

1 AN ACT relating to contracts.

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 (1) As used in this section:

6 (a) "Covenant not to compete":

7 1. Means a covenant or agreement, including a provision of a contract of
8 employment, between an employer and employee that restrains,
9 prohibits, or otherwise restricts an individual's ability, following the
10 termination of the individual's employment, to compete with his or her
11 former employer; and

12 2. Includes but is not limited to a covenant or agreement that restricts an
13 employee from providing a service to a customer or client of the
14 employer if the employee does not initiate contact with or solicit the
15 customer or client; and

16 (b) "Covered employee":

17 1. Means an employee whose average weekly earnings, calculated by
18 dividing the employee's earnings during the period of fifty-two (52)
19 weeks immediately preceding the date of termination of employment
20 by fifty-two (52), or if an employee worked fewer than fifty-two (52)
21 weeks, by the number of weeks that the employee was actually paid
22 during the fifty-two (52) week period, are less than two thousand
23 dollars (\$2,000); and

24 2. Includes:

25 a. Interns, students, apprentices, or trainees employed, with or
26 without pay, at a trade or occupation in order to gain work or
27 educational experience; and

1 b. An individual who has independently contracted with another
2 person to perform services independent of an employment
3 relationship.

4 (2) No employer shall enter into, enforce, or threaten to enforce a covenant not to
5 compete with any covered employee.

6 (3) A covered employee may bring a civil action against any former employer or
7 other person that attempts to enter into, enforce, or threaten to enforce a
8 covenant not to compete against him or her in violation of this section.

9 (4) An action under this section shall be brought within two (2) years of the later of
10 the date the:

11 (a) Covenant not to compete was signed;

12 (b) Covered employee learns of the covenant not to compete;

13 (c) Employment relationship is terminated; or

14 (d) Employer takes any step to enforce the covenant not to compete.

15 (5) The court shall have jurisdiction to void any covenant not to compete with a
16 covered employee and to order all appropriate relief, including an order enjoining
17 the conduct of any person or employer, awarding damages, and reasonable
18 attorney fees and costs.

19 (6) No employer may discharge, threaten, or otherwise discriminate or retaliate
20 against a covered employee for bringing a civil action pursuant to this section.

21 (7) Every employer shall post a copy of this section or a summary approved by the
22 commissioner in the same location where other employee notices required by
23 state or federal law are posted.

24 (8) The provisions of this section shall apply to covenants not to compete that are
25 entered into on or after the effective date of this Act.

26 ➔Section 2. KRS 336.990 is amended to read as follows:

27 (1) Upon proof that any person employed by the Education and Labor Cabinet as a

- 1 labor inspector has taken any part in any strike, lockout or similar labor dispute, the
2 person shall forfeit his or her office.
- 3 (2) The following civil penalties shall be imposed, in accordance with the provisions in
4 KRS 336.985, for violations of the provisions of this chapter:
- 5 (a) Any person who violates KRS 336.110 or 336.130 shall for each offense be
6 assessed a civil penalty of not less than one hundred dollars (\$100) nor more
7 than one thousand dollars (\$1,000);
- 8 (b) Any corporation, association, organization, or person that violates KRS
9 336.190 and 336.200 shall be assessed a civil penalty of not less than one
10 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each
11 offense. Each act of violation, and each day during which such an agreement
12 remains in effect, shall constitute a separate offense;
- 13 (c) Any employer who violates the provisions of KRS 336.220 or subsection (7)
14 of Section 1 of this Act shall be assessed a civil penalty of not less than one
15 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each
16 violation;~~and~~
- 17 (d) Any labor organization who violates KRS 336.135 shall be assessed a civil
18 penalty of not less than one hundred dollars (\$100) nor more than one
19 thousand dollars (\$1,000) for each offense;~~and~~
- 20 (e) Any public employer or labor organization that violates KRS 161.158,
21 164.365, 336.133, 336.134, 336.1341, 336.135, or 336.180 shall be assessed a
22 civil penalty of not less than one hundred dollars (\$100) nor more than one
23 thousand dollars (\$1,000) for each offense.
- 24 (3) Any labor organization, employer, or other person who directly or indirectly
25 violates KRS 336.130(3) shall be guilty of a Class A misdemeanor.
- 26 (4) Any person aggrieved as a result of any violation or threatened violation of KRS
27 336.130(3) may seek abatement of the violation or threatened violation by

1 petitioning a court of competent jurisdiction for injunctive relief and shall be
2 entitled to costs and reasonable attorney fees if he or she prevails in the action.

3 (5) Any person injured as a result of any violation or threatened violation of KRS
4 336.130(3) may recover all damages resulting from the violation or threatened
5 violation and shall be entitled to costs and reasonable attorney fees if he or she
6 prevails in the action.

7 **(6) Any employer who violates subsection (2) or (6) of Section 1 of this Act shall be**
8 **assessed a civil penalty of not less than one thousand dollars (\$1,000) nor more**
9 **than ten thousand dollars (\$10,000) for each violation.**