

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

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

11 As used in Sections 1 to 10 of this Act:

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

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

20 (3) "Contractor" means a person, company, or other legal entity permitted by law to
21 do business within the Commonwealth of Kentucky who engages in construction
22 by providing goods or services through a contractual agreement;

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

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

25 (6) "Prime contractor" means a person, company, or other legal entity who enters
26 into a contractual agreement with the consumer for which the work is being
27 performed, and is responsible for the completion of the project;

1 (7) "Secretary" means the secretary of the Education and Labor Cabinet;

2 (8) "Subcontractor" means a person, company, or other legal entity, with no
3 contractual obligation to the consumer for which the work is being performed,
4 hired by a prime contractor to perform a specified task for a project set forth in a
5 contractual agreement between the prime contractor and consumer; and

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

9 (a) Perform similar work;

10 (b) Occupy the same premises;

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

12 (d) Share the same email address or website;

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

14 (f) Employ substantially the same workforce;

15 (g) Utilize the same tools and equipment;

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

18 (i) List substantially the same work experience.

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

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

25 (2) A person performing services for a contractor or a prime contractor is presumed
26 to be an employee of the contractor or prime contractor and not an independent
27 contractor unless the person is engaged in a distinct occupation or business and

1 meets all the following criteria:

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

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

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

13 (d) The person furnishes the tools and equipment necessary to perform the
14 services;

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

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

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

24 (4) An individual's act of securing workers' compensation insurance with a carrier
25 as a sole proprietor, partnership, or otherwise shall not be binding on any
26 determination under this section.

27 (5) When a person meets the criteria set forth in subsection (2) of this section, he or

1 she shall be considered a subcontractor subject to Sections 1 to 10 of this Act in
2 regard to the classification of individuals performing services for the person.

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

5 (1) Any interested party receiving the benefit of the services provided, who has a
6 reasonable belief, based on good faith and without malicious intent, that the
7 subcontractor or the agent of the subcontractor is in violation of or has violated
8 Section 3, 5, or 7 of this Act, may file a complaint with the department.

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

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

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

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

23 3. In the case of unlawful retaliation, initiate actions to provide all legal
24 or equitable relief as appropriate;

25 4. Assess civil penalties provided in Section 11 of this Act; and

26 5. Take affirmative or other action as deemed reasonable to eliminate the
27 effect of a violation pursuant to the authority granted in KRS Chapters

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336 and 337.

- (3) All orders or decisions of the commissioner may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The secretary shall conduct the hearing as soon as practicable and shall give notice of the hearing to the parties not less than twenty (20) days in advance of the date set for the hearing. A hearing officer shall preside over the conduct of the administrative hearing. All final orders of the secretary shall be subject to judicial review instituted by the filing of a petition in Franklin Circuit Court or the Circuit Court in which the appealing party resides or operates a place of business.
- (4) A subcontractor who prevails against any agency in any action regarding a violation of Section 3 of this Act may, upon a finding that the department initiated an investigation against the subcontractor without having received a complaint pursuant to subsection (1) of this section, may be awarded costs, including reasonable attorney's fees, incurred in connection with the action.
- (5) Complaints received by the department pursuant to subsection (1) of this section shall be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884.
- (6) The department shall provide a copy of the complaint that initiated the investigation to the subcontractor who is the subject of the investigation upon request of that subcontractor.
- (7) If the commissioner determines that a complaint filed pursuant to subsection (1) of this section was filed in bad faith or with malicious intent, the person filing the complaint shall be subject to the civil penalties under Section 11 of this Act.
- (8) The department shall maintain a list of subcontractors who have received a final determination of a third violation of Section 3 of this Act and provide that list to the Finance and Administration Cabinet upon request. The secretary shall also make the list available to the public and display the list on the internet website of

1 the Education and Labor Cabinet.

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

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

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

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

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

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

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

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

22 If the department fails to take action within one hundred eighty (180) days following
23 the filing of a complaint, the complaint shall be dismissed without prejudice. Nothing
24 shall preclude the filing of the same or a similar complaint following the dismissal of a
25 complaint without prejudice.

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

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

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

7 2. Rights of employees to workers' compensation, unemployment
 8 benefits, minimum wage, overtime, and other federal and state
 9 workplace protections;

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

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

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

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

18 (2) Within thirty (30) days of the effective date of this Act, the commissioner shall
 19 create the notice described in this section and post the notice on the Education
 20 and Labor Cabinet's website for downloading by contractors, prime contractors,
 21 or subcontractors.

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

24 The commissioner shall promulgate administrative regulations in accordance with
 25 KRS Chapter 13A to implement and administer Sections 1 to 10 of this Act.

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

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

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

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

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

15 The following civil penalties shall be imposed by the Education and Labor Cabinet, in
16 accordance with the provisions in KRS 336.985, for violations of the provisions of this
17 chapter:

- 18 (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be
19 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
20 one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the
21 wages when due him under KRS 337.020 shall constitute a separate offense.
- 22 (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not
23 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- 24 (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not
25 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
26 for each offense and shall make full payment to the employee by reason of the
27 violation. Each failure to pay an employee the wages as required by KRS 337.055

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

1 thereto shall be assessed a civil penalty of not less than one hundred dollars (\$100)
2 nor more than one thousand dollars (\$1,000).

3 (9) Any employer who discharges or in any other manner discriminates against any
4 employee because the employee has made any complaint to his or her employer, to
5 the commissioner, or to the commissioner's authorized representative that he or she
6 has not been paid wages in accordance with KRS 337.275 and 337.285 or
7 regulations issued thereunder, or because the employee has caused to be instituted
8 or is about to cause to be instituted any proceeding under or related to KRS
9 337.385, or because the employee has testified or is about to testify in any such
10 proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,
11 and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than
12 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

13 (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not
14 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

15 (11) A person shall be assessed a civil penalty of not less than one hundred dollars
16 (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or
17 in any other manner discriminates against an employee because the employee has:

18 (a) Made any complaint to his or her employer, the commissioner, or any other
19 person; or

20 (b) Instituted, or caused to be instituted, any proceeding under or related to KRS
21 337.420 to 337.433; or

22 (c) Testified, or is about to testify, in any such proceedings.

23 **(12) (a) Upon a final determination of a violation of Section 3 of this Act, the**
24 **subcontractor shall be assessed a civil penalty not to exceed two hundred**
25 **fifty dollars (\$250) per each improperly classified person for the first**
26 **violation. A subcontractor shall be assessed a civil penalty not to exceed**
27 **three thousand dollars (\$3,000) per each improperly classified person for**

1 each subsequent final determination of a violation within a five (5) year
2 period. Any subcontractor who receives a final determination of a third
3 violation within the five (5) year period following the initial violation shall
4 be ineligible to contract to provide services to the Commonwealth or to
5 respond to or perform work awarded to any person pursuant to a request for
6 proposals or invitation to bid pursuant to KRS Chapter 45A, 56, 162, 164,
7 176, 425, or any other provision of the Kentucky Revised Statutes which
8 governs the awarding of bids or contracts for construction funded in any
9 way by local or state funds or financed through tax increment financing
10 pursuant to KRS Chapter 65.

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

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

19 3. As used in this paragraph, "willfully violates" means a contractor or
20 subcontractor knew or should have known that his or her conduct was
21 prohibited.

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

25 (13) A contractor or subcontractor shall be assessed a civil penalty of not less than
26 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for a
27 violation of Section 5 of this Act.

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

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

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

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

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

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

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

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

24 (3) When funds are not appropriated or otherwise made available to support
25 continuation of performance in a subsequent year of a contract as described in
26 subsection (1) of this section, the contract for such subsequent year may be
27 canceled and the contractor shall be reimbursed for the reasonable value of any

1 nonrecurring costs incurred but not amortized in the price of the supplies or services
 2 delivered under the contract. The cost of cancellation may be paid from:

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

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

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

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

25 (2) The prohibition established by subsection (1) of this section shall not extend to:
 26 (a) Information required in prosecutions for making false reports or returns of
 27 property for taxation, or any other infraction of the tax laws;

- 1 (b) Any matter properly entered upon any assessment record, or in any way made
2 a matter of public record;
- 3 (c) Furnishing any taxpayer or his or her properly authorized agent with
4 information respecting his or her own return;
- 5 (d) Testimony provided by the commissioner or any employee of the department
6 in any court, or the introduction as evidence of returns or reports filed with the
7 department, in an action for violation of state or federal tax laws or in any
8 action challenging state or federal tax laws;
- 9 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
10 energy resources assessed under KRS 132.820, or owners of surface land
11 under which the unmined minerals lie, factual information about the owner's
12 property derived from third-party returns filed for that owner's property, under
13 the provisions of KRS 132.820, that is used to determine the owner's
14 assessment. This information shall be provided to the owner on a confidential
15 basis, and the owner shall be subject to the penalties provided in KRS
16 131.990(2). The third-party filer shall be given prior notice of any disclosure
17 of information to the owner that was provided by the third-party filer;
- 18 (f) Providing to a third-party purchaser pursuant to an order entered in a
19 foreclosure action filed in a court of competent jurisdiction, factual
20 information related to the owner or lessee of coal, oil, gas reserves, or any
21 other mineral resources assessed under KRS 132.820. The department may
22 promulgate an administrative regulation establishing a fee schedule for the
23 provision of the information described in this paragraph. Any fee imposed
24 shall not exceed the greater of the actual cost of providing the information or
25 ten dollars (\$10);
- 26 (g) Providing information to a licensing agency, the Transportation Cabinet, or
27 the Kentucky Supreme Court under KRS 131.1817;

- 1 (h) Statistics of gasoline and special fuels gallonage reported to the department
2 under KRS 138.210 to 138.448;
- 3 (i) Providing any utility gross receipts license tax return information that is
4 necessary to administer the provisions of KRS 160.613 to 160.617 to
5 applicable school districts on a confidential basis;
- 6 (j) Providing documents, data, or other information to a third party pursuant to an
7 order issued by a court of competent jurisdiction; or
- 8 (k) Providing information to the Legislative Research Commission under:
- 9 1. KRS 139.519 for purposes of the sales and use tax refund on building
10 materials used for disaster recovery;
- 11 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 12 3. KRS 141.437 for purposes of the ENERGY STAR home and the
13 ENERGY STAR manufactured home credits;
- 14 4. KRS 141.383 for purposes of the film industry incentives;
- 15 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
16 tax credits and the job assessment fees;
- 17 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 18 7. KRS 141.396 for purposes of the angel investor tax credit;
- 19 8. KRS 141.389 for purposes of the distilled spirits credit;
- 20 9. KRS 141.408 for purposes of the inventory credit;
- 21 10. KRS 141.390 for purposes of the recycling and composting credit;
- 22 11. KRS 141.3841 for purposes of the selling farmer tax credit;
- 23 12. KRS 141.4231 for purposes of the renewable chemical production tax
24 credit;
- 25 13. KRS 141.524 for purposes of the Education Opportunity Account
26 Program tax credit;
- 27 14. KRS 141.398 for purposes of the development area tax credit;

1 15. KRS 139.516 for the purposes of the sales and use tax exemption on the
2 commercial mining of cryptocurrency; and

3 16. KRS 141.419 for purposes of the decontamination tax credit.

4 (3) The commissioner shall make available any information for official use only and on
5 a confidential basis to the proper officer, agency, board or commission of this state,
6 any Kentucky county, any Kentucky city, any other state, or the federal
7 government, under reciprocal agreements whereby the department shall receive
8 similar or useful information in return.

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

16 (5) Statistics of crude oil as reported to the department under the crude oil excise tax
17 requirements of KRS Chapter 137 and statistics of natural gas production as
18 reported to the department under the natural resources severance tax requirements
19 of KRS Chapter 143A may be made public by the department by release to the
20 Energy and Environment Cabinet, Department for Natural Resources.

21 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
22 submissions for the 1989 tax year, the department may make public or divulge only
23 those portions of mine maps submitted by taxpayers to the department pursuant to
24 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
25 out parcel areas. These electronic maps shall not be relied upon to determine actual
26 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
27 required under KRS Chapters 350 and 352 shall not be construed to constitute land

1 surveying or boundary surveys as defined by KRS 322.010 and any administrative
2 regulations promulgated thereto.

3 (7) Notwithstanding any provision of the Kentucky Revised Statutes, the department
4 shall provide a copy of any assessment for failure to pay business, corporate, or
5 personal income tax by a subcontractor in the construction industry arising out
6 of the misclassification of an employee, on a confidential basis, to the
7 commissioner of the Department of Workplace Standards, the commissioner of
8 the Department of Workers' Claims, and the Office of Unemployment Insurance
9 no later than sixty (60) days after the issuance of the assessment.

10 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO
11 READ AS FOLLOWS:

12 Notwithstanding any provision of the Kentucky Revised Statutes, the Office of
13 Unemployment Insurance shall provide a copy of any assessment for failure to pay
14 unemployment insurance taxes by a subcontractor in the construction industry arising
15 out of the misclassification of an employee to the commissioner of the Department of
16 Workplace Standards, the commissioner of the Department of Workers' Claims, and
17 the commissioner of the Department of Revenue no later than sixty (60) days after the
18 issuance of the assessment.

19 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO
20 READ AS FOLLOWS:

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

1 order.

2 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
3 READ AS FOLLOWS:

4 *The secretary shall develop a training program to educate the public on the*
5 *classification of persons as employees or independent contractors based upon the*
6 *criteria established by Section 3 of this Act. The training program shall:*

7 *(1) Be offered to employers, employees, and contractors throughout the state;*

8 *(2) Be offered in the workplace, as well as other locations around the state;*

9 *(3) Include a workplace poster, to be developed by the Education and Labor Cabinet,*
10 *explaining the criteria of employee classification; and*

11 *(4) Begin no later than September 1, 2024.*

12 ➔Section 17. Sections 1 to 10, 14, and 15 of this Act may be cited as the
13 Kentucky Workers Fairness Act.

14 ➔Section 18. Sections 1 to 10, 11, 12, 13, 14 and 15 of this Act take effect
15 January 1, 2025.