

1 AN ACT relating to employment of unauthorized aliens.

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 *As used in Sections 1 to 3 of this Act:*

6 *(1) "Alien" means any person who is not a citizen or national of the United States,*  
7 *as described in 8 U.S.C. sec. 1101 et seq., as amended;*

8 *(2) "Business entity":*

9 *(a) Means any person or group of persons that employs one (1) or more persons*  
10 *performing or engaging in any activity, enterprise, profession, or*  
11 *occupation for gain, benefit, advantage, or livelihood, whether for profit or*  
12 *not for profit; and*

13 *(b) Includes but is not limited to:*

14 *1. A self-employed individual, business entity filing articles of*  
15 *incorporation, partnership, limited partnership, limited liability*  
16 *company, foreign corporation, foreign limited partnership, foreign*  
17 *limited liability company authorized to transact business in this state,*  
18 *business trusts, and any business entity that registers with the*  
19 *Secretary of State; and*

20 *2. Any business entity that possesses a business license, permit,*  
21 *certificate, approval, registration, charter, or similar form of*  
22 *authorization issued by the state, any business entity that is exempt by*  
23 *law from obtaining such a business license, and any business entity*  
24 *that is operating unlawfully without a business license;*

25 *(3) "Contractor":*

26 *(a) Means a person, employer, or business entity that enters into an agreement*  
27 *to perform any service or work or to provide a certain product in exchange*

1 for valuable consideration; and

2 (b) Includes but is not limited to a general contractor, subcontractor,  
3 independent contractor, contract employee, project manager, or a recruiting  
4 or staffing entity;

5 (4) "Employee":

6 (a) Means any person directed, allowed, or permitted to perform labor or  
7 service of any kind by an employer, except that employees of an independent  
8 contractor working for a business entity shall not be regarded as the  
9 employees of the business entity for the purposes of Sections 1 to 3 and 4 of  
10 this Act; and

11 (b) Does not include any inmate in the legal custody of the state, a county, or a  
12 municipality;

13 (5) "Employer":

14 (a) Means any person, firm, corporation, partnership, joint stock association,  
15 agent, manager, representative, foreman, or other person having control or  
16 custody of any employment, place of employment, or of any employee,  
17 including any person or entity employing any person for hire within the  
18 Commonwealth of Kentucky, including a public employer; and

19 (b) Does not include the occupant of a household contracting with another  
20 person to perform casual domestic labor within the household;

21 (6) "Employment":

22 (a) Means the act of employing or state of being employed, engaged, or hired to  
23 perform work or service of any kind or character within the Commonwealth  
24 of Kentucky, including any job, task, work, labor, personal services, or any  
25 other activity for which compensation is provided, expected, or due;

26 (b) Includes but is not limited to all activities conducted by a business entity or  
27 employer; and

1 (c) Does not include:

2 1. Casual domestic labor performed in a household on behalf of the  
3 occupant of the household; or

4 2. The relationship between a contractor and the employees of a  
5 subcontractor performing work for the contractor;

6 (7) "E-Verify" or "E-Verify Program" means the electronic verification of federal  
7 employment authorization program of the Illegal Immigration Reform and  
8 Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, in U.S.C. sec.  
9 1324(a), as amended, and operated by the United States Department of Homeland  
10 Security, or a successor program.

11 (8) "Federal work authorization program" means any of the electronic verification  
12 of work authorization programs operated by the United States Department of  
13 Homeland Security, or an equivalent federal work authorization program  
14 operated by the United States Department of Homeland Security to verify  
15 information of newly hired employees, under the Immigration Reform and  
16 Control Act of 1986, Pub. L. No. 99-603, as amended, or the Illegal Immigration  
17 Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, as  
18 amended, in U.S.C. sec. 1324(a);

19 (9) "Knows" or "knowingly" means a person acts knowingly or with knowledge with  
20 respect to either:

21 (a) The person's conduct or to attendant circumstances when the person is  
22 aware of the nature of the person's conduct or that those circumstances  
23 exist; or

24 (b) A result of the person's conduct when the person is reasonably aware that  
25 the person's conduct is likely to cause that result;

26 (10) "Policy or practice" means a guiding principle or rule that may be written or  
27 adopted through repeated actions or customs;

1 (11) "Public employer" means every department, agency, or instrumentality of the  
2 state or a political subdivision of the state, including every department, agency, or  
3 instrumentality of cities, counties, urban-county governments, charter county  
4 governments, consolidated local governments, unified local governments, and  
5 special districts;

6 (12) "State-funded entity":

7 (a) Means any governmental entity of the state or a political subdivision thereof  
8 or any other entity that receives any moneys from the state or a political  
9 subdivision thereof; and

10 (b) Does not include an entity that only provides a service or a product to any  
11 governmental entity of the state or a political subdivision thereof, and  
12 receives compensation for the same;

13 (13) "Subcontractor" means a person, business entity, or employer who is awarded a  
14 portion of an existing contract by a contractor, regardless of its tier; and

15 (14) "Unauthorized alien" means an alien who is not authorized to work in the United  
16 States as defined in 8 U.S.C. sec. 1324a(h)(3).

17 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
18 READ AS FOLLOWS:

19 (1) A business entity, employer, or public employer shall not knowingly employ, hire  
20 for employment, or continue to employ an unauthorized alien to perform work  
21 within the Commonwealth of Kentucky. As used in this subsection, "knowingly  
22 employ, hire for employment, or continue to employ an unauthorized alien"  
23 means the actions described in 8 U.S.C. sec. 1324a.

24 (2) Every business entity or employer in this state shall enroll in E-Verify and  
25 thereafter verify the employment eligibility of the employee through E-Verify in  
26 accordance with the federal statutes and regulations governing the E-Verify  
27 Program. A business entity or employer that uses E-Verify to determine the work

1 authorization of an employee shall not be deemed to have violated this section  
2 with respect to the employment of that employee.

3 (3) On a finding of a first violation by a court of competent jurisdiction that a  
4 business entity or employer knowingly violated subsection (1) of this section, the  
5 court shall do all of the following:

6 (a) Order the business entity or employer to terminate the employment of every  
7 unauthorized alien;

8 (b) Subject the business entity or employer to a three (3) year probationary  
9 period throughout the state. During the probationary period, the business  
10 entity or employer shall file quarterly reports with the local county attorney  
11 specifying each new employee who is hired by the business entity or  
12 employer in the state;

13 (c) Order the business entity or employer to file a signed, sworn affidavit with  
14 the local county attorney within three (3) days after the order is issued by  
15 the court stating that the business entity or employer has terminated the  
16 employment of every unauthorized alien and the business entity or employer  
17 will not knowingly or intentionally employ an unauthorized alien in this  
18 state; and

19 (d) Direct the applicable state, county, or municipal governing bodies to  
20 suspend all existing business licenses and permits of the business entity or  
21 employer for a period not to exceed ten (10) business days specific to the  
22 business location where the unauthorized alien performed work.

23 (4) Before a business license or permit that has been suspended under subsection  
24 (3)(d) of this section is reinstated, a legal representative of the business entity or  
25 employer shall submit to the court:

26 (a) A signed, sworn affidavit stating that the business entity or employer is in  
27 compliance with subsection (1) of this section; and

- 1        (b) A copy of the memorandum of understanding issued to the business entity  
2                    or employer at the time of enrollment in E-Verify.
- 3        (5) The suspension of a business license or permit under subsection (3)(d) of this  
4                    section shall terminate one (1) business day after a legal representative of the  
5                    business entity or employer submits a signed, sworn affidavit to the court, stating  
6                    that the business entity or employer is in compliance with subsection (1) of this  
7                    section.
- 8        (6) For a second violation of subsection (1) of this section by a business entity or  
9                    employer, the court shall direct the applicable state, county, or municipal  
10                   governing body to permanently revoke all existing business licenses and permits,  
11                   held by the business entity or employer specific to the business location where the  
12                   unauthorized alien performed work. On receipt of the order, and notwithstanding  
13                   any other law, the appropriate agencies shall immediately revoke the licenses and  
14                   permits held by the business entity or employer.
- 15        (7) For a subsequent violation of subsection (1) of this section, the court shall direct  
16                   the applicable governing bodies to forever suspend all existing business licenses  
17                   and permits of the business entity or employer throughout the state.
- 18        (8) This section shall not be construed to deny any procedural mechanisms or legal  
19                   defenses included in the E-Verify Program or any other federal work  
20                   authorization program. A person or entity that establishes that it has complied in  
21                   good faith with the requirements of 8 U.S.C. sec. 1324a(b) establishes an  
22                   affirmative defense that the business entity or employer did not knowingly hire or  
23                   employ an unauthorized alien.
- 24        (9) In proceedings of the court, the determination of whether an employee is an  
25                   unauthorized alien shall be made by the federal government pursuant to 8 U.S.C.  
26                   sec. 1373(c). The court shall consider only the federal government's  
27                   determination when deciding whether an employee is an unauthorized alien. The

1 court may take judicial notice of any verification of an individual's immigration  
2 status previously provided by the federal government and may request the federal  
3 government to provide further automated or testimonial verification.

4 (10) Any business entity or employer that terminates an employee to comply with this  
5 section shall not be liable for any claims made against the business entity or  
6 employer by the terminated employee, provided that the termination is made  
7 without regard to the race, ethnicity, or national origin of the employee and is  
8 consistent with the antidiscrimination laws of this state and the United States.

9 (11) (a) In addition to the county attorneys of this state, the Attorney General shall  
10 also have authority to bring a civil complaint in any court of competent  
11 jurisdiction to enforce the requirements of this section.

12 (b) Any resident of this state may petition the Attorney General to bring an  
13 enforcement action against a specific business entity or employer by means  
14 of a written, signed petition. A valid petition shall include an allegation that  
15 describes the alleged violator or violators, as well as the action constituting  
16 the violation, and the date and location where the action occurred.

17 (c) A petition that alleges a violation on the basis of national origin, ethnicity,  
18 or race shall be deemed invalid and shall not be acted upon.

19 (d) The Attorney General shall respond to any petition under this subsection  
20 within sixty (60) days of receiving the petition, either by filing a civil  
21 complaint in a court of competent jurisdiction or by informing the petitioner  
22 in writing that the Attorney General has determined that filing a civil  
23 complaint is not warranted.

24 (12) This section shall not apply to the relationship between a party and the employees  
25 of an independent contractor performing work for the party and does not apply to  
26 casual domestic labor performed within a household.

27 (13) (a) It is an affirmative defense to a violation of subsection (1) of this section

1           that a business entity or employer was entrapped.

2           (b) To claim entrapment, the business entity or employer shall admit by  
3           testimony or other evidence the substantial elements of the violation.

4           (c) A business entity or employer who asserts an entrapment defense has the  
5           burden of proving by clear and convincing evidence the following:

6           1. The idea of committing the violation started with law enforcement  
7           officers or their agents rather than with the business entity or  
8           employer;

9           2. The law enforcement officers or their agents urged and induced the  
10           business entity or employer to commit the violation; and

11           3. The business entity or employer was not already predisposed to  
12           commit the violation before the law enforcement officers or their  
13           agents urged and induced the employer to commit the violation.

14           (14) In addition to actions taken by the state or political subdivisions thereof, the  
15           Attorney General or the county attorney may bring an action to enforce the  
16           requirements of this section in any District Court of a county in which the  
17           business entity or employer does business.

18           (15) The terms of this section shall be interpreted consistently with 8 U.S.C. sec. 1324a  
19           and any applicable federal rules and regulations.

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

22           (1) The Kentucky Office of Homeland Security shall establish and maintain an E-  
23           Verify employer agent service for any business entity or employer in this state  
24           with twenty-five (25) or fewer employees to use the E-Verify Program to verify an  
25           employee's employment eligibility on behalf of the business entity or employer.

26           (2) The Kentucky Office of Homeland Security shall:

27           (a) Establish an E-Verify employer agent account with the United States

- 1           Department of Homeland Security;
- 2           (b) Enroll a participating business entity or employer in the E-Verify Program
- 3           on its behalf; and
- 4           (c) Conform to all federal statutes and regulations governing E-Verify
- 5           employer agents.
- 6           (3) The Kentucky Office of Homeland Security shall not charge a fee to a
- 7           participating business entity or employer for the E-Verify employer agent service.
- 8           (4) The Kentucky Office of Homeland Security's E-Verify employer agent service
- 9           shall accommodate a business entity or employer who wishes to communicate
- 10           with the Kentucky Office of Homeland Security by internet, by electronic mail, by
- 11           facsimile machine, by telephone, or in person, provided that the communication
- 12           is consistent with federal statutes and regulations governing E-Verify employer
- 13           agents.
- 14           (5) Before receiving any contract, grant, or incentive by the state, any political
- 15           subdivision thereof, or any state-funded entity, a business entity or employer shall
- 16           provide proof to the state, political subdivision thereof, or state-funded entity that
- 17           the business entity or employer is enrolled and is participating in the E-Verify
- 18           Program, either independently or through the Kentucky Office of Homeland
- 19           Security's E-Verify employer agent service.
- 20           (6) Every three (3) months, the Kentucky Office of Homeland Security shall request
- 21           from the United States Department of Homeland Security a list of every business
- 22           entity or employer in this state that is enrolled in the E-Verify Program. On
- 23           receipt of the list, the Kentucky Office of Homeland Security shall make the list
- 24           available on its website.
- 25           (7) A business entity or employer that is enrolled in the E-Verify Program, verifies
- 26           the employment eligibility of an employee in good faith pursuant to this section,
- 27           and acts in conformity with all applicable federal statutes and regulations is

1 immune from liability under Kentucky law for any action by an employee for  
2 wrongful discharge or retaliation based on a notification from the E-Verify  
3 Program that the employee is an unauthorized alien.

4 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO  
5 READ AS FOLLOWS:

6 (1) As used in this section:

7 (a) The following terms have the same meanings as in Section 1 of this Act:

8 1. "Alien";

9 2. "Business entity";

10 3. "Contractor";

11 4. "Employee";

12 5. "Employer";

13 6. "Employment";

14 7. "E-Verify" or "E-Verify Program";

15 8. "Federal work authorization program";

16 9. "Knows" or "knowingly";

17 10. "Policy or practice";

18 11. "State-funded entity";

19 12. "Subcontractor"; and

20 13. "Unauthorized alien"; and

21 (b) "Contract" means a contract awarded by the state, any political subdivision  
22 thereof, or any state-funded entity that was competitively bid.

23 (2) As a condition for the award of any contract, grant, or incentive by the state, any  
24 political subdivision thereof, or any state-funded entity to a business entity or  
25 employer that employs one (1) or more employees, the business entity or employer  
26 shall not knowingly employ, hire for employment, or continue to employ an  
27 unauthorized alien within the Commonwealth of Kentucky.

- 1 (3) As a condition for the award of any contract, grant, or incentive by the state, any  
2 political subdivision thereof, or any state-funded entity to a business entity or  
3 employer that employs one (1) or more employees within the Commonwealth of  
4 Kentucky, the business entity or employer shall provide documentation  
5 establishing that the business entity or employer is enrolled in the E-Verify  
6 Program. During the performance of the contract, the business entity or employer  
7 shall participate in the E-Verify Program and shall verify every employee that is  
8 required to be verified according to the applicable federal rules and regulations.
- 9 (4) Any subcontractor on a project paid for by contract, grant, or incentive by the  
10 state, any political subdivision thereof, or any state-funded entity shall not  
11 knowingly employ, hire for employment, or continue to employ an unauthorized  
12 alien within the Commonwealth of Kentucky and shall also enroll in the E-Verify  
13 Program prior to performing any work on the project. Furthermore, during the  
14 performance of the contract, the subcontractor shall participate in the E-Verify  
15 Program and shall verify every employee that is required to be verified according  
16 to the applicable federal rules and regulations. This subsection shall only apply to  
17 subcontractors performing work on a project subject to this section and not to  
18 collateral persons or business entities hired by the subcontractor.
- 19 (5) A contractor of any tier shall not be liable under this section when the contractor  
20 contracts with its direct subcontractor who violates subsection (4) of this section  
21 unless it is shown that the contractor knew or should have known that the direct  
22 subcontractor was in violation of subsection (4) of this section.
- 23 (6) Upon a finding by a court of competent jurisdiction of a first violation of  
24 subsection (2) of this section by any business entity or employer, including a  
25 subcontractor:
- 26 (a) The business entity or employer shall be deemed in breach of contract and  
27 the state, political subdivision thereof, or state-funded entity may terminate

1 the contract after providing notice and an opportunity to be heard;

2 (b) The court shall do all of the following:

3 1. Order the business entity or employer to terminate the employment of  
4 every unauthorized alien;

5 2. Subject the business entity or employer to a three (3) year  
6 probationary period throughout the state. During the probationary  
7 period, the business entity or employer shall file quarterly reports with  
8 the Finance and Administration Cabinet of each new employee who is  
9 hired by the business entity or employer in the state; and

10 3. Order the business entity or employer to file, subject to the penalty of  
11 perjury, a signed, sworn affidavit with the Finance and Administration  
12 Cabinet within three (3) days after the order is issued by the court  
13 stating that the business entity or employer has terminated the  
14 employment of every unauthorized alien and the business entity or  
15 employer will not knowingly or intentionally employ an unauthorized  
16 alien in this state;

17 (c) If the court determines that the business entity or employer has a policy or  
18 practice that violates this section, the court shall direct the applicable state,  
19 county, or municipal governing bodies to suspend the business licenses or  
20 permits of the business entity or employer for a period not to exceed sixty  
21 (60) days specific to the location or locations where the unauthorized alien  
22 performed work; and

23 (d) Before a business license or permit that has been suspended under  
24 paragraph (c) of this subsection is reinstated, a legal representative of the  
25 business entity or employer shall submit to the court a signed, sworn  
26 affidavit stating that the business entity or employer is in compliance with  
27 subsection (2) of this section and a copy of the Memorandum of

1           Understanding issued to the business entity or employer at the time of  
2           enrollment in E-Verify.

3   (7) Upon a finding by a court of competent jurisdiction of a second violation of  
4   subsection (2) of this section by a business entity or employer, including a  
5   subcontractor, awarded a contract by the state, any political subdivision thereof,  
6   or any state-funded entity that occurs within ten (10) years of a finding by a court  
7   of competent jurisdiction of a first violation by the business entity or employer:

8   (a) The business entity or employer shall be deemed in breach of contract and  
9   the state, political subdivision thereof, or state-funded entity shall terminate  
10   the contract after providing notice and an opportunity to be heard;

11   (b) The court shall do all of the following:

12       1. Order the business entity or employer to terminate the employment of  
13       every unauthorized alien;

14       2. Subject the business entity or employer to a five (5) year probationary  
15       period throughout the state. During the probationary period, the  
16       business entity or employer shall file quarterly reports with the  
17       Finance and Administration Cabinet specifying each new employee  
18       who is hired by the business entity or employer in the state; and

19       3. Order the business entity or employer to file, subject to the penalty of  
20       perjury, a signed, sworn affidavit with the Finance and Administration  
21       Cabinet within three (3) days after the order is issued by the court  
22       stating that the business entity or employer has terminated the  
23       employment of every unauthorized alien and the business entity or  
24       employer will not knowingly or intentionally employ an unauthorized  
25       alien in this state;

26   (c) If the court determines that the business entity or employer has a policy or  
27   practice that violates this section, the court shall direct the applicable state,

- 1           county, or municipal governing body to suspend the business licenses or  
2           permits of the business entity or employer for a period not less than sixty  
3           (60) days and not to exceed one hundred twenty (120) days specific to the  
4           location or locations where the unauthorized alien performed work;
- 5           (d) Before a business license or permit that has been suspended under  
6           paragraph (c) of this subsection is reinstated, a legal representative of the  
7           business entity or employer shall submit to the court a signed, sworn  
8           affidavit stating that the business entity or employer is in compliance with  
9           the provisions of subsection (2) of this section and a copy of the  
10           Memorandum of Understanding issued to the business entity or employer at  
11           the time of enrollment in E-Verify; and
- 12           (e) A finding by a court of competent jurisdiction of a second violation of  
13           subsection (2) of this section that does not occur within ten (10) years of a  
14           first violation shall:
- 15           (a) Be considered a second violation of subsection (2) of this section by  
16           the business entity or employer; and
- 17           (b) Be penalized in accordance with subsection (6) of this section.
- 18           (8) Upon a finding by a court of competent jurisdiction of a third violation of  
19           subsection (2) of this section by a business entity or employer, including a  
20           subcontractor, awarded a contract by the state, any political subdivision thereof,  
21           or any state-funded entity:
- 22           (a) The business entity or employer shall be deemed in breach of contract and  
23           the state, political subdivision thereof, or state-funded entity shall terminate  
24           the contract after providing notice and an opportunity to be heard; and
- 25           (b) The court shall direct the applicable state, county, or municipal governing  
26           bodies to permanently revoke all business licenses or permits of the business  
27           entity or employer.

- 1 (9) This section shall not be construed to deny any procedural mechanisms or legal  
2 defenses included in the E-Verify Program or any other federal work  
3 authorization program.
- 4 (10) A business entity or employer that has enrolled in the E-Verify Program and has  
5 used the program to verify the work authorization of an employee shall not be  
6 liable under this section for violations resulting from the hiring of that employee.
- 7 (11) The Finance and Administration Cabinet shall promulgate administrative  
8 regulations in accordance with KRS Chapter 13A to administer this section.
- 9 (12) Compliance with this section may be verified by the contracting authority or any  
10 state or local law enforcement agency at any time to ensure a contractual  
11 agreement as provided for in this section is being met.
- 12 (13) Anything to the contrary notwithstanding, this section shall not apply to  
13 agreements by the state, any political subdivision thereof, or any state-funded  
14 entity relating to debt obligations by such entities.
- 15 (14) Any business entity or employer found in violation of this section that has had its  
16 business license or permit suspended shall not, for the duration of the  
17 suspension, be allowed, directly or indirectly, to procure or execute a license or  
18 permit similar to those that have been suspended.
- 19 (15) All contracts or agreements to which the state, a political subdivision, or state-  
20 funded entity are a party shall include the following clause: "By signing this  
21 contract, the contracting parties affirm, for the duration of the agreement, that  
22 they will not violate federal immigration law or knowingly employ, hire for  
23 employment, or continue to employ an unauthorized alien within the  
24 Commonwealth of Kentucky. Furthermore, a contracting party found to be in  
25 violation of this provision shall be deemed in breach of the agreement and shall  
26 be responsible for all damages resulting therefrom."
- 27 (16) An action brought under this section shall be brought in Franklin Circuit Court.

1           ➔Section 5. This Act takes effect January 1, 2026.