

1 AN ACT relating to employment and declaring an emergency.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 335B.010 TO 335B.070 IS
4 CREATED TO READ AS FOLLOWS:

5 *The General Assembly finds a compelling public interest in removing barriers to*
6 *employment opportunities and occupational licenses for citizens of the Commonwealth*
7 *who have been convicted of a crime. Employers can increase their hiring prospects by*
8 *offering positions to this historically untapped pool of workers who have taken*
9 *rehabilitative steps in preparation for participation in the workforce so they may*
10 *reenter society as productive citizens rather than being defined by a past crime.*

11 ➔SECTION 2. A NEW SECTION OF KRS 335B.010 TO 335B.070 IS
12 CREATED TO READ AS FOLLOWS:

13 *(1) Any hiring or licensing authority that considers a criminal background check as*
14 *part of its application process shall establish and implement a process by which*
15 *an individual who has been convicted of a crime can obtain a determination*
16 *about whether the crime will disqualify the individual from a position of public*
17 *employment or an occupation for which a professional license is required.*

18 *(2) When a criminal background check is required by a hiring or licensing authority*
19 *under subsection (1) of this section, an individual may submit his or her*
20 *application and have that application considered by the authority before pursuing*
21 *any training or specialized education that is required for the position of public*
22 *employment or an occupation for which a professional license is required. A*
23 *hiring or licensing authority shall:*

24 *(a) Request that the individual submit the information listed in subsection (2) of*
25 *Section 3 of this Act to the hiring or licensing authority within a reasonable*
26 *time as determined by the authority;*

27 *(b) Afford the individual an opportunity for an in-person, telephone, or video*

- 1 hearing; and
- 2 (c) Evaluate the applicant's testimony and the evidence of items listed in
3 subsection (2) of Section 3 of this Act and determine if the conviction relates
4 to the position of public employment sought or the occupation for which a
5 license is sought prior to taking any action on the application.
- 6 (3) A determination made in accordance with this section that a person is not
7 disqualified from a position of public employment or an occupation for which a
8 professional license is required due to criminal history shall be binding upon a
9 hiring or licensing authority unless, at the time a full application for a position of
10 public employment or an occupation for which a license is required is submitted,
11 the applicant has subsequently been convicted of a crime or has any previously
12 undisclosed convictions of a crime.
- 13 (4) A hiring or licensing authority shall display on its website its application policy
14 and procedures pertaining to an individual with a criminal background. The
15 application instructions shall include the following:
- 16 (a) That the application process may include a background check by the
17 Department of Kentucky State Police or the Administrative Office of the
18 Courts and may require the applicant to submit to fingerprinting;
- 19 (b) That a criminal conviction may disqualify an applicant from obtaining a
20 position of public employment or an occupational license; and
- 21 (c) That the applicant shall submit the information described in subsection (2)
22 of Section 3 of this Act to the hiring or licensing authority within a
23 reasonable time determined by the authority.
- 24 (5) A hiring or licensing authority shall provide the public notice as described in
25 subsection (4) of this section:
- 26 (a) To all applicants within fourteen (14) days of application or selection for an
27 interview; and

1 (b) To educational institutions that provide education and training in the areas
 2 of study requiring an occupational license to practice for prospective
 3 applicants.

4 (6) A hiring or licensing authority shall:

5 (a) No later than January 1, 2027:

6 1. Formulate policies and procedures as necessary to carry out the
 7 provisions of this section; and

8 2. Promulgate administrative regulations in accordance with KRS
 9 Chapter 13A related to this section; and

10 (b) Provide the Legislative Research Commission for referral to the Interim
 11 Joint Committee on Licensing, Occupations, and Administrative
 12 Regulations a report by November 1, 2027, to confirm that an application
 13 process as described in this section has been established and is being
 14 utilized.

15 ➔Section 3. KRS 335B.020 is amended to read as follows:

16 (1) No person shall be disqualified from public employment, nor shall a person be
 17 disqualified from pursuing, practicing, or engaging in any occupation for which a
 18 license is required solely because of a prior conviction of a crime, unless the crime
 19 for which convicted directly relates to the position of employment sought or the
 20 occupation for which the license is sought.

21 (2) In determining if a conviction directly relates to the position of public employment
 22 sought or the occupation for which the license is sought, the hiring or licensing
 23 authority shall consider items submitted by the applicant, which may include:

24 (a) The individual's criminal history, including but not limited to:

25 1. The nature and seriousness of the crime;

26 2. The individual's age when the offense was committed;

27 3. The length of time since the offense was committed;

1 4. The relationship of the crime to the public employment position
 2 sought or the occupation for which the license is sought; and

3 5. The relationship of the crime to the ability, capacity, and fitness
 4 required to perform the duties and discharge the responsibilities of the
 5 public employment position or licensed occupation;

6 (b) Any bonding requirements for the occupation for which the license is
 7 sought; and

8 (c) Any evidence of rehabilitation submitted by the applicant, including but not
 9 limited to evidence related to the person's compliance with any conditions of
 10 community supervision, parole, or mandatory supervision, the conduct and
 11 work activity of the person, treatment undertaken by the person, and
 12 testimonials or personal reference statements;

13 ~~The nature and seriousness of the crime for which the individual was convicted and~~
 14 ~~the passage of time since its commission;~~

15 ~~(b) The relationship of the crime to the purposes of regulating the position of~~
 16 ~~public employment sought or the occupation for which the license is sought;~~

17 ~~(c) The relationship of the crime to the ability, capacity, and fitness required to~~
 18 ~~perform the duties and discharge the responsibilities of the position of~~
 19 ~~employment or occupation].~~

20 ➔ Section 4. KRS 335B.030 is amended to read as follows:

21 (1) (a) If, after evaluating the evidence as described in subsection (2) of Section of
 22 3 of this Act, a hiring or licensing authority denies an individual a position of
 23 public employment or a license solely because of the individual's prior
 24 conviction of a crime, the hiring or licensing authority shall provide the
 25 individual with written findings of fact, including but not limited to ~~notify~~
 26 ~~the individual in writing of~~ the following:

27 1. The grounds and reasons for the denial or disqualification, citing facts

1 as they relate to specific items of consideration in subsection (2) of
 2 Section 3 of this Act;

- 3 2. That the individual has the right to a hearing conducted in accordance
 4 with KRS Chapter 13B, if written request for hearing is made within ten
 5 (10) working days after service of notice;
- 6 3. The earliest date the person may reapply for a position of public
 7 employment or a license; and
- 8 4. That new or previously submitted evidence of rehabilitation may be
 9 considered upon reapplication.

10 (b) Any party aggrieved by a final order issued by a hiring or licensing authority
 11 after a hearing under this subsection may appeal to Franklin Circuit Court or
 12 the Circuit Court of the county in which the appealing party resides in
 13 accordance with KRS Chapter 13B.

14 (2) (a) ~~[Except as provided in paragraph (b) of this subsection,]~~ A hiring or licensing
 15 authority shall not disqualify an individual from a position of public
 16 employment or from pursuing, practicing, or engaging in any occupation for
 17 which a license is required solely because of the individual's prior conviction
 18 of a crime, unless the authority provides the individual with a written notice
 19 that the authority has determined that the prior conviction may disqualify the
 20 person, demonstrates the connection between the prior conviction and the
 21 position of public employment or license being sought, and affords the
 22 individual an opportunity to be personally heard before the board prior to the
 23 board making a decision on whether to disqualify the individual. If the
 24 position of public employment or license is denied after the person was heard,
 25 the hiring or licensing authority shall notify the individual in writing of the
 26 following:

- 27 1. The grounds and reasons for the denial or disqualification;

- 1 2. That the individual has the right to a hearing conducted in accordance
2 with KRS Chapter 13B, if a written request for hearing is made within
3 ten (10) working days after service of notice;
- 4 3. The earliest date the person may reapply for a position of public
5 employment or license; and
- 6 4. That evidence of rehabilitation may be considered upon reapplication.
- 7 (b) ~~{If an individual's prior conviction was for a Class A felony, a Class B felony,~~
8 ~~or any felony offense that would qualify the individual as a registrant pursuant~~
9 ~~to KRS 17.500, there shall be a rebuttable presumption that a connection~~
10 ~~exists between the prior conviction and the license being sought.~~
- 11 ~~(c)~~ Any party aggrieved by a final order issued by a hiring or licensing authority
12 after a hearing under this subsection may appeal to Franklin Circuit Court or
13 the Circuit Court of the county in which the appealing party resides in
14 accordance with KRS Chapter 13B.
- 15 (3) ~~{Except as provided in subsection (2)(b) of this section, }~~In any administrative
16 hearing or civil litigation authorized under this section, the hiring or licensing
17 authority shall carry the burden of proof on the question of whether the prior
18 conviction directly relates to the position of public employment sought or the
19 occupation for which the license is sought.

20 ➔SECTION 5. A NEW SECTION OF KRS 335B.010 TO 335B.070 IS
21 CREATED TO READ AS FOLLOWS:

22 **Section 2 of this Act shall not apply to:**

23 **(1) Cities;**

24 **(2) Counties;**

25 **(3) Urban-county governments;**

26 **(4) Charter county governments;**

27 **(5) Consolidated local governments;**

1 **(6) Unified local governments;**

2 **(7) Any political subdivision of any entity listed in subsections (1) to (6) of this**
3 **section; or**

4 **(8) The Department of Financial Institutions within the Public Protection Cabinet,**
5 **as described in KRS 12.020, when acting as a licensing authority.**

6 ➔Section 6. KRS 337.010 is amended to read as follows:

7 (1) As used in this chapter, unless the context requires otherwise:

8 (a) "Commissioner" means the commissioner of the Department of Workplace
9 Standards under the direction and supervision of the secretary of the
10 Education and Labor Cabinet;

11 (b) "Department" means the Department of Workplace Standards in the
12 Education and Labor Cabinet;

13 (c) 1. "Wages" includes any compensation due to an employee by reason of
14 his or her employment, including salaries, commissions, vested vacation
15 pay, overtime pay, severance or dismissal pay, earned bonuses, and any
16 other similar advantages agreed upon by the employer and the employee
17 or provided to employees as an established policy. The wages shall be
18 payable in legal tender of the United States, checks on banks, direct
19 deposits, or payroll card accounts convertible into cash on demand at
20 full face value, subject to the allowances made in this chapter. However,
21 an employee may not be charged an activation fee and the payroll card
22 account shall provide the employee with the ability, without charge, to
23 make at least one (1) withdrawal per pay period for any amount up to
24 and including the full account balance.

25 2. For the purposes of calculating hourly wage rates for scheduled
26 overtime for professional firefighters, as defined in KRS 95A.210(8),
27 "wages" shall not include the distribution to qualified professional

1 firefighters by local governments of supplements received from the
2 Firefighters Foundation Program Fund. For the purposes of calculating
3 hourly wage rates for unscheduled overtime for professional firefighters,
4 as defined in KRS 95A.210(9), "wages" shall include the distribution to
5 qualified professional firefighters by local governments of supplements
6 received from the Firefighters Foundation Program Fund;

7 (d) "Employer" is any person, either individual, corporation, partnership, agency,
8 or firm who employs an employee and includes any person, either individual,
9 corporation, partnership, agency, or firm acting directly or indirectly in the
10 interest of an employer in relation to an employee; and

11 (e) "Employee" is any person employed by or suffered or permitted to work for
12 an employer, except that:

13 1. Notwithstanding any voluntary agreement entered into between the
14 United States Department of Labor and a franchisee, neither a franchisee
15 nor a franchisee's employee shall be deemed to be an employee of the
16 franchisor for any purpose under this chapter; and

17 2. Notwithstanding any voluntary agreement entered into between the
18 United States Department of Labor and a franchisor, neither a franchisor
19 nor a franchisor's employee shall be deemed to be an employee of the
20 franchisee for any purpose under this chapter.

21 For purposes of this paragraph, "franchisee" and "franchisor" have the same
22 meanings as in 16 C.F.R. sec. 436.1.

23 (2) As used in KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405, unless the
24 context requires otherwise:

25 (a) "Employee" is any person employed by or suffered or permitted to work for
26 an employer, but shall not include:

27 1. Any individual employed in agriculture;

- 1 2. Any individual employed in a bona fide executive, administrative,
2 supervisory, or professional capacity, or in the capacity of outside
3 salesman, or as an outside collector as the terms are defined by
4 administrative regulations of the commissioner;
- 5 3. Any individual employed by the United States;
- 6 4. Any individual employed in domestic service in or about a private
7 home. The provisions of this section shall include individuals employed
8 in domestic service in or about the home of an employer where there is
9 more than one (1) domestic servant regularly employed;
- 10 5. Any individual classified and given a certificate by the commissioner
11 showing a status of learner, apprentice, worker with a disability,
12 sheltered workshop employee, and student under administrative
13 procedures and administrative regulations prescribed and promulgated
14 by the commissioner. This certificate shall authorize employment at the
15 wages, less than the established fixed minimum fair wage rates, and for
16 the period of time fixed by the commissioner and stated in the certificate
17 issued to the person;
- 18 6. Employees of retail stores, service industries, hotels, motels, and
19 restaurant operations whose average annual gross volume of sales made
20 for business done is less than ninety-five thousand dollars (\$95,000) for
21 the five (5) preceding years exclusive of excise taxes at the retail level
22 or if the employee is the parent, spouse, child, or other member of his or
23 her employer's immediate family;
- 24 7. Any individual employed as a baby-sitter in an employer's home, or an
25 individual employed as a companion by a sick, convalescing, or elderly
26 person or by the person's immediate family, to care for that sick,
27 convalescing, or elderly person and whose principal duties do not

- 1 include housekeeping;
- 2 8. Any individual engaged in the delivery of newspapers to the consumer;
- 3 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,
- 4 30A, and 18A provided that the secretary of the Personnel Cabinet shall
- 5 have the authority to prescribe by administrative regulation those
- 6 emergency employees, or others, who shall receive overtime pay rates
- 7 necessary for the efficient operation of government and the protection of
- 8 affected employees;
- 9 10. Any employee employed by an establishment which is an organized
- 10 nonprofit camp, religious, or nonprofit educational conference center, if
- 11 it does not operate for more than two hundred ten (210) days in any
- 12 calendar year;
- 13 11. Any employee whose function is to provide twenty-four (24) hour
- 14 residential care on the employer's premises in a parental role to children
- 15 who are primarily dependent, neglected, and abused and who are in the
- 16 care of private, nonprofit childcaring facilities licensed by the Cabinet
- 17 for Health and Family Services under KRS 199.640 to 199.670;
- 18 12. Any individual whose function is to provide twenty-four (24) hour
- 19 residential care in his or her own home as a family caregiver, family
- 20 home provider, or adult foster care provider and who is approved to
- 21 provide family caregiver services to an adult with a disability through a
- 22 contractual relationship with a community board for mental health or
- 23 individuals with an intellectual disability established under KRS
- 24 210.370 to 210.460 or through a contractual relationship with a certified
- 25 waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or
- 26 licensed by the Cabinet for Health and Family Services to provide adult
- 27 foster care;

- 1 13. A direct seller as defined in Section 3508(b)(2) of the Internal Revenue
2 Code of 1986;
- 3 14. Any individual whose function is to provide behavior support services,
4 behavior programming services, case management services, community
5 living support services, positive behavior support services, or respite
6 services through a contractual relationship with a certified waiver
7 provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c)
8 home and community based services waiver program, as defined in 907
9 KAR 7:005 sec. 1(2); or
- 10 15. Any individual employed to play baseball who is compensated pursuant
11 to the terms of a contract and a collective bargaining agreement that
12 expressly provides for wages and working conditions;
- 13 (b) "Agriculture" means farming in all its branches, including cultivation and
14 tillage of the soil; dairying; production, cultivation, growing, and harvesting
15 of any agricultural or horticultural commodity; raising of livestock, bees,
16 furbearing animals, or poultry; and any practice, including any forestry or
17 lumbering operations, performed on a farm in conjunction with farming
18 operations, including preparation and delivery of produce to storage, to
19 market, or to carriers for transportation to market;
- 20 (c) "Gratuity" means voluntary monetary contribution received by an employee
21 from a guest, patron, or customer for services rendered;
- 22 (d) "Tipped employee" means any employee engaged in an occupation in which
23 he or she:
- 24 1. Customarily and regularly receives more than thirty dollars (\$30) per
25 month in tips; ***and***
- 26 2. ***Performs work that:***
- 27 ***a. Directly supports or is itself the service function for which a***

1 customer would tip, regardless of whether the employee performs
2 the service function; or
3 b. Directly supports the service function that involves any amount
4 of direct customer interaction or is performed in the direct line of
5 sight of customers; and

6 (e) "U.S.C." means the United States Code.

7 ➔Section 7. KRS 337.065 is amended to read as follows:

8 (1) No employer shall require an employee to remit to the employer any gratuity, or
9 any portion thereof, except for the purpose of withholding amounts required by
10 federal or state law. The amount withheld from such gratuity shall not exceed the
11 amount required by federal or state law.

12 (2) As used in this section, "gratuity" means voluntary monetary contribution received
13 by an employee from a guest, patron, or customer for services rendered.

14 (3) An employer may provide custodial services for the safekeeping of funds placed in
15 a tip pool mandated by the employer or voluntarily entered into amongst the
16 employees, if the account is properly identified and segregated from his other
17 business records and open to examination by pool participants.

18 (4) A tip pooling arrangement may include tipped employees. A tip pooling
19 arrangement shall not include salaried employees, managers, or supervisors.

20 ➔Section 8. Whereas it is important that employers and employees have clear
21 rules regarding the permissibility of tip pools following changes in the interpretation of
22 federal agency rules, an emergency is declared to exist, and this Act takes effect upon its
23 passage and approval by the Governor or upon its otherwise becoming a law.