

1 AN ACT relating to arbitration agreements.

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

3 ➔Section 1. KRS 417.050 is amended to read as follows:

4 A written agreement to submit any existing controversy to arbitration or a provision in
5 written contract to submit to arbitration any controversy thereafter arising between the
6 parties is valid, enforceable, and irrevocable, save upon such grounds as exist at law for
7 the revocation of any contract. This chapter does not apply to:

- 8 (1) Arbitration agreements contained within the collective bargaining agreements
9 entered into by employers and the respective representatives of member employees;
- 10 (2) Insurance contracts. Nothing in this subsection shall be deemed to invalidate or
11 render unenforceable contractual arbitration provisions between two (2) or more
12 insurers, including reinsurers;~~and~~
- 13 (3) Arbitration agreements entered by any industrial insured captive insurer that is
14 created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. secs.
15 3901 et seq., as amended; and

16 **(4) Pre-dispute arbitration agreements or pre-dispute joint action waivers, involving**
17 **a person or named representative of a class alleging conduct constituting sexual**
18 **assault or harassment under Section 2 of this Act.**

19 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 417 IS CREATED TO
20 READ AS FOLLOWS:

21 **(1) As used in this section:**

22 **(a) "Pre-dispute arbitration agreement" means any agreement to arbitrate a**
23 **dispute that had not yet arisen at the time of the making of the agreement;**

24 **(b) "Pre-dispute joint-action waiver" means an agreement, whether or not part**
25 **of a pre-dispute arbitration agreement, that would prohibit or waive the**
26 **right of one (1) of the parties to the agreement to participate in a joint,**
27 **class, or collective action in a judicial, arbitral, administrative, or other**

1 forum, concerning a dispute that has not yet arisen at the time of making
2 the agreement;

3 (c) "Sexual assault dispute" means a dispute involving any prohibited sexual
4 act or contact, as described in KRS Chapter 510, 531.090, or 531.100;

5 (d) "Sexual harassment" means unwelcome sexual advances, requests for
6 sexual favors, and other verbal or physical conduct of a sexual nature
7 when:

8 1. Submission to such conduct is made, either explicitly or implicitly, a
9 term or condition of an individual's employment;

10 2. Submission to or rejection of such conduct by an individual is used as
11 a basis for employment decisions affecting the individual; or

12 3. Such conduct has the purpose or effect of unreasonably interfering
13 with an individual's work performance or creating an intimidating,
14 hostile, or offensive working environment; and

15 (e) "Sexual harassment dispute" means a dispute relating to conduct that is
16 alleged to constitute sexual harassment.

17 (2) At the election of the person alleging conduct constituting a sexual assault
18 dispute or a sexual harassment dispute, or the named representative of a class or
19 a collective action alleging such conduct, no pre-dispute arbitration agreement or
20 pre-dispute joint action waiver shall be valid or enforceable with respect to a case
21 filed under Kentucky law that relates to a sexual assault dispute or the sexual
22 harassment dispute.

23 (3) The applicability of this chapter to an agreement to arbitrate and the validity and
24 enforceability of an agreement to which this chapter applies shall be determined
25 by a court, rather than an arbitrator, irrespective of whether the party resisting
26 arbitration challenges the arbitration agreement specifically or in conjunction
27 with other terms of the contract containing such agreement, and irrespective of

1 *whether the agreement purports to delegate such determinations to an arbitrator.*