

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2015 REGULAR SESSION
Unofficial Document

Amend printed copy of HB 206

On page 2, after line 16, insert the following and renumber sections accordingly:

➔Section 2. KRS 342.320 is amended to read as follows:

- (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be in compliance with~~[subject to the approval of an administrative law judge pursuant to]~~ the statutes and administrative regulations.
- (2) In an original claim, attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:
 - (a) Twenty-five percent (25%~~[20%]~~) of the first twenty-five thousand dollars (\$25,000) of the award, twenty~~[fifteen]~~ percent (20%~~[15%]~~) of the next ten thousand dollars (\$10,000), and ten~~[five]~~ percent (10%~~[5%]~~) of the remainder of the award, not to exceed a maximum fee of twenty-four~~[twelve]~~ thousand dollars (\$24,000~~[\$12,000]~~). Annually, the commissioner shall compute, in accordance with KRS 342.740, the increase or decrease in the average weekly wage, and consistent with that calculation shall adjust the maximum attorney fee for an injury in the succeeding year. This fee shall be paid by the employee from the proceeds of the award or settlement; and
 - (b) Attorney-client employment contracts entered into and signed on or after the effective

Amendment No. HFA 3

Sponsor: Kevin P. Sinnette

Committee Amendment:

Signed: _____

Floor Amendment:

LRC Drafter: Ross, Matt

Adopted: _____

Date: _____

Rejected: _____

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date of this Act~~[July 14, 2000]~~, shall be subject to the conditions of paragraph (a) of this subsection.

- (3) All attorneys shall file with the commissioner, with notice to the other party or parties, a notarized affidavit detailing the amount of fees charged and the basis for the fee calculation used~~[In approving an allowance of attorney's fees, the administrative law judge shall consider the extent, complexity, and quality of services rendered, and in the case of death, the Remarriage Tables of the Dutch Royal Insurance Institute]. An administrative law judge may order a refund or reduction in the amount of the attorney's fee~~[may be denied or reduced]~~ upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court.~~
- (4) No attorney's fee in any case involving benefits under this chapter shall be paid until the affidavit for the fee is filed with the commissioner as required in subsection (3) of this section~~[approved by the administrative law judge]~~, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The notarized affidavit for the~~[motion for approval of an]~~ attorney's fee shall be submitted within thirty (30) days following finality of the claim. Except when the attorney's fee is to be paid by the employer or carrier, the attorney's fee shall be paid in one (1) of the following ways:
- (a) The employee may pay the attorney's fee out of his or her personal funds or from the proceeds of a lump-sum settlement; or
- (b) If the award or settlement calls for weekly payments, then the employer or carrier shall issue the~~[The administrative law judge, upon request of the employee, may order the]~~ payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the employee in equal installments over the duration of the award or until the attorney's fee has been

paid, commuting sufficient sums to pay the fee.

- (5) At the commencement of the attorney-client relationship, the attorney shall explain to the employee the methods by which this section provides for the payment of the attorney's fee, and the employee shall select the method in which the attorney's fee is to be paid. His or her selection and statement that he or she fully understands the method to be used shall be submitted to the commissioner by his or her attorney, on a notarized form signed by the employee, within thirty (30) days following the finality of the claim~~[at the time the motion for approval of the attorney's fee is submitted]~~. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and contain an explanation in nontechnical language of each method.
- (6) The General Assembly declares that by the enactment of KRS 342.316(3), it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge shall give due regard to this legislative intent in the handling of uncontested claims~~[and the allowance of attorney's fees therein]~~.
- (7) In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be charged~~[awarded by the administrative law judge]~~ subject to the limits set forth in subsection (2) of this section. ~~[In awarding the attorney's fee, the administrative law judge shall consider the factors set forth in subsection (3) of this section.]~~ If no additional amount is recovered upon reopening, no attorney's fee shall be awarded. No attorney's fee shall be allowed ~~[or approved]~~ exceeding the amounts provided in subsection (2)(a) of this section applicable to any additional amount recovered.
- (8) ~~[Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge in~~

~~the same manner as prescribed for attorney representation of employees. }Employer~~
attorney's fees are subject to the limitation of twenty-four~~twelve~~ thousand dollars
(\$24,000)~~(\$12,000)~~ maximum fees except that fees for representing employers shall not
be dependent upon the result achieved. Employer attorney's fees may be paid on a periodic
basis while a claim is adjudicated and the payments need not be filed~~approved~~ until the
claims resolution process is completed. Fees for legal services in presenting a claim for
reimbursement from the Kentucky coal workers' pneumoconiosis fund shall not exceed one
thousand dollars (\$1,000). All such ~~approved~~ fees shall be paid by the employer and in no
event shall exceed the amount the employer agreed by contract to pay.

➔Section 3. KRS 342.730 is amended to read as follows:

- (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:
 - (a) For temporary or permanent total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related impairment and conditions compensable under KRS 342.732 and hearing loss covered in KRS 342.7305 shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.
 - (b) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by the permanent impairment rating caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," times the factor set forth in the table that follows:

AMA Impairment	Factor
0 to 5%	<u>1.0</u> {0.65}
6 to 10%	<u>1.0</u> {0.85}
11 to 15%	<u>1.5</u> {1.00}
16 to 20%	<u>1.5</u> {1.00}
21 to <u>27%</u> {25%}	<u>1.5</u> {1.15}
<u>28</u> {26} to <u>35%</u> {30%}	<u>1.6</u> {1.35}
{31 to 35%}	{1.50}
36% and above	<u>2.0</u> {1.70}

Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

- (c) 1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments; or
2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or

without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments.

3. Recognizing that limited education and advancing age impact an employee's post-injury earning capacity, an education and age factor, when applicable, shall be added to the income benefit multiplier set forth in paragraph (c)1. of this subsection. If at the time of injury, the employee had less than eight (8) years of formal education, the multiplier shall be increased by four-tenths (0.4); if the employee had less than twelve (12) years of education or a high school General Educational Development diploma, the multiplier shall be increased by two-tenths (0.2); if the employee was age sixty (60) or older, the multiplier shall be increased by six-tenths (0.6); if the employee was age fifty-five (55) or older, the multiplier shall be increased by four-tenths (0.4); or if the employee was age fifty (50) or older, the multiplier shall be increased by two-tenths (0.2).
 4. Notwithstanding the provisions of KRS 342.125, a claim may be reopened at any time during the period of permanent partial disability in order to conform the award payments with the requirements of subparagraph 2. of this paragraph.
- (d) For permanent partial disability, if an employee has a permanent disability rating of fifty percent (50%) or less as a result of a work-related injury, the compensable permanent partial disability period shall be four hundred twenty-five (425) weeks, and if the permanent disability rating is greater than fifty percent (50%), the compensable permanent partial disability period shall be five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of

sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and shall not exceed seventy-five percent (75%) of the state average weekly wage, except for benefits payable pursuant to paragraph (c)1. of this subsection, which shall not exceed one hundred percent (100%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in paragraph (b) of this subsection would yield a greater percentage of disability.

- (e) For permanent partial disability, impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be considered in determining the extent of disability or duration of benefits under this chapter.
- (2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.
- (3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his or her lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his or her death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death

and in the proportions and upon the conditions specified in this section and in the order named:

- (a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or
 - (b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or
 - (c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or
 - (d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.
 - (e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.
- (4) All income benefits payable pursuant to this chapter shall terminate as of the date upon

which the employee reaches the age of seventy (70) years~~[qualifies for normal old age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f], or five (5)~~[two (2)]~~ years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents reach the age of seventy (70) years~~[qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old age Social Security retirement benefits].~~~~

- (5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.
- (6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.
- (7) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

On page 2, line 25, after second occurrence of "and" insert "Section 1 of".