

AN ACT relating to workers' compensation.

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

➔Section 1. KRS 342.120 is amended to read as follows:

- (1) There is created the Division of Workers' Compensation Funds in the Department of Workplace Standards which shall be responsible for the administration of the special fund and the coal workers' pneumoconiosis fund and the maintenance of records regarding the payment of claims by these funds. The Division of Workers' Compensation Funds shall be headed by a director appointed by the secretary of the Labor Cabinet, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the funds and the maintenance of records regarding the payment of claims by the funds.
- (2) The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred, after December 12, 1996.
- (3) Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, with the period of payment beginning on the date settlement was approved by an administrative law judge. This provision is remedial and shall apply to all pending and future claims.
- (4) *The General Assembly hereby finds and declares that the settlement of workers' compensation claims involving special fund liabilities plays a positive role in the general welfare of the injured worker and his or her dependents. The General Assembly further finds and declares that many special fund beneficiaries and their dependents may make better use of their awarded income benefits when paid in a lump-sum payment, rather than by periodic payments over the duration of the award. The Division of Workers' Compensation Funds shall:***

- (a) Engage in an aggressive program to attempt to resolve its outstanding liabilities through lump-sum settlements for as many claims as practicable at the earliest feasible date; and
- (b) If an injured worker chooses to receive a lump-sum payment pursuant to this subsection:
1. The injured worker may elect to be represented in the settlement process by an attorney of his or her choice;
 2. The legal fees of the injured worker shall be paid from the special fund, in addition to the lump-sum payment; and
 3. The legal fees shall not exceed more than one percent (1%) of the lump-sum payment to the injured worker.

→ Section 2. KRS 342.122 is amended to read as follows:

- (1) (a) ~~[For calendar year 1997 and for each calendar year thereafter,]~~For the purpose of funding and prefunding the liabilities of the special fund and~~[,]~~ financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, including the Department of Workers' Claims; the Divisions of Occupational Safety and Health Compliance, Occupational Safety and Health Education and Training, and Worker Compensation Funds in the Department of Employment Standards, and the Office of the Secretary of the Labor Cabinet which includes the Office of the General Counsel and Division of Management Services except the Division of Employment Standards, Apprenticeship and Mediation in the Department of Workplace Standards, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of not less than six and twenty-eight one hundredths percent (6.28%)~~[nine percent (9%)]~~ 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, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk. **Funding for the financing of the expenditures for the programs in the Labor Cabinet specifically listed above shall be capped at the amount budgeted for the 2015-2016 fiscal biennium, less direct operational expenses of the Workers Compensation Funding Commission and the Division of Special Funds, exclusive of any amount for capital projects, as reflected in the budget of the Commonwealth enacted by the 2014 General Assembly and, the cap shall decrease by five percent (5%) each fiscal year of each subsequent biennium, beginning on July 1, 2016. The Labor Cabinet shall not transfer any of the designated funds to any other cabinet, department, office, or division whether attached administratively or directly to the cabinet except those specifically authorized by this section.**

- (b) The funding commission shall~~[, for calendar year 1998 and thereafter,]~~ establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of June 30 preceding January 1 of each year, for the period remaining **which shall not be later than** ~~[until]~~ December 31, 2029. **At the point where the Special Fund balance has reached a balance sufficient to produce enough revenue to amortize the remaining claims balance and to fund the operations of the Kentucky Workers Compensation Funding Commission solely for the purpose of finalization of claims administration, the**

assessment provided for in KRS 342.122 shall expire. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying its own risk. On or before October 1 of each year, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insured employers, and each employer carrying its own risk, of the rates which shall become effective on January 1 of each year, unless modified by the General Assembly.

- (c) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.
 - (d) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.
- (2) 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. Receipt shall be considered timely through actual physical receipt or by postmark of 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.
- (3) The assessments imposed by this section may be collected by the insurance carrier from the insured. However, the insurance carrier shall not collect from the employer

any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

- (4) A self-insured group may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years, except that the board of directors of the funding commission may, at its discretion, waive the ten (10) year ban on a case-by-case basis after formal petition has been made to the funding commission by a self-insured group.
- (5) The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each self-insured group to provide a list of employers which it has insured or

which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or self-insured group may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or self-insured group from the obligation to furnish same to the funding commission. The Office of Employment and Training, Education and Workforce Development Cabinet, is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.

- (6) Each self-insured employer, self-insured group, or insurance carrier shall provide any information and submit any reports the Department of Revenue or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.
- (7) The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.
- (8) The fund heretofore designated as the subsequent claim fund is abolished, and there is substituted therefor the special fund as set out by this section, and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.
- (9) 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.

- (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provision of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying its own risk.

➔Section 3. KRS 342.1223 is amended to read as follows:

- (1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.
- (2) The commission shall:
- (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;
 - (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities;
 - (c) Report to the General Assembly at each even-numbered-year regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;

- (d) Recommend to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, changes deemed necessary in the level of the assessments imposed in this chapter;
 - (e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, a proposed budget for the biennium beginning July 1 following the even-numbered-year regular session of the General Assembly;
 - (f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;
 - (g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Department of Revenue, of all entities subject to the assessments imposed in this chapter; and
 - (h) Report monthly to the Interim Joint Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures; and
 - (i) Report quarterly to the Interim Joint Committees on Appropriations and Revenue and on Labor and Industry on:
 - 1. Claims closure;
 - 2. Current claims;
 - 3. Claims received;
 - 4. Assessment income;
 - 5. Transfer of funds; and
 - 6. Use of transferred funds.
- (3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:

- (a) To sue and be sued, complain, or defend, in its name;
 - (b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;
 - (c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;
 - (d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;
 - (e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and
 - (f) To make and promulgate administrative regulations.
- (4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management in the Office of the Controller within the Finance and Administration Cabinet rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.
- (5) The commission shall be attached to the Labor Cabinet for administrative purposes only.

➔Section 4. KRS 342.1224 is amended to read as follows:

- (1) The commission shall be governed by a board of directors consisting of seven (7) members~~[-. The seven (7) members shall include the secretary of the Labor Cabinet or a designee, the secretary of the Cabinet for Economic Development or a designee, the secretary of the Finance and Administration Cabinet or a designee,~~

~~and four (4) members]~~ who shall be appointed by the Governor.

- (2) The seven (7)~~four (4)~~ appointed members shall include:
- (a) One (1) member, selected from a list of three (3) submitted by the *American Federation of Labor-Congress of Industrial Organizations*~~[secretary of the Labor Cabinet, who shall represent labor];~~
 - (b) One (1) member, selected from a list of three (3) submitted by the secretary for economic development, who shall represent employers; provided, however, that these three (3) members shall represent employers who purchase workers' compensation coverage for their employees from insurance companies writing workers' compensation insurance in the Commonwealth;
 - (c) One (1) member, selected from a list of three (3) submitted by the insurance advisory organization having jurisdiction over Kentucky, who shall represent insurance companies writing workers' compensation insurance in the Commonwealth;~~[and]~~
 - (d) One (1) member, selected from a list of three (3) submitted by the associations representing self-insured employers in the Commonwealth;
 - (e) One (1) member, selected from a list of three (3) submitted by the United Auto Workers;
 - (f) One (1) member, selected from a list of three (3) submitted by the United Mine Workers of America; and
 - (g) One (1) member, selected from a list of three (3) submitted by a public employer association.
- (3) The members of the board of directors shall serve a term of four (4) years~~[, except that the initial terms of the members shall be staggered as follows:~~
- ~~(a) The initial member appointed by the Governor to represent labor shall serve a term of one (1) year. Thereafter, such member shall serve a term of four (4) years;~~

- ~~(b) The initial member appointed by the Governor to represent employers shall serve a term of two (2) years. Thereafter, such member shall serve a term of four (4) years;~~
- ~~(c) The initial member appointed by the Governor to represent insurance companies shall serve a term of four (4) years. Thereafter, such member shall serve a term of four (4) years; and~~
- ~~(d) The initial member appointed by the Governor to represent self insured employers shall serve a term of three (3) years. Thereafter, such member shall serve a term of four (4) years].~~
- (4) The board of directors shall annually elect from among its members a chairman, a vice chairman, and a secretary-treasurer. The board of directors may also elect or appoint, and prescribe the duties of, other officers as the board of directors deems necessary or advisable.
- (5) The board of directors shall appoint an executive director to administer, manage, and direct the affairs and business of the commission, and other staff persons to carry out the affairs and business of the commission, subject in each instance to the policies, control, and directions of the board of directors. The board of directors shall fix the compensation of all such persons and shall pay such compensation out of the funds of the commission.
- (6) Notwithstanding any other law, the Governor, pursuant to an executive order, may cause the employees of the commission to be eligible to participate in the Kentucky Retirement System and the Kentucky Public Employees Deferred Compensation System.
- (7) A majority of the board of directors of the commission shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. The majority shall be determined by excluding any existing vacancies from the total number of directors.

(8) The board of directors of the Kentucky Workers' Compensation Funding Commission are hereby determined to be officers and agents of the Commonwealth of Kentucky and, as such, shall enjoy the same immunities from suit for the performance of their official acts as do other officers of the Commonwealth of Kentucky.

(9) *The secretaries of the Economic Development Cabinet, Finance and Administration Cabinet, and Labor Cabinet or their designees shall serve as nonvoting, ex-officio members of the commission.*