

CHAPTER 122**(SB 263)**

AN ACT relating to the coal workers' pneumoconiosis fund.

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

➔Section 1. KRS 342.1242 is amended to read as follows:

- (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after December 12, 1996, which are filed on or before June 30, 2017. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement for any claims filed after June 30, 2017.
- (2) For claims brought under KRS 342.732 for last exposure incurred on or after December 12, 1996 which are filed on or before June 30, 2017, the employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written request upon the director in the manner prescribed by administrative regulation to be promulgated by the commissioner of the Department of Workers' Claims.
- (3)
 - (a) For the purpose of funding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
 - (b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents (\$0.025) per ton is hereby imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.
 - (c) As of June 30, 2018, and each year thereafter until the liabilities of the fund are fully funded, the Funding Commission and the Kentucky Employers' Mutual Insurance Authority shall determine the assets of the fund and the claim liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1 of the next year to fund claim liabilities through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than October 1 of the year preceding the rate change.
- (4) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be transferred to the Kentucky Employers' Mutual Insurance Authority, which is administering the coal workers' pneumoconiosis fund. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1221, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.
- (5) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying

their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.

- (6) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers' pneumoconiosis fund shall be liable for payment of a part of the liability only for employees of employers engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a) and (b).
- (8)
 - (a) Assessments issued pursuant to this section shall cease to be imposed once the liabilities of the fund are fully funded. After the liabilities are fully funded, any excess assessments shall be refunded to the employers on a pro rata basis *as determined from the cumulative amounts of assessments received from workers' compensation premiums paid by employers, whether insured, self-insured, or carrying his or her own risk, on or after January 1, 2017.*
 - (b) *The Kentucky Employers' Mutual Insurance Authority shall disperse, on a pro rata basis, the excess assessments to each employer which is engaged in the severance or processing of coal and which is in good standing with the Secretary of State and authorized to do business in the Commonwealth as evidenced by a certificate of existence, certificate of authorization, or other such certificate issued by the Secretary of State their pro rata shares of excess assessments.*
 - (c) *Upon a determination by the Kentucky Workers' Compensation Funding Commission and the Kentucky Employers' Mutual Insurance authority that final audits are closed and the liabilities of the fund are fully funded, the Kentucky Employers' Mutual Insurance Authority shall send a notice to each employer via first-class United States mail advising each employer that in order to assert a claim to the employer's pro rata share of any excess assessments the employer must submit a certification under oath to the Kentucky Employers' Mutual Insurance Authority stating that the employer is engaged in the severance or processing of coal in the Commonwealth and that the employer is in good standing with the Secretary of State and authorized to do business in the Commonwealth. The employer shall also certify whether or not it has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code.*
 - (d) *The employer shall submit to the Kentucky Employers' Mutual Insurance Authority the employer's certificate obtained from the Secretary of State along with the certification under oath specified in this subsection.*
 - (e) *Kentucky Employers' Mutual Insurance Authority shall specify in the notice the date of mailing of the notice to the employer and shall send the notice to the employer at the address of the statutory agent designated by the employer with the Secretary of State or, if the employer has not designated a statutory agent with the Secretary of State, at the address of the employer on file with the Kentucky Employers' Mutual Insurance Authority or, if the address of the employer is not on file with the Kentucky Employers' Mutual Insurance Authority, at the address of the employer on file with the Kentucky Workers' Compensation Funding Commission.*
 - (f) *The employer's certification must be received by the Kentucky Employers' Mutual Insurance Authority within thirty (30) days of mailing of the notice from the Kentucky Employers' Mutual Insurance Authority to the employer.*
 - (g) *Within thirty (30) days of receipt of a timely submitted certification from an employer, the Kentucky Employers' Mutual Insurance Authority shall distribute to the employer the employer's pro rata share of the excess funds. If the employer is in bankruptcy at the time the certification is provided to the Kentucky Employers' Mutual Insurance Authority, any funds that would be distributed to the employer shall only be distributed to former employees to whom past due wages are owed, subject to the approval of the bankruptcy judge. If an employer has an outstanding balance due for taxes or other obligations to the Commonwealth, for a bond payment, or to a county, city, school system or school district, fire district, or any special taxing authority, no funds shall be distributed to the*

employer unless those outstanding balances have been paid in full at the time of the distribution of the funds by Kentucky Employers' Mutual Insurance Authority.

- (h) *If, at any time after the Kentucky Employers' Mutual Insurance Authority's distribution of funds to an employer, it is determined that the certification submitted by the employer to the Kentucky Employers' Mutual Insurance Authority was materially false at the time of the certification, the Attorney General is authorized to file an action against the employer to recover the funds distributed to the employer by the Kentucky Employers' Mutual Insurance Authority along with interest at the rate of twelve percent (12%) from the date of distribution of the funds to the employer and a penalty of ten percent (10%) of the amount of the funds distributed to the employer, plus reasonable attorney's fees, litigation expenses, and court costs.*
 - (i) *For those employers who do not timely submit a certification to the Kentucky Employers' Mutual Insurance Authority as specified in this subsection, their pro rata shares shall be transferred to the Kentucky coal employers self-insurance guaranty fund for the purpose of paying workers' compensation benefits to employees of insolvent self-insured employers engaged in the severance and processing of coal, and those employers' claims to a distribution of funds pursuant to this subsection shall be forever barred.*
 - (j) *The Kentucky Workers' Compensation Funding Commission shall provide all available information regarding the employers to the Kentucky Employers' Mutual Insurance Authority upon the request of the Kentucky Employers' Mutual Insurance Authority.*
- (9) The Kentucky Employers' Mutual Insurance Authority shall reimburse the funding commission for any expenses incurred with regard to the collection of assessments for the coal workers' pneumoconiosis fund and other incurred expenses related to the coal workers' pneumoconiosis fund.

➔Section 2. KRS 342.1243 is amended to read as follows:

- (1) Notwithstanding any provisions of this chapter or any other provisions to the contrary, the Kentucky coal workers' pneumoconiosis fund shall have no liability for income benefits for coal workers' pneumoconiosis claims filed or reopened on or after July 1, 2017.
- (2) Notwithstanding any provisions of this chapter or any other provisions to the contrary, as soon as practically possible after July 1, 2017, all of the assets and liabilities of the Kentucky coal workers' pneumoconiosis fund shall be transferred from the Kentucky Workers' Compensation Funding Commission and Division of Workers' Compensation Funds to the Kentucky Employers' Mutual Insurance Authority through a loss portfolio transfer agreement. The Kentucky Employers' Mutual Insurance Authority shall have full authority and responsibility over the Kentucky coal workers' pneumoconiosis fund's claims and shall administer the claims as permitted pursuant to KRS Chapter 342.
- (3) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation Funding Commission shall impose an assessment at an annual rate of fourteen percent (14%) upon the amount of workers' compensation premiums received on or after January 1, 2017, through December 31, 2017, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and KRS Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on or after January 1, 2017, through December 31, 2017, an assessment at the rate of fourteen percent (14%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
- (4) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation Funding Commission shall impose an assessment at an annual rate of fourteen percent (14%) upon the amount of workers' compensation premiums received on or after January 1, 2018, through December 31, 2018, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on or after January 1, 2018, through December 31, 2018, an assessment at the rate of fourteen percent (14%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
- (5) Notwithstanding the provisions of KRS 342.1242, in addition to the assessments in subsection (3) and (4) of this section, for the calendar years of 2017 and 2018, an assessment at the rate of fifteen cents (\$0.15) per ton shall be imposed upon the total annual amount of tons of coal severed by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.

- (6) The assessments imposed by this section shall supersede any assessment imposed pursuant to KRS 342.1242 for the calendar years of 2017 and 2018. Any amount paid and collected that exceeds the assessment imposed by this section in calendar year 2017 shall be reimbursed to the employer or credited to the employer's account subject to the preference of the employer.
- (7) Assessments pursuant to this section and KRS 342.1242 that are collected by the Kentucky Worker's Compensation Funding Commission shall be transferred to the Kentucky Employers' Mutual Insurance Authority.
- (8) When the Kentucky Workers' Compensation Funding Commission and the Kentucky Employers' Mutual Insurance Authority have determined final audits are closed and the liability of the fund is fully funded, then the authority for imposing assessment rates pursuant to this section and KRS 342.1242 shall cease to exist. Any remaining assessments received following the exhaustion of liabilities shall be refunded pro rata to all employers who have paid an assessment in the year that liabilities are fully funded. When all *distributions pursuant to subsection (8) of Section 1 of this Act have been*~~claim payouts are~~ completed, the Kentucky coal workers' pneumoconiosis fund shall be abolished. *The Kentucky Employers' Mutual Insurance Authority may thereafter apply all funds received through subrogation or otherwise to expenses incurred in the administration and distribution of funds.*

Signed by Governor April 24, 2020.