with
6 information respecting his or her own return;
- 7 (d) Testimony provided by the commissioner or any employee of the department
8 in any court, or the introduction as evidence of returns or reports filed with the
9 department, in an action for violation of state or federal tax laws or in any
10 action challenging state or federal tax laws;
- 11 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
12 energy resources assessed under KRS 132.820, or owners of surface land
13 under which the unmined minerals lie, factual information about the owner's
14 property derived from third-party returns filed for that owner's property, under
15 the provisions of KRS 132.820, that is used to determine the owner's
16 assessment. This information shall be provided to the owner on a confidential
17 basis, and the owner shall be subject to the penalties provided in KRS
18 131.990(2). The third-party filer shall be given prior notice of any disclosure
19 of information to the owner that was provided by the third-party filer;
- 20 (f) Providing to a third-party purchaser pursuant to an order entered in a
21 foreclosure action filed in a court of competent jurisdiction, factual
22 information related to the owner or lessee of coal, oil, gas reserves, or any
23 other mineral resources assessed under KRS 132.820. The department may
24 promulgate an administrative regulation establishing a fee schedule for the
25 provision of the information described in this paragraph. Any fee imposed
26 shall not exceed the greater of the actual cost of providing the information or
27 ten dollars (\$10);

- 1 (g) Providing information to a licensing agency, the Transportation Cabinet, or
2 the Kentucky Supreme Court under KRS 131.1817;
- 3 (h) Statistics of gasoline and special fuels gallonage reported to the department
4 under KRS 138.210 to 138.448;
- 5 (i) Providing any utility gross receipts license tax return information that is
6 necessary to administer the provisions of KRS 160.613 to 160.617 to
7 applicable school districts on a confidential basis;
- 8 (j) Providing documents, data, or other information to a third party pursuant to an
9 order issued by a court of competent jurisdiction; or
- 10 (k) Providing information to the Legislative Research Commission under:
- 11 1. KRS 139.519 for purposes of the sales and use tax refund on building
12 materials used for disaster recovery;
- 13 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 14 3. KRS 141.437 for purposes of the ENERGY STAR home and the
15 ENERGY STAR manufactured home credits;
- 16 4. KRS 148.544 for purposes of the film industry incentives;
- 17 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
18 tax credits and the job assessment fees;
- 19 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 20 7. KRS 141.396 for purposes of the angel investor tax credit;
- 21 8. KRS 141.389 for purposes of the distilled spirits credit;
- 22 9. KRS 141.408 for purposes of the inventory credit; and
- 23 10. KRS 141.390 for purposes of the recycling and composting credit.
- 24 (3) The commissioner shall make available any information for official use only and on
25 a confidential basis to the proper officer, agency, board or commission of this state,
26 any Kentucky county, any Kentucky city, any other state, or the federal government,
27 under reciprocal agreements whereby the department shall receive similar or useful

1 information in return.

2 (4) Access to and inspection of information received from the Internal Revenue Service
3 is for department use only, and is restricted to tax administration purposes.
4 Information received from the Internal Revenue Service shall not be made available
5 to any other agency of state government, or any county, city, or other state, and shall
6 not be inspected intentionally and without authorization by any present secretary or
7 employee of the Finance and Administration Cabinet, commissioner or employee of
8 the department, or any other person.

9 (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil
10 excise tax requirements of KRS Chapter 137 and statistics of natural gas production
11 as reported to the Department of Revenue under the natural resources severance tax
12 requirements of KRS Chapter 143A may be made public by the department by
13 release to the Energy and Environment Cabinet, Department for Natural Resources.

14 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
15 submissions for the 1989 tax year, the department may make public or divulge only
16 those portions of mine maps submitted by taxpayers to the department pursuant to
17 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
18 out parcel areas. These electronic maps shall not be relied upon to determine actual
19 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
20 required under KRS Chapters 350 and 352 shall not be construed to constitute land
21 surveying or boundary surveys as defined by KRS 322.010 and any administrative
22 regulations promulgated thereto.

23 (7) Notwithstanding any other provision of the Kentucky Revised Statutes, the
24 department shall provide a copy of any assessment for failure to pay business,
25 corporate, or personal income tax by a subcontractor in the construction industry
26 arising out of the misclassification of an employee, on a confidential basis, to the
27 commissioner of the Department of Workplace Standards, the commissioner of

1 *the Department of Workers' Claims, and the Office of Unemployment Insurance*
2 *no later than sixty (60) days after the issuance of the assessment.*

3 ➔Section 14. KRS 336.050 is amended to read as follows:

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

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

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

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

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

25 *(3) The secretary in person or by representative shall develop a training program to*
26 *educate the public on the classification of persons as employees or independent*
27 *contractors based upon the criteria established by Section 3 of this Act. The*

1 training program shall:

2 (a) Be offered to employers, employees, and contractors throughout the state;

3 (b) Be offered in the workplace, as well as other locations around the state;

4 (c) Include a workplace poster, to be developed by the cabinet, explaining the
5 criteria of employee classification; and

6 (d) Begin no later than July 15, 2020.

7 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO
8 READ AS FOLLOWS:

9 Pursuant to KRS 341.190(3), the Office of Unemployment Insurance shall provide a
10 copy of any assessment for failure to pay unemployment insurance taxes by a
11 subcontractor in the construction industry arising out of the misclassification of an
12 employee to the commissioner of the Department of Workplace Standards, the
13 commissioner of the Department of Workers' Claims, and the commissioner of the
14 Department of Revenue no later than sixty (60) days after the issuance of the
15 assessment.

16 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO
17 READ AS FOLLOWS:

18 Notwithstanding any confidentiality provisions contained in this chapter, the
19 commissioner of the Department of Workers' Claims shall provide a copy of any order
20 relating to the misclassification of an employee, the intentional and material
21 underpayment or concealment of payroll, or the failure to secure workers'
22 compensation in the construction industry to the commissioner of the Department of
23 Workplace Standards, the commissioner of the Department of Revenue, and the Office
24 of Unemployment Insurance no later than sixty (60) days after the issuance of the
25 order.

26 ➔Section 17. Sections 1 to 10, 15, and 16 of this Act may be cited as "The
27 Kentucky Workers Fairness Act."

1 ➔Section 18. Sections 1 to 13, 15, and 16 of this Act take effect January 1, 2021.