

1 AN ACT relating to the Kentucky Workers' Compensation Funding Commission.

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

3 ➔Section 1. KRS 342.0011 is amended to read as follows:

4 As used in this chapter, unless the context otherwise requires:

- 5 (1) "Injury" means any work-related traumatic event or series of traumatic events,
6 including cumulative trauma, arising out of and in the course of employment which
7 is the proximate cause producing a harmful change in the human organism
8 evidenced by objective medical findings. "Injury" does not include the effects of the
9 natural aging process, and does not include any communicable disease unless the
10 risk of contracting the disease is increased by the nature of the employment.
11 "Injury" when used generally, unless the context indicates otherwise, shall include
12 an occupational disease and damage to a prosthetic appliance, but shall not include
13 a psychological, psychiatric, or stress-related change in the human organism, unless
14 it is a direct result of a physical injury;
- 15 (2) "Occupational disease" means a disease arising out of and in the course of the
16 employment;
- 17 (3) An occupational disease as defined in this chapter shall be deemed to arise out of
18 the employment if there is apparent to the rational mind, upon consideration of all
19 the circumstances, a causal connection between the conditions under which the
20 work is performed and the occupational disease, and which can be seen to have
21 followed as a natural incident to the work as a result of the exposure occasioned by
22 the nature of the employment and which can be fairly traced to the employment as
23 the proximate cause. The occupational disease shall be incidental to the character of
24 the business and not independent of the relationship of employer and employee. An
25 occupational disease need not have been foreseen or expected but, after its
26 contraction, it must appear to be related to a risk connected with the employment
27 and to have flowed from that source as a rational consequence;

- 1 (4) "Injurious exposure" shall mean that exposure to occupational hazard which would,
2 independently of any other cause whatsoever, produce or cause the disease for
3 which the claim is made;
- 4 (5) "Death" means death resulting from an injury or occupational disease;
- 5 (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the
6 liability of employers under this chapter and includes a self-insurer;
- 7 (7) "Self-insurer" is an employer who has been authorized under the provisions of this
8 chapter to carry his own liability on his employees covered by this chapter;
- 9 (8) "Department" means the Department of Workers' Claims in the Labor Cabinet;
- 10 (9) "Commissioner" means the commissioner of the Department of Workers' Claims
11 under the direction and supervision of the secretary of the Labor Cabinet;
- 12 (10) "Board" means the Workers' Compensation Board;
- 13 (11) (a) "Temporary total disability" means the condition of an employee who has not
14 reached maximum medical improvement from an injury and has not reached a
15 level of improvement that would permit a return to employment;
- 16 (b) "Permanent partial disability" means the condition of an employee who, due to
17 an injury, has a permanent disability rating but retains the ability to work; and
- 18 (c) "Permanent total disability" means the condition of an employee who, due to
19 an injury, has a permanent disability rating and has a complete and permanent
20 inability to perform any type of work as a result of an injury, except that total
21 disability shall be irrebuttably presumed to exist for an injury that results in:
- 22 1. Total and permanent loss of sight in both eyes;
- 23 2. Loss of both feet at or above the ankle;
- 24 3. Loss of both hands at or above the wrist;
- 25 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at
26 or above the wrist;
- 27 5. Permanent and complete paralysis of both arms, both legs, or one (1)

- 1 arm and one (1) leg;
- 2 6. Incurable insanity or imbecility; or
- 3 7. Total loss of hearing;
- 4 (12) "Income benefits" means payments made under the provisions of this chapter to the
5 disabled worker or his dependents in case of death, excluding medical and related
6 benefits;
- 7 (13) "Medical and related benefits" means payments made for medical, hospital, burial,
8 and other services as provided in this chapter, other than income benefits;
- 9 (14) "Compensation" means all payments made under the provisions of this chapter
10 representing the sum of income benefits and medical and related benefits;
- 11 (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical
12 rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- 13 (16) "Person" means any individual, partnership, limited partnership, limited liability
14 company, firm, association, trust, joint venture, corporation, or legal representative
15 thereof;
- 16 (17) "Wages" means, in addition to money payments for services rendered, the
17 reasonable value of board, rent, housing, lodging, fuel, or similar advantages
18 received from the employer, and gratuities received in the course of employment
19 from persons other than the employer as evidenced by the employee's federal and
20 state tax returns;
- 21 (18) "Agriculture" means the operation of farm premises, including the planting,
22 cultivation, producing, growing, harvesting, and preparation for market of
23 agricultural or horticultural commodities thereon, the raising of livestock for food
24 products and for racing purposes, and poultry thereon, and any work performed as
25 an incident to or in conjunction with the farm operations, including the sale of
26 produce at on-site markets and the processing of produce for sale at on-site markets.
27 It shall not include the commercial processing, packing, drying, storing, or canning

1 of such commodities for market, or making cheese or butter or other dairy products
2 for market;

3 (19) "Beneficiary" means any person who is entitled to income benefits or medical and
4 related benefits under this chapter;

5 (20) "United States," when used in a geographic sense, means the several states, the
6 District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the
7 territories of the United States;

8 (21) "Alien" means a person who is not a citizen, a national, or a resident of the United
9 States or Canada. Any person not a citizen or national of the United States who
10 relinquishes or is about to relinquish his residence in the United States shall be
11 regarded as an alien;

12 (22) "Insurance carrier" means every insurance carrier or insurance company authorized
13 to do business in the Commonwealth writing workers' compensation insurance
14 coverage and includes the Kentucky Employers Mutual Insurance Authority and
15 every self-insured group operating under the provisions of this chapter;

16 (23) (a) "Severance or processing of coal" means all activities performed in the
17 Commonwealth at underground, auger, and surface mining sites; all activities
18 performed at tipple or processing plants that clean, break, size, or treat coal;
19 and all activities performed at coal loading facilities for trucks, railroads, and
20 barges. Severance or processing of coal shall not include acts performed by a
21 final consumer if the acts are performed at the site of final consumption.

22 (b) "Engaged in severance or processing of coal" shall include all individuals,
23 partnerships, limited partnerships, limited liability companies, corporations,
24 joint ventures, associations, or any other business entity in the Commonwealth
25 which has employees on its payroll who perform any of the acts stated in
26 paragraph (a) of this subsection, regardless of whether the acts are performed
27 as owner of the coal or on a contract or fee basis for the actual owner of the

1 coal. A business entity engaged in the severance or processing of coal,
2 including but not limited to administrative or selling functions, shall be
3 considered wholly engaged in the severance or processing of coal for the
4 purpose of this chapter. However, a business entity which is engaged in a
5 separate business activity not related to coal, for which a separate premium
6 charge is not made, shall be deemed to be engaged in the severance or
7 processing of coal only to the extent that the number of employees engaged in
8 the severance or processing of coal bears to the total number of employees.
9 Any employee who is involved in the business of severing or processing of
10 coal and business activities not related to coal shall be prorated based on the
11 time involved in severance or processing of coal bears to his total time;

12 (24) "Premium" for every self-insured group means any and all assessments levied on its
13 members by such group or contributed to it by the members thereof. For special
14 fund assessment purposes, "premium" also includes any and all membership dues,
15 fees, or other payments by members of the group to associations or other entities
16 used for underwriting, claims handling, loss control, premium audit, actuarial, or
17 other services associated with the maintenance or operation of the self-insurance
18 group;

19 (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for
20 insurance companies means direct written premiums as reported in the annual
21 statement to the Department of Insurance by insurance companies, except that
22 "premiums received" includes premiums charged off or deferred, and, on
23 insurance policies or other evidence of coverage with provisions for
24 deductibles, the calculated cost for coverage, including experience
25 modification and premium surcharge or discount, prior to any reduction for
26 deductibles. The rates, factors, and methods used to calculate the cost for
27 coverage under this paragraph for insurance policies or other evidence of

1 coverage with provisions for deductibles shall be the same rates, factors, and
2 methods normally used by the insurance company in Kentucky to calculate the
3 cost for coverage for insurance policies or other evidence of coverage without
4 provisions for deductibles, except that, for insurance policies or other
5 evidence of coverage with provisions for deductibles effective on or after
6 January 1, 1995, the calculated cost for coverage shall not include any
7 schedule rating modification, debits, or credits. The cost for coverage
8 calculated under this paragraph by insurance companies that issue only
9 deductible insurance policies in Kentucky shall be actuarially adequate to
10 cover the entire liability of the employer for compensation under this chapter,
11 including all expenses and allowances normally used to calculate the cost for
12 coverage. For policies with provisions for deductibles with effective dates of
13 May 6, 1993, through December 31, 1993, for which the insurance company
14 did not report premiums and remit special fund assessments based on the
15 calculated cost for coverage prior to the reduction for deductibles, "premiums
16 received" includes the initial premium plus any reimbursements invoiced for
17 losses, expenses, and fees charged under the deductibles. The special fund
18 assessment rates in effect for reimbursements invoiced for losses, expenses, or
19 fees charged under the deductibles shall be those percentages in effect on the
20 effective date of the insurance policy. For policies covering leased employees
21 as defined in KRS 342.615, "premiums received" means premiums calculated
22 using the experience modification factor of each lessee as defined in KRS
23 342.615 for each leased employee for that portion of the payroll pertaining to
24 the leased employee. *For policies with provisions for deductibles with*
25 *effective dates on or after January 1, 2019, assessments shall be imposed on*
26 *premiums as calculated by the deductible program adjustment.*

27 (b) "Direct written premium" for insurance companies means the gross premium

1 written less return premiums and premiums on policies not taken but
2 including policy and membership fees.

3 (c) "Premium," for policies effective on or after January 1, 1994, for insurance
4 companies means all consideration, whether designated as premium or
5 otherwise, for workers' compensation insurance paid to an insurance company
6 or its representative, including, on insurance policies with provisions for
7 deductibles, the calculated cost for coverage, including experience
8 modification and premium surcharge or discount, prior to any reduction for
9 deductibles. The rates, factors, and methods used to calculate the cost for
10 coverage under this paragraph for insurance policies or other evidence of
11 coverage with provisions for deductibles shall be the same rates, factors, and
12 methods normally used by the insurance company in Kentucky to calculate the
13 cost for coverage for insurance policies or other evidence of coverage without
14 provisions for deductibles, except that, for insurance policies or other
15 evidence of coverage with provisions for deductibles effective on or after
16 January 1, 1995, the calculated cost for coverage shall not include any
17 schedule rating modifications, debits, or credits. The cost for coverage
18 calculated under this paragraph by insurance companies that issue only
19 deductible insurance policies in Kentucky shall be actuarially adequate to
20 cover the entire liability of the employer for compensation under this chapter,
21 including all expenses and allowances normally used to calculate the cost for
22 coverage. For policies with provisions for deductibles with effective dates of
23 May 6, 1993, through December 31, 1993, for which the insurance company
24 did not report premiums and remit special fund assessments based on the
25 calculated cost for coverage prior to the reduction for deductibles, "premium"
26 includes the initial consideration plus any reimbursements invoiced for losses,
27 expenses, or fees charged under the deductibles. **For policies with provisions**

1 for deductibles with effective dates on or after January 1, 2019, large risk
2 alternative rating options and schedule rating modifications shall be subject
3 to assessment.

4 (d) "Return premiums" for insurance companies means amounts returned to
5 insureds due to endorsements, retrospective adjustments, cancellations,
6 dividends, or errors.

7 (e) "Deductible program adjustment" means the method of calculating
8 premium and premiums received on a gross basis for any schedule rating
9 modifications, debits, or credits as if the deductible contract is not being
10 used to calculate coverage;

11 (26) "Insurance policy" for an insurance company or self-insured group means the term
12 of insurance coverage commencing from the date coverage is extended, whether a
13 new policy or a renewal, through its expiration, not to exceed the anniversary date
14 of the renewal for the following year;

15 (27) "Self-insurance year" for a self-insured group means the annual period of
16 certification of the group created pursuant to KRS 342.350(4) and 304.50-010;

17 (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1)
18 shall be the projected value of the employer's workers' compensation claims for the
19 next calendar year as calculated by the commissioner using generally-accepted
20 actuarial methods as follows:

21 (a) The base period shall be the earliest three (3) calendar years of the five (5)
22 calendar years immediately preceding the calendar year for which the
23 calculation is made. The commissioner shall identify each claim of the
24 employer which has an injury date or date of last injurious exposure to the
25 cause of an occupational disease during each one (1) of the three (3) calendar
26 years to be used as the base, and shall assign a value to each claim. The value
27 shall be the total of the indemnity benefits paid to date and projected to be

1 paid, adjusted to current benefit levels, plus the medical benefits paid to date
2 and projected to be paid for the life of the claim, plus the cost of medical and
3 vocational rehabilitation paid to date and projected to be paid. Adjustment to
4 current benefit levels shall be done by multiplying the weekly indemnity
5 benefit for each claim by the number obtained by dividing the statewide
6 average weekly wage which will be in effect for the year for which the
7 premium is being calculated by the statewide average weekly wage in effect
8 during the year in which the injury or date of the last exposure occurred. The
9 total value of the claims using the adjusted weekly benefit shall then be
10 calculated by the commissioner. Values for claims in which awards have been
11 made or settlements reached because of findings of permanent partial or
12 permanent total disability shall be calculated using the mortality and interest
13 discount assumptions used in the latest available statistical plan of the
14 advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The
15 sum of all calculated values shall be computed for all claims in the base
16 period;

17 (b) The commissioner shall obtain the annual payroll for each of the three (3)
18 years in the base period for each employer carrying his own risk from records
19 of the department and from the records of the Office of Employment and
20 Training, Education and Workforce Development Cabinet. The commissioner
21 shall multiply each of the three (3) years of payroll by the number obtained by
22 dividing the statewide average weekly wage which will be in effect for the
23 year in which the premium is being calculated by the statewide average
24 weekly wage in effect in each of the years of the base period;

25 (c) The commissioner shall divide the total of the adjusted claim values for the
26 three (3) year base period by the total adjusted payroll for the same three (3)
27 year period. The value so calculated shall be multiplied by 1.25 and shall then

1 be multiplied by the employer's most recent annualized payroll, calculated
2 using records of the department and the Office of Employment and Training
3 data which shall be made available for this purpose on a quarterly basis as
4 reported, to obtain the premium for the next calendar year for assessment
5 purposes under KRS 342.122;

6 (d) For November 1, 1987, through December 31, 1988, premium for each
7 employer carrying its own risk shall be an amount calculated by the board
8 pursuant to the provisions contained in this subsection and such premium
9 shall be provided to each employer carrying its own risk and to the funding
10 commission on or before January 1, 1988. Thereafter, the calculations set
11 forth in this subsection shall be performed annually, at the time each employer
12 applies or renews its application for certification to carry its own risk for the
13 next twelve (12) month period and submits payroll and other data in support
14 of the application. The employer and the funding commission shall be notified
15 at the time of the certification or recertification of the premium calculated by
16 the commissioner, which shall form the employer's basis for assessments
17 pursuant to KRS 342.122 for the calendar year beginning on January 1
18 following the date of certification or recertification;

19 (e) If an employer having fewer than five (5) years of doing business in this state
20 applies to carry its own risk and is so certified, its premium for the purposes of
21 KRS 342.122 shall be based on the lesser number of years of experience as
22 may be available including the two (2) most recent years if necessary to create
23 a three (3) year base period. If the employer has less than two (2) years of
24 operation in this state available for the premium calculation, then its premium
25 shall be the greater of the value obtained by the calculation called for in this
26 subsection or the amount of security required by the commissioner pursuant to
27 KRS 342.340(1);

- 1 (f) If an employer is certified to carry its own risk after having previously insured
2 the risk, its premium shall be calculated using values obtained from claims
3 incurred while insured for as many of the years of the base period as may be
4 necessary to create a full three (3) year base. After the employer is certified to
5 carry its own risk and has paid all amounts due for assessments upon
6 premiums paid while insured, the employer shall be assessed only upon the
7 premium calculated under this subsection;
- 8 (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated
9 as set forth in this subsection; and
- 10 (h) Notwithstanding any other provision of this subsection, the premium of any
11 employer authorized to carry its own risk for purposes of assessments due
12 under this chapter shall be no less than thirty cents (\$0.30) per one hundred
13 dollars (\$100) of the employer's most recent annualized payroll for employees
14 covered by this chapter;
- 15 (29) "SIC code" as used in this chapter means the Standard Industrial Classification
16 Code contained in the latest edition of the Standard Industrial Classification Manual
17 published by the Federal Office of Management and Budget;
- 18 (30) "Investment interest" means any pecuniary or beneficial interest in a provider of
19 medical services or treatment under this chapter, other than a provider in which that
20 pecuniary or investment interest is obtained on terms equally available to the public
21 through trading on a registered national securities exchange, such as the New York
22 Stock Exchange or the American Stock Exchange, or on the National Association of
23 Securities Dealers Automated Quotation System;
- 24 (31) "Managed health care system" means a health care system that employs gatekeeper
25 providers, performs utilization review, and does medical bill audits;
- 26 (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists,
27 podiatrists, and osteopathic and chiropractic practitioners acting within the scope of

1 their license issued by the Commonwealth;

2 (33) "Objective medical findings" means information gained through direct observation
3 and testing of the patient applying objective or standardized methods;

4 (34) "Work" means providing services to another in return for remuneration on a regular
5 and sustained basis in a competitive economy;

6 (35) "Permanent impairment rating" means percentage of whole body impairment caused
7 by the injury or occupational disease as determined by the "Guides to the Evaluation
8 of Permanent Impairment";

9 (36) "Permanent disability rating" means the permanent impairment rating selected by an
10 administrative law judge times the factor set forth in the table that appears at KRS
11 342.730(1)(b); and

12 (37) "Guides to the Evaluation of Permanent Impairment" means, except as provided in
13 KRS 342.262:

14 (a) The fifth edition published by the American Medical Association; and

15 (b) For psychological impairments, Chapter 12 of the second edition published by
16 the American Medical Association.

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

18 (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose
19 of funding and prefunding the liabilities of the special fund, financing the
20 administration and operation of the Kentucky Workers' Compensation
21 Funding Commission, and financing the expenditures for all programs in the
22 Labor Cabinet, except the Division of Apprenticeship and Division of Wages
23 and Hours in the Department of Workplace Standards, as reflected in the
24 enacted budget of the Commonwealth and enacted by the General Assembly,
25 the funding commission shall impose a special fund assessment rate of nine
26 percent (9%) upon the amount of workers' compensation premiums received
27 on and after January 1, 1997, through December 31, 1997, by every insurance

1 carrier writing workers' compensation insurance in the Commonwealth, by
2 every self-insured group operating under the provisions of KRS 342.350(4)
3 and Chapter 304, and against the premium, as defined in KRS 342.0011, of
4 every employer carrying his or her own risk.

5 (b) The funding commission shall, for calendar year 1998 and thereafter, establish
6 for the special fund an assessment rate to be assessed against all premium
7 received during that calendar year which shall produce enough revenue to
8 amortize on a level basis the unfunded liability of the special fund as of June
9 30 preceding January 1 of each year, for the period remaining until December
10 31, 2029. The interest rate to be used in this calculation shall reflect the
11 funding commission's investment experience to date and the current
12 investment policies of the commission. This assessment shall be imposed
13 upon the amount of workers' compensation premiums received by every
14 insurance carrier writing workers' compensation insurance in the
15 Commonwealth, by every self-insured group operating under the provisions of
16 KRS 342.350(4) and Chapter 304, and against the premium, as defined in
17 KRS 342.0011, of every employer carrying its own risk. On or before October
18 1 of each year, the commission shall notify each insurance carrier writing
19 workers' compensation insurance in the Commonwealth, every group of self-
20 insured employers, and each employer carrying its own risk, of the rates which
21 shall become effective on January 1 of each year, unless modified by the
22 General Assembly.

23 (c) All assessments imposed by this section shall be paid to the Kentucky
24 Workers' Compensation Funding Commission and shall be credited to the
25 benefit reserve fund within the Kentucky Workers' Compensation Funding
26 Commission.

27 (d) The assessments imposed in this chapter shall be in lieu of all other

1 assessments or taxes on workers' compensation premiums.

2 (2) (a) These assessments shall be paid quarterly not later than the thirtieth day of the
3 month following the end of the quarter in which the premium is received.
4 Receipt shall be considered timely through actual physical receipt or by
5 postmark of the United States Postal Service. Employers carrying their own
6 risk and employers defined in KRS 342.630(2) shall pay the annual
7 assessments in four (4) equal quarterly installments.

8 (b) Beginning on January 1, 2020, all assessments shall be electronically
9 remitted to the funding commission quarterly not later than the thirtieth day
10 of the month following the end of the quarter in which the premium is
11 received. Receipt shall be considered timely when filed and remitted using
12 the appropriate electronic pay system as prescribed by the funding
13 commission. Employers carrying their own risk and employers defined in
14 KRS 342.630(2) shall pay the annual assessments in four (4) equal
15 quarterly installments.

16 (3) The assessments imposed by this section may be collected by the insurance carrier
17 from the insured. However, the insurance carrier shall not collect from the employer
18 any amount exceeding the assessments imposed pursuant to this section. If the
19 insurance carrier collects the assessment from an insured, the assessment shall be
20 collected at the same time and in the same proportion as the premium is collected.
21 The assessment for an insurance policy or other evidence of coverage providing a
22 deductible may be collected in accordance with this chapter on a premium amount
23 that equates to the premium that would have applied without the deductible. Each
24 statement from an insurance carrier presented to an insured reflecting premium and
25 assessment amounts shall clearly identify and distinguish the amount to be paid for
26 premium and the amount to be paid for assessments. No insurance carrier shall
27 collect from an insured an amount in excess of the assessment percentages imposed

1 by this chapter. The assessment for an insurance policy or other evidence of
2 coverage providing a deductible may be collected in accordance with this chapter on
3 a premium amount that equates to the premium that would have applied without the
4 deductible. The percentages imposed by this chapter for an insurance policy issued
5 by an insurance company shall be those percentages in effect on the annual effective
6 date of the policy, regardless of the date that the premium is actually received by the
7 insurance company.

8 (4) A self-insured group may elect to report its premiums and to have its assessments
9 computed in the same manner as insurance companies. This election may not be
10 rescinded for at least ten (10) years, nor may this election be made a second time for
11 at least another ten (10) years, except that the board of directors of the funding
12 commission may, at its discretion, waive the ten (10) year ban on a case-by-case
13 basis after formal petition has been made to the funding commission by a self-
14 insured group.

15 (5) The funding commission, as part of the collection and auditing of the special fund
16 assessments required by this section, shall annually require each insurance carrier
17 and each self-insured group to provide a list of employers which it has insured or
18 which are members and the amount collected from each employer. Additionally, the
19 funding commission shall require each entity paying a special fund assessment to
20 report the SIC code for each employer and the amount of premium collected from
21 each SIC code. An insurance carrier or self-insured group may require its insureds
22 or members to furnish the SIC code for each of their employees. However, the
23 failure of any employer to furnish said codes shall not relieve the insurance carrier
24 or self-insured group from the obligation to furnish same to the funding
25 commission. The Office of Employment and Training, Education and Workforce
26 Development Cabinet, is hereby directed to make available the SIC codes assigned
27 in its records to specific employers to aid in the reporting and recording of the

1 special fund assessment data.

2 (6) Each self-insured employer, self-insured group, or insurance carrier shall provide
3 any information and submit any reports the Department of Revenue or the funding
4 commission may require to effectuate the provisions of this section. In addition, the
5 funding commission may enter reciprocal agreements with other governmental
6 agencies for the exchange of information necessary to effectuate the provisions of
7 this section.

8 (7) The special fund shall be required to maintain a central claim registry of all claims
9 to which it is named a party, giving each such claim a unique claim number and
10 thereafter recording the status of each claim on a current basis. The registry shall be
11 established by January 26, 1988, for all claims on which payments were made since
12 July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all
13 claim files in the possession of the special fund.

14 (8) The fund heretofore designated as the subsequent claim fund is abolished, and there
15 is substituted therefor the special fund as set out by this section, and all moneys and
16 properties owned by the subsequent claim fund are transferred to the special fund.

17 (9) Notwithstanding any other provisions of this section or this chapter to the contrary,
18 the total amount of funds collected pursuant to the assessment rates adopted by the
19 funding commission shall not be limited to the provisions of this section.

20 (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS
21 342.122 shall forever remain applicable to premiums received on policies with
22 effective dates prior to January 1, 1997, by every insurance carrier writing workers'
23 compensation insurance in the Commonwealth, by every self-insured group
24 operating under the provision of KRS 342.350(4) and Chapter 304, and against the
25 premium, as defined in KRS 342.0011, of every employer carrying its own risk.

26 ➔Section 3. KRS 342.1221 is amended to read as follows:

27 Assessments levied and expenses owed pursuant to KRS 342.122 and Sections 6 and 7

1 **of this Act** and unpaid on the date on which they are due and payable shall bear interest at
2 the rate specified in KRS 131.183 plus a penalty of one and one-half percent (1.5%) per
3 month or portion thereof without proration from the date on which the assessment **or**
4 **expenses are**~~[was]~~ due and payable. The funding commission shall have the authority to
5 waive part or all of the penalty, but not the interest, where it is shown to the satisfaction
6 of the commission that failure to timely pay assessments is due to reasonable cause. **This**
7 **authority shall extend to the coal workers' pneumoconiosis fund until it ceases to exist.**

8 ➔Section 4. KRS 342.1223 is amended to read as follows:

9 (1) The Kentucky Workers' Compensation Funding Commission is created as an
10 agency of the Commonwealth for the public purpose of controlling, investing, and
11 managing the funds collected pursuant to KRS 342.122.

12 (2) The commission shall:

13 (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS
14 342.122 and its other funds separate and apart from all "state funds" or "public
15 funds," as defined in KRS Chapter 446;

16 (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power
17 over the funds collected pursuant to KRS 342.122, and may invest association
18 funds through one (1) or more banks, trust companies, or other financial
19 institutions with offices in Kentucky in good standing with the Department of
20 Financial Institutions, in investments described in KRS Chapter 386, except
21 that the funding commission may, at its discretion, invest in ~~nondividend-~~
22 ~~paying~~ equity securities;

23 (c) Report to the General Assembly at each even-numbered-year regular session
24 the actuarial soundness and adequacy of the funding mechanism for the
25 special fund and other programs supported by the mechanism, including
26 detailed information on the investment of funds and yields thereon;

27 (d) Recommend to the General Assembly, not later than October 31 of the year

- 1 prior to each even-numbered-year regular legislative session, changes deemed
2 necessary in the level of the assessments imposed in this chapter;
- 3 (e) In conjunction with the Labor Cabinet, submit to the General Assembly, not
4 later than October 31 of the year prior to each even-numbered-year regular
5 legislative session, a proposed budget for the biennium beginning July 1
6 following the even-numbered-year regular session of the General Assembly;
- 7 (f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee
8 on Appropriations and Revenue an annual budget and detailed quarterly
9 financial reports;
- 10 (g) Conduct periodic audits, independently or in cooperation with the Labor
11 Cabinet or the Department of Revenue, of all entities subject to the
12 assessments imposed in this chapter; and
- 13 (h) Report monthly to the Committees on Appropriations and Revenue and on
14 Labor and Industry its monthly expenditures of restricted agency funds and the
15 nature of the expenditures.
- 16 (3) The commission shall have all of the powers necessary or convenient to carry out
17 and effectuate the purposes for which it was established, including, but not limited
18 to, the power:
- 19 (a) To sue and be sued, complain, or defend, in its name;
- 20 (b) To elect, appoint, or hire officers, agents, and employees, and define their
21 duties and fix their compensation within the limits of its budget approved by
22 the General Assembly;
- 23 (c) To contract for investment counseling, legal, actuarial, auditing, and other
24 professional services in accordance with the provisions relating to personal
25 service contracts contained in KRS Chapter 45A;
- 26 (d) To appoint, hire, and contract with banks, trust companies, and other entities
27 to serve as depositories and custodians of its investment receipts and other

1 funds;

2 (e) To take any and all other actions consistent with the purposes of the
3 commission and the provisions of this chapter; and

4 (f) To make and promulgate administrative regulations.

5 (4) The Kentucky Workers' Compensation Funding Commission may utilize the
6 investment expertise and advice of the Office of Financial Management within the
7 Finance and Administration Cabinet. The Kentucky Workers' Compensation
8 Funding Commission may procure one (1) or more consulting firms and enter into a
9 personal service contract with such consulting firms to provide investment advisory,
10 investment counseling, or investment management services. The Office of Financial
11 Management shall participate in the selection of any firms for investment services
12 provided, however, the Kentucky Workers' Compensation Funding Commission
13 shall have the right to make the final decision on the selection of any firms.
14 Notwithstanding any provisions of this section to the contrary, all contracts for
15 investment advisory, investment counseling, or investment management services or
16 for the management of assets shall be subject to KRS Chapter 45A. The fees
17 charged by financial institutions for managing the investments of the funds of the
18 funding commission shall be paid from the investment earnings of the funds.

19 (5) The commission shall be attached to the Labor Cabinet for administrative purposes
20 only.

21 ➔Section 5. KRS 342.1231 is amended to read as follows:

22 (1) The funding commission may mail to the **assessment payer**~~{taxpayer}~~ a notice of
23 any assessment assessed by it. The assessment shall be final if not protested in
24 writing to the funding commission within thirty (30) days from the date of notice.
25 **Payment for the assessment, penalty and interest, and expenses shall be received**
26 **by the funding commission within thirty (30) days from the date the notice**
27 **becomes final.** The protest shall be accompanied by a supporting statement setting

- 1 forth the grounds upon which the protest is made. Upon written request, the funding
2 commission may extend the time for filing the supporting statement if it appears the
3 delay is necessary and unavoidable. The refusal of such extension may be reviewed
4 in the same manner as a protested assessment.
- 5 (2) After a timely protest has been filed, the assessment payer~~[taxpayer]~~ may request a
6 conference with the funding commission. The request shall be granted in writing
7 stating the date and time set for the conference. The assessment payer~~[taxpayer]~~
8 may appear in person or by representative. Further conferences may be held by
9 mutual agreement.
- 10 (3) After considering the assessment payer's~~[taxpayer's]~~ protest, including any matters
11 presented at the final conference, the funding commission shall issue a final ruling
12 on any matter still in controversy, which shall be mailed to the assessment
13 payer~~[taxpayer]~~. The ruling shall state that it is a final ruling of the funding
14 commission, generally state the issues in controversy, the funding commission's
15 position thereon and set forth the procedure for prosecuting an appeal to the
16 Kentucky Claims Commission pursuant to KRS 49.220.
- 17 (4) The assessment payer~~[taxpayer]~~ may request in writing a final ruling at any time
18 after filing a timely protest and supporting statement. When a final ruling is
19 requested, the funding commission shall issue such ruling within sixty (60)~~[thirty~~
20 ~~(30)]~~ days or at the next board of directors meeting, whichever is later, from the
21 date the request is received by the funding commission.
- 22 (5) After a final ruling has been issued, the assessment payer~~[taxpayer]~~ may appeal to
23 the Kentucky Claims Commission pursuant to KRS 49.220.
- 24 (6) The expenses incurred by the funding commission in conducting audits required in
25 this chapter shall be paid by the audited entities~~[insurance companies]~~ in
26 accordance with administrative regulations promulgated by the funding
27 commission.

- 1 (7) Notwithstanding any provision to the contrary, a notice of assessment under
 2 subsection (1) of this section shall not be collected unless the notice of assessment
 3 is mailed to the assessment payer not later than five (5) years from the due date of
 4 the quarterly premium report or the date the amended quarterly premium report
 5 is filed, whichever is later. A quarterly premium report shall not be amended later
 6 than one (1) year after the due date of the quarterly premium report.
- 7 (8) Assessment payers shall preserve, retain, and provide all documents relevant to
 8 quarterly premium reports and subject to audits to the funding commission upon
 9 request during the completion of the audit.
- 10 (9) (a) The funding commission may mail the assessment payer notice of a refund
 11 amount to be returned to an insured. The insurance carrier shall pay the
 12 amount of the refund to the insured within sixty (60) days from the date of
 13 notice sent by the funding commission. If, after good faith efforts, the
 14 refund cannot be returned to the insured, the refund amount shall be
 15 remitted to the funding commission within thirty (30) days from the last
 16 date of attempting the refund.
- 17 (b) If a refund amount to an insured is unpaid on the date on which it is due,
 18 then that amount shall bear a penalty of one and one-half percent (1.5%)
 19 per month from that due date. The funding commission shall have the
 20 authority to waive part or all of the penalty where failure to pay is shown, to
 21 the satisfaction of the funding commission, to be for a reasonable cause.

22 (10) 'Assessment payer'~~["Taxpayer"]~~ as used in this section means insurance carrier,
 23 self-insured group, and self-insured employer.

24 ➔Section 6. KRS 342.1242 is amended to read as follows:

- 25 (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have
 26 one-half (1/2) of the liability for income benefits, including retraining benefits,
 27 payable for claims brought under KRS 342.732 for last exposure incurred on or

1 after December 12, 1996, which are filed on or before June 30, 2017. Income
2 benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made
3 contemporaneous with the payments made by the employer, except that the
4 employer shall make all payments due under a final award or approved settlement
5 for any claims filed after June 30, 2017.

6 (2) For claims brought under KRS 342.732 for last exposure incurred on or after
7 December 12, 1996 which are filed on or before June 30, 2017, the employer shall
8 defend any claim brought under KRS 342.732 and upon conclusion shall seek
9 participation in payment of the final award or settlement by the Kentucky coal
10 workers' pneumoconiosis fund by making written request upon the director in the
11 manner prescribed by administrative regulation to be promulgated by the
12 commissioner of the Department of Workers' Claims.

13 (3) (a) For the purpose of funding the liabilities of the Kentucky coal workers'
14 pneumoconiosis fund and financing the administration and operation of the
15 Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the
16 Commonwealth enacted by the General Assembly, a Kentucky coal workers'
17 pneumoconiosis fund assessment at the rate of three percent (3%) is hereby
18 imposed upon the amount of workers' compensation premiums received on
19 and after January 1, 1997, through December 31, 1997, by every insurance
20 carrier writing workers' compensation insurance in the Commonwealth and by
21 every self-insured group operating under the provisions of KRS 342.350(4)
22 and Chapter 304, from employers engaged in the severance or processing of
23 coal. Likewise, on and after January 1, 1997, through December 31, 1997, an
24 assessment at the rate of three percent (3%) of premium shall be paid by every
25 employer engaged in the severance or processing of coal who is carrying his
26 or her own risk.

27 (b) In addition to the assessment imposed in paragraph (a) of this subsection, an

1 additional Kentucky coal workers' pneumoconiosis fund assessment at the rate
2 of two and one-half cents (\$0.025) per ton is hereby imposed upon the total
3 annual amount of tons of coal severed on or after January 1, 1997, through
4 December 31, 1997, by every entity engaged in the severance of coal as
5 required pursuant to KRS Chapter 143.

6 (c) As of June 30, 2018, and each year thereafter until the liabilities of the fund
7 are fully funded, the Funding Commission and the Kentucky Employers'
8 Mutual Insurance Authority shall determine the assets of the fund and the
9 claim liability incurred by the fund for all previous years and shall establish
10 the rates under the provisions of paragraphs (a) and (b) of this subsection
11 necessary as of January 1 of the next year to fund claim liabilities through
12 December 31 of the next year of operations. The assessment rate authorized
13 by this section for premiums received and tons of coal severed shall be set so
14 as to receive fifty percent (50%) of the needed revenue from each assessment.
15 Notice of any rate changes shall be provided no later than October 1 of the
16 year preceding the rate change.

17 (4) All assessments imposed by this section shall be paid to the Kentucky Workers'
18 Compensation Funding Commission and shall be transferred to the Kentucky
19 Employers' Mutual Insurance Authority, which is administering the coal workers'
20 pneumoconiosis fund. In addition, the powers and responsibilities of the Kentucky
21 Workers' Compensation Funding Commission including its fiduciary duties and
22 responsibilities relating to assessments collected for the special fund pursuant to
23 KRS 342.122, Section 3 of this Act, 342.1222, 342.1223, 342.1226, 342.1229, and
24 342.1231 shall apply to assessments collected for the Kentucky coal workers'
25 pneumoconiosis fund created pursuant to this section. Each entity subject to
26 assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any
27 and all information requested by the Kentucky Workers' Compensation Funding

- 1 Commission necessary to carry out its powers and responsibilities relating thereto.
- 2 (5) These assessments shall be paid quarterly not later than the thirtieth day of the
3 month following the end of the quarter in which the premium is received or the coal
4 is processed or severed. Receipt shall be considered timely through actual physical
5 receipt or by postmark by the United States Postal Service. Employers carrying their
6 own risk and employers defined in KRS 342.630(2) shall pay the annual
7 assessments in four (4) equal quarterly installments. Penalty and interest penalties
8 imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers'
9 Compensation Funding Commission to waive part or all of the penalty shall apply
10 to assessments for the Kentucky coal workers' pneumoconiosis fund in the same
11 manner and amount as they are imposed on assessments for the special fund under
12 KRS 342.122.
- 13 (6) Notwithstanding any other provisions of this section or this chapter to the contrary,
14 the total amount of funds collected pursuant to the assessment rates adopted by the
15 funding commission shall not be limited to the provisions of this section.
- 16 (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis
17 shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers'
18 pneumoconiosis fund shall be liable for payment of a part of the liability only for
19 employees of employers engaged in the severance or processing of coal as defined
20 in KRS 342.0011(23)(a) and (b).
- 21 (8) Assessments issued pursuant to this section shall cease to be imposed once the
22 liabilities of the fund are fully funded. After the liabilities are fully funded, any
23 excess assessments shall be refunded to the employers on a pro rata basis.
- 24 **(9) The Kentucky Employers' Mutual Insurance Authority shall reimburse the**
25 **funding commission for any expenses incurred with regard to the collection of**
26 **assessments for the coal workers' pneumoconiosis fund and other incurred**
27 **expenses related to the coal workers' pneumoconiosis fund.**

1 ➔Section 7. KRS 342.1243 is amended to read as follows:

- 2 (1) Notwithstanding any provisions of this chapter or any other provisions to the
3 contrary, the Kentucky coal workers' pneumoconiosis fund shall have no liability
4 for income benefits for coal workers' pneumoconiosis claims filed or reopened on or
5 after July 1, 2017.
- 6 (2) Notwithstanding any provisions of this chapter or any other provisions to the
7 contrary, as soon as practically possible after July 1, 2017, all of the assets and
8 liabilities of the Kentucky coal workers' pneumoconiosis fund shall be transferred
9 from the Kentucky Workers' Compensation Funding Commission and Division of
10 Workers' Compensation Funds to the Kentucky Employers' Mutual Insurance
11 Authority through a loss portfolio transfer agreement. The Kentucky Employers'
12 Mutual Insurance Authority shall have full authority and responsibility over the
13 Kentucky coal workers' pneumoconiosis fund's claims and shall administer the
14 claims as permitted pursuant to KRS Chapter 342.
- 15 (3) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation
16 Funding Commission shall impose an assessment at an annual rate of fourteen
17 percent (14%) upon the amount of workers' compensation premiums received on or
18 after January 1, 2017, through December 31, 2017, by every insurance carrier
19 writing workers' compensation insurance in the Commonwealth and by every self-
20 insured group operating under the provisions of KRS 342.350(4) and KRS Chapter
21 304, from employers engaged in the severance or processing of coal. Likewise, on
22 or after January 1, 2017, through December 31, 2017, an assessment at the rate of
23 fourteen percent (14%) of premium shall be paid by every employer engaged in the
24 severance or processing of coal who is carrying his or her own risk.
- 25 (4) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation
26 Funding Commission shall impose an assessment at an annual rate of fourteen
27 percent (14%) upon the amount of workers' compensation premiums received on or

1 after January 1, 2018, through December 31, 2018, by every insurance carrier
2 writing workers' compensation insurance in the Commonwealth and by every self-
3 insured group operating under the provisions of KRS 342.350(4) and Chapter 304,
4 from employers engaged in the severance or processing of coal. Likewise, on or
5 after January 1, 2018, through December 31, 2018, an assessment at the rate of
6 fourteen percent (14%) of premium shall be paid by every employer engaged in the
7 severance or processing of coal who is carrying his or her own risk.

8 (5) Notwithstanding the provisions of KRS 342.1242, in addition to the assessments in
9 subsection (3) and (4) of this section, for the calendar years of 2017 and 2018, an
10 assessment at the rate of fifteen cents (\$0.15) per ton shall be imposed upon the
11 total annual amount of tons of coal severed by every entity engaged in the severance
12 of coal as required pursuant to KRS Chapter 143.

13 (6) The assessments imposed by this section shall supersede any assessment imposed
14 pursuant to KRS 342.1242 for the calendar years of 2017 and 2018. Any amount
15 paid and collected that exceeds the assessment imposed by this section in calendar
16 year 2017 shall be reimbursed to the employer or credited to the employer's account
17 subject to the preference of the employer.

18 (7) Assessments pursuant to this section and KRS 342.1242 that are collected by the
19 Kentucky Worker's Compensation Funding Commission shall be transferred to the
20 Kentucky Employers' Mutual Insurance Authority.

21 (8) When the Kentucky Workers' Compensation Funding Commission and the
22 Kentucky Employers' Mutual Insurance Authority have determined **final audits are**
23 **closed and the liability of the fund is fully funded**~~that the Kentucky coal workers'~~
24 ~~pneumoconiosis fund has fully funded its liabilities~~, then the authority for imposing
25 **assessment rates**~~assessments~~ pursuant to this section and KRS 342.1242 shall
26 cease to exist~~, and the Kentucky coal workers' pneumoconiosis fund shall be~~
27 ~~abolished~~. Any remaining assessments received following the exhaustion of

1 liabilities shall be refunded pro rata to all employers who have paid an assessment
2 in the year that liabilities are fully funded. *When all claim payouts are completed,*
3 *the Kentucky coal workers' pneumoconiosis fund shall be abolished.*