

1 AN ACT relating to mining.

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

3 ➔Section 1. KRS 13B.020 is amended to read as follows:

- 4 (1) The provisions of this chapter shall apply to all administrative hearings conducted
5 by an agency, with the exception of those specifically exempted under this section.
6 The provisions of this chapter shall supersede any other provisions of the Kentucky
7 Revised Statutes and administrative regulations, unless exempted under this section,
8 to the extent these other provisions are duplicative or in conflict. This chapter
9 creates only procedural rights and shall not be construed to confer upon any person
10 a right to hearing not expressly provided by law.
- 11 (2) The provisions of this chapter shall not apply to:
- 12 (a) Investigations, hearings to determine probable cause, or any other type of
13 information gathering or fact finding activities;
 - 14 (b) Public hearings required in KRS Chapter 13A for the promulgation of
15 administrative regulations;
 - 16 (c) Any other public hearing conducted by an administrative agency which is
17 nonadjudicatory in nature and the primary purpose of which is to seek public
18 input on public policy making;
 - 19 (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter
20 35;
 - 21 (e) Administrative hearings conducted by the legislative and judicial branches of
22 state government;
 - 23 (f) Administrative hearings conducted by any city, county, urban-county, charter
24 county, or special district contained in KRS Chapters 65 to 109, or any other
25 unit of local government operating strictly in a local jurisdictional capacity;
 - 26 (g) Informal hearings which are part of a multilevel hearing process that affords
27 an administrative hearing at some point in the hearing process if the

- 1 procedures for informal hearings are approved and promulgated in accordance
2 with subsections (4) and (5) of this section;
- 3 (h) Limited exemptions granted for specific hearing provisions and denoted by
4 reference in the text of the applicable statutes or administrative regulations;
- 5 (i) Administrative hearings exempted pursuant to subsection (3) of this section;
- 6 (j) Administrative hearings exempted, in whole or in part, pursuant to
7 subsections (4) and (5) of this section; and
- 8 (k) Any administrative hearing which was commenced but not completed prior to
9 July 15, 1996.
- 10 (3) The following administrative hearings are exempt from application of this chapter
11 in compliance with 1994 Ky. Acts ch. 382, sec. 19:
- 12 (a) Finance and Administration Cabinet
- 13 1. Higher Education Assistance Authority
- 14 a. Wage garnishment hearings conducted under authority of 20
15 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
- 16 b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A
17 and sec. 3716, and 34 C.F.R. sec. 30.33
- 18 2. Department of Revenue
- 19 a. Any licensing and bond revocation hearings conducted under the
20 authority of KRS 138.210 to 138.448 and 234.310 to 234.440
- 21 b. Any license revocation hearings under KRS 131.630 and 138.130
22 to 138.205
- 23 (b) Cabinet for Health and Family Services
- 24 1. Office of Health Policy
- 25 a. Certificate-of-need hearings and licensure conducted under
26 authority of KRS Chapter 216B
- 27 b. Licensure revocation hearings conducted under authority of KRS

- 1 Chapter 216B
- 2 2. Department for Community Based Services
- 3 a. Supervised placement revocation hearings conducted under
- 4 authority of KRS Chapter 630
- 5 3. Department for Income Support
- 6 a. Disability determination hearings conducted under authority of 20
- 7 C.F.R. sec. 404
- 8 4. Department for Medicaid Services
- 9 a. Administrative appeal hearings following an external independent
- 10 third-party review of a Medicaid managed care organization's final
- 11 decision that denies, in whole or in part, a health care service to an
- 12 enrollee or a claim for reimbursement to the provider for a health
- 13 care service rendered by the provider to an enrollee of the
- 14 Medicaid managed care organization, conducted under authority of
- 15 KRS 205.646
- 16 (c) Justice and Public Safety Cabinet
- 17 1. Department of Kentucky State Police
- 18 a. Kentucky State Police Trial Board disciplinary hearings conducted
- 19 under authority of KRS Chapter 16
- 20 2. Department of Corrections
- 21 a. Parole Board hearings conducted under authority of KRS Chapter
- 22 439
- 23 b. Prison adjustment committee hearings conducted under authority
- 24 of KRS Chapter 197
- 25 c. Prison grievance committee hearings conducted under authority of
- 26 KRS Chapters 196 and 197
- 27 3. Department of Juvenile Justice

- 1 a. Supervised placement revocation hearings conducted under KRS
2 Chapter 635
- 3 (d) Energy and Environment Cabinet
- 4 1. Department for Natural Resources
- 5 a. Surface mining hearings conducted under authority of KRS
6 Chapter 350
- 7 **b. Explosives and blasting hearings conducted under authority of**
8 **KRS 351.315 to 351.375**
- 9 2. Department for Environmental Protection
- 10 a. Wild River hearings conducted under authority of KRS Chapter
11 146
- 12 b. Water resources hearings conducted under authority of KRS
13 Chapter 151
- 14 c. Water plant operator and water well driller hearings conducted
15 under authority of KRS Chapter 223
- 16 d. Environmental protection hearings conducted under authority of
17 KRS Chapter 224
- 18 e. Petroleum Storage Tank Environmental Assurance Fund hearings
19 under authority of KRS Chapter 224
- 20 3. Public Service Commission
- 21 a. Utility hearings conducted under authority of KRS Chapters 74,
22 278, and 279
- 23 (e) Labor Cabinet
- 24 1. Department of Workers' Claims
- 25 a. Workers' compensation hearings conducted under authority of
26 KRS Chapter 342
- 27 2. Kentucky Occupational Safety and Health Review Commission

- 1 a. Occupational safety and health hearings conducted under authority
2 of KRS Chapter 338
- 3 (f) Public Protection Cabinet
- 4 1. Kentucky Claims Commission
- 5 a. Liability hearings conducted under authority of KRS 49.020(1) and
6 49.040 to 49.180
- 7 (g) Education and Workforce Development Cabinet
- 8 1. Unemployment Insurance hearings conducted under authority of KRS
9 Chapter 341
- 10 (h) Secretary of State
- 11 1. Registry of Election Finance
- 12 a. Campaign finance hearings conducted under authority of KRS
13 Chapter 121
- 14 (i) State universities and colleges
- 15 1. Student suspension and expulsion hearings conducted under authority of
16 KRS Chapter 164
- 17 2. University presidents and faculty removal hearings conducted under
18 authority of KRS Chapter 164
- 19 3. Campus residency hearings conducted under authority of KRS Chapter
20 164
- 21 4. Family Education Rights to Privacy Act hearings conducted under
22 authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
- 23 5. Federal Health Care Quality Improvement Act of 1986 hearings
24 conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS
25 Chapter 311.
- 26 (4) Any administrative hearing, or portion thereof, may be certified as exempt by the
27 Attorney General based on the following criteria:

- 1 (a) The provisions of this chapter conflict with any provision of federal law or
2 regulation with which the agency must comply, or with any federal law or
3 regulation with which the agency must comply to permit the agency or
4 persons within the Commonwealth to receive federal tax benefits or federal
5 funds or other benefits;
- 6 (b) Conformity with the requirement of this chapter from which exemption is
7 sought would be so unreasonable or so impractical as to deny due process
8 because of undue delay in the conduct of administrative hearings; or
- 9 (c) The hearing procedures represent informal proceedings which are the
10 preliminary stages or the review stages of a multilevel hearing process, if the
11 provisions of this chapter or the provisions of a substantially equivalent
12 hearing procedure exempted under subsection (3) of this section are applied at
13 some level within the multilevel process.
- 14 (5) The Attorney General shall not exempt an agency from any requirement of this
15 chapter until the agency establishes alternative procedures by administrative
16 regulation which, insofar as practical, shall be consistent with the intent and purpose
17 of this chapter. When regulations for alternative procedures are submitted to the
18 Administrative Regulation Review Subcommittee, they shall be accompanied by the
19 request for exemption and the approval of exemption from the Attorney General.
20 The decision of the Attorney General, whether affirmative or negative, shall be
21 subject to judicial review in the Franklin Circuit Court within thirty (30) days of the
22 date of issuance. The court shall not overturn a decision of the Attorney General
23 unless the decision was arbitrary or capricious or contrary to law.
- 24 (6) Except to the extent precluded by another provision of law, a person may waive any
25 procedural right conferred upon that person by this chapter.
- 26 ➔Section 2. KRS 350.0301 is amended to read as follows:
- 27 (1) Any person who considers himself *or herself* aggrieved by any determination made

1 by the cabinet under this chapter may file, in accordance with administrative
2 regulations promulgated by the cabinet under the provisions of this chapter, a
3 petition alleging that the determination is contrary to law or fact and is injurious to
4 him, the grounds and reasons therefor, and demand a hearing. Unless the cabinet
5 considers that the petition is frivolous, it shall serve written notice of the petition on
6 each person named therein and shall schedule a hearing before the cabinet not less
7 than twenty-one (21) days after the date of the notice unless the person complained
8 against waives in writing the twenty-one (21) day period. The right to demand a
9 hearing pursuant to this section shall be limited to a period of thirty (30) days after
10 the petitioner has had actual notice of the determination complained of, or could
11 reasonably have had notice. However, the petitioner shall have the opportunity to
12 contest the validity of an underlying notice of noncompliance in a timely-filed
13 demand for hearing to contest the validity of a cessation order issued for a failure to
14 abate the violation contained in the notice of noncompliance.

15 (2) All hearings, other than conferences, under this chapter shall be held before a
16 hearing officer, duly qualified to practice law in the Commonwealth of Kentucky,
17 who may be a full-time employee of the cabinet, serve by contract, or be paid on a
18 per diem basis in the discretion of the cabinet. After the conclusion of the hearing,
19 the hearing officer shall within thirty (30) days make to the secretary a report and
20 recommended order which shall contain a finding of fact and a conclusion of law. If
21 the secretary finds upon written request of the hearing officer that additional time is
22 needed, the secretary may grant an extension. The hearing officer shall serve a copy
23 of his report and recommended order upon all parties of record and their attorney of
24 record to the proceeding, and they shall be granted the right to file exceptions
25 thereto within fourteen (14) days of service. Any party may submit a written
26 response to exceptions within twenty-one (21) days of service of the report and
27 recommended order. Exceptions and responses not timely filed shall be noted and

1 made a part of the record but shall not be considered by the secretary in making a
2 final order. The secretary shall consider the report, exceptions, and recommended
3 order and decide the case. The decision shall be served by mail upon all parties and
4 their attorney of record and shall be a final order of the cabinet.

5 (3) Any party to a hearing under this subsection may be represented by counsel, may
6 make oral or written argument, offer testimony, cross-examine witnesses, or take
7 any combination of these actions. The record of the hearing shall be open to public
8 inspection, and copies thereof shall be made available to any person upon payment
9 of the actual cost of reproducing the original.

10 (4) All hearings conducted pursuant to this chapter shall be open to the public.

11 (5) The cabinet shall promulgate administrative regulations, pursuant to the provisions
12 set forth in this chapter, establishing formal and informal hearing procedures by
13 which any hearing shall, upon the written request of the operator, permittee, or
14 person, be held in the county or regional office where the surface coal mining
15 operation is located, before an impartial hearing officer who is independent of any
16 prosecutorial functions of the cabinet. The administrative regulations shall provide
17 for the conduct of hearings and investigation of any matter relating to the regulation
18 of surface coal mining and reclamation operations and provide for the assessment
19 and payment of civil penalties, including the placement of proposed civil penalty
20 assessments into an escrow account prior to a formal hearing on the amount of the
21 assessment; and provide for a waiver of the placement of the proposed civil
22 penalties into escrow for those individuals who demonstrate with substantial
23 evidence an inability to pay the proposed civil penalties into escrow. The
24 procedures developed pursuant to this subsection shall provide that the hearings be
25 held in the most expeditious manner possible within the time constraints established
26 under this chapter. No person who presided at a prior hearing shall either preside at
27 a subsequent hearing or participate in any further decision or subsequent

1 administrative appeal in the same matter.

2 (6) The cabinet may promulgate administrative regulations pursuant to the provisions
3 set forth in this chapter establishing procedures for the holding of administrative
4 conferences needed to implement the provisions of this chapter.

5 (7) The secretary may designate a deputy to sign any or all final orders of the cabinet,
6 whether the orders are the result of hearing or agreement.

7 ➔Section 3. KRS 350.064 is amended to read as follows:

8 (1) After a surface coal mining and reclamation permit application has been approved
9 but before the permit is issued, the applicant shall file with the regulatory authority,
10 on a form prescribed and furnished by the regulatory authority, a reclamation bond
11 for performance payable, as appropriate, to the state, and conditional upon faithful
12 performance of all the requirements of this chapter and the permit. The reclamation
13 bond shall cover that area of land within the permit area upon which the applicant
14 will initiate and conduct surface coal mining and reclamation operations within the
15 initial term of the permit. As succeeding increments of surface coal mining and
16 reclamation operations are to be initiated and conducted within the permit area, the
17 permittee shall file with the cabinet an additional bond or bonds to cover the
18 increments in accordance with this section.

19 (2) ~~[/The cabinet may accept the reclamation bond of the applicant itself without
20 separate surety when the applicant demonstrates to the satisfaction of the cabinet the
21 existence of a suitable agent to receive service of process and a history of financial
22 solvency and continuous operation sufficient for authorization to self-insure or bond
23 the amount or in lieu of the establishment of a bonding program, as set forth in this
24 section;]The cabinet may approve an alternative system that will achieve the
25 objectives and purposes of the bonding program pursuant to this section.~~

26 ➔Section 4. KRS 350.070 is amended to read as follows:

27 (1) Any extensions of the area covered by the permit, except incidental boundary

1 revisions, shall be made by application for another permit or an amendment to the
2 permit. [~~However, extensions of the underground mining area that are not incidental
3 boundary revisions and do not include planned subsidence or other new proposed
4 surface disturbances may be made by application for a major revision to the permit.~~]

5 (2) For an amendment, the permittee shall file an application, map, and revised
6 reclamation plan in the same form and with the same content as required for an
7 original application under this chapter. He *or she* shall pay a basic fee set by
8 regulation and bearing a reasonable relationship to the cost of processing the permit
9 application, not to exceed one thousand seven hundred fifty dollars (\$1,750), plus a
10 fee set by regulation, not to exceed seventy-five dollars (\$75), for each acre or
11 fraction of an acre for the increase requested. He *or she* shall file with the cabinet a
12 supplemental bond in the amount to be determined under the provisions of KRS
13 350.060(11) for each acre or fraction of an acre of the increase approved. This
14 application shall be subject to all of the same requirements as an original
15 application, including, but not limited to, the same public notice, review, and
16 issuance or denial provisions.

17 (3) If the cabinet approves a reduction in the acreage covered by the permit, it shall
18 release the bond for each acre reduced, but the bond shall not be reduced below ten
19 thousand dollars (\$10,000). If the cabinet approves a reduction in acreage, it shall
20 transfer the acreage fee for each acre reduced to acreage fees for subsequent permit
21 applications by the permittee.

22 (4) The cabinet shall promulgate regulations specifying the permit application
23 information requirements and procedures, including notice and hearing, which shall
24 apply depending on the scale or extent of a permit revision. Any revision which
25 proposes significant alterations in the reclamation plan shall be subject to the notice
26 and hearing requirements as set forth in the regulations of the cabinet. The applicant
27 for a revision shall pay a basic fee set by regulation, not to exceed seven hundred

1 fifty dollars (\$750) for a minor revision and one thousand seven hundred fifty
2 dollars (\$1,750) for a major revision, plus a fee set by regulation not to exceed
3 seventy-five dollars (\$75), for each acre or fraction of an acre included in an
4 incidental boundary revision.

- 5 (5) Incidental boundary revisions shall be deemed minor revisions if they:
- 6 (a) Do not exceed ten percent (10%) of the initial permit acreage;
 - 7 (b) Are contiguous with the permit acreage;
 - 8 (c) Are within the same watershed as the initial permit acreage;
 - 9 (d) Are required for an orderly continuation of the mining operation;
 - 10 (e) Cover the same coal seam or seams as in the permit;
 - 11 (f) Would only involve lands for which the hydrologic and geologic data and the
12 probable hydrologic consequences analysis contained in the permit are
13 applicable to the proposed incidental boundary revision;
 - 14 (g) Would not involve properties designated as unsuitable for mining, or any
15 properties eligible for listing on the National Register of Historic Places;
 - 16 (h) Would not involve any of the special categories of mining listed in 30 C.F.R.
17 Part 785 including, but not limited to, prime farmland and coal preparation
18 plants, unless the approved permit already includes the relevant category;
 - 19 (i) Would not constitute a change in the method of mining; and
 - 20 (j) Would be reclaimed in conformity with the initial reclamation plan.
- 21 (6) For the purpose of this section, the maximum acreage allowed to be added by an
22 incidental boundary revision shall be as follows:
- 23 (a) Surface operations shall be allowed up to twenty (20) acres;
 - 24 (b) ~~Underground operations shall be allowed up to ten percent (10%) of the~~
25 ~~original permitted acreage of the underground workings or twenty (20) acres,~~
26 ~~whichever is less;~~
 - 27 (c) Surface disturbances of underground mines including, but not limited to, face-

1 up areas and haul roads, shall be allowed up to twenty (20) acres; **and**
 2 ~~(c)~~~~(d)~~ The cumulative acreage added by successive revisions shall not exceed
 3 the above limitations.

4 ➔SECTION 5. A NEW SECTION OF KRS 350.240 TO 350.280 IS CREATED
 5 TO READ AS FOLLOWS:

6 **A person shall not conduct mining for limestone, dolomite, sand, gravel, clay,**
 7 **fluorspar, or other vein minerals without first obtaining a permit from the cabinet.**
 8 **However, no permit shall be required for the extraction of limestone, dolomite, sand,**
 9 **gravel, clay, fluorspar, or other vein minerals by a landowner for personal,**
 10 **noncommercial use if:**

11 **(1) Fifty (50) tons or less are mined in twelve (12) successive calendar months;**

12 **(2) They are mined from land owned by the landowner; and**

13 **(3) They are used only on the property owned by the landowner.**

14 ➔Section 6. KRS 350.300 is amended to read as follows:

15 The Interstate Mining Compact is hereby enacted into law and entered into with all other
 16 jurisdictions legally joining therein in the form substantially as follows:

17 ARTICLE I

18 Findings and Purposes

19 (a) The party States find that:

20 1. Mining and the contributions thereof to the economy and well-being of every
 21 State are of basic significance.

22 2. The effects of mining on the availability of land, water and other resources for
 23 other uses present special problems which properly can be approached only with due
 24 consideration for the rights and interests of those engaged in mining, those using or
 25 proposing to use these resources for other purposes, and the public.

26 3. Measures for the reduction of the adverse effects of mining on land, water and
 27 other resources may be costly and the devising of means to deal with them are of both

1 public and private concern.

2 4. Such variables as soil structure and composition, physiography, climatic
3 conditions, and the needs of the public make impracticable the application to all mining
4 areas of a single standard for the conservation, adaptation, or restoration of mined land, or
5 the development of mineral and other natural resources; but justifiable requirements of
6 law and practice relating to the effects of mining on land, water, and other resources may
7 be reduced in equity or effectiveness unless they pertain similarly from state to state for
8 all mining operations similarly situated.

9 5. The States are in a position and have the responsibility to assure that mining
10 shall be conducted in accordance with sound conservation principles, and with due regard
11 for local conditions.

12 (b) The purposes of this compact are to:

13 1. Advance the protection and restoration of land, water and other resources
14 affected by mining.

15 2. Assist in the reduction or elimination or counteracting of pollution or
16 deterioration of land, water and air attributable to mining.

17 3. Encourage, with due recognition of relevant regional, physical, and other
18 differences, programs in each of the party States which will achieve comparable results in
19 protecting, conserving, and improving the usefulness of natural resources, to the end that
20 the most desirable conduct of mining and related operations may be universally
21 facilitated.

22 4. Assist the party States in their efforts to facilitate the use of land and other
23 resources affected by mining, so that such use may be consistent with sound land use,
24 public health, and public safety, and to this end to study and recommend, wherever
25 desirable, techniques for the improvement, restoration or protection of such land and
26 other resources.

27 5. Assist in achieving and maintaining an efficient and productive mining

1 industry and in increasing economic and other benefits attributable to mining.

2 ARTICLE II

3 Definitions

4 As used in this compact, the term:

5 (a) "Mining" means the breaking of the surface soil in order to facilitate or
6 accomplish the extraction or removal of minerals, ores, or other solid matter; any activity
7 or process constituting all or part of a process for the extraction or removal of minerals,
8 ores, and other solid matter from its original location; and the preparation, washing,
9 cleaning, or other treatment of minerals, ores, or other solid matter so as to make them
10 suitable for commercial, industrial, or construction use; but shall not include those
11 aspects of deep mining not having significant effect on the surface, and shall not include
12 excavation or grading when conducted solely in aid of ~~on-site~~ farming or construction
13 **pursuant to Section 5 of this Act.**

14 (b) "State" means a State of the United States, the District of Columbia, the
15 Commonwealth of Puerto Rico, or a Territory or Possession of the United States.

16 ARTICLE III

17 State Programs

18 Each party State agrees that within a reasonable time it will formulate and establish
19 an effective program for the conservation and use of mined land, by the establishment of
20 standards, enactment of laws, or the continuing of the same in force, to accomplish:

21 1. The protection of the public and the protection of adjoining and other
22 landowners from damage to their lands and the structures and other property thereon
23 resulting from the conduct of mining operations or the abandonment or neglect of land
24 and property formerly used in the conduct of such operations.

25 2. The conduct of mining and the handling of refuse and other mining wastes in
26 ways that will reduce adverse effects on the economic, residential, recreational or
27 aesthetic value and utility of land and water.

1 3. The institution and maintenance of suitable programs for adaptation,
2 restoration, and rehabilitation of mined lands.

3 4. The prevention, abatement and control of water, air and soil pollution
4 resulting from mining, present, past and future.

5 ARTICLE IV

6 Powers

7 In addition to any other powers conferred upon the Interstate Mining Commission,
8 established by Article V of this compact, such Commission shall have power to:

9 1. Study mining operations, processes and techniques for the purpose of gaining
10 knowledge concerning the effects of such operations, processes and techniques on land,
11 soil, water, air, plant and animal life, recreation, and patterns of community or regional
12 development or change.

13 2. Study the conservation, adaptation, improvement and restoration of land and
14 related resources affected by mining.

15 3. Make recommendations concerning any aspect or aspects of law or practice
16 and governmental administration dealing with matters within the purview of this
17 compact.

18 4. Gather and disseminate information relating to any of the matters within the
19 purview of this compact.

20 5. Cooperate with the federal government and any public or private entities
21 having interests in any subject coming within the purview of this compact.

22 6. Consult, upon the request of a party State and within resources available
23 therefor, with the officials of such State in respect to any problem within the purview of
24 this compact.

25 7. Study and make recommendations with respect to any practice, process,
26 technique, or course of action that may improve the efficiency of mining or the economic
27 yield from mining operations.

1 8. Study and make recommendations relating to the safeguarding of access to
2 resources which are or may become the subject of mining operations to the end that the
3 needs of the economy for the products of mining may not be adversely affected by
4 unplanned or inappropriate use of land and other resources containing minerals or
5 otherwise connected with actual or potential mining sites.

6 ARTICLE V

7 The Commission

8 (a) There is hereby created an agency of the party States to be known as the
9 "Interstate Mining Commission," hereinafter called "the Commission." The Commission
10 shall be composed of one commissioner from each party State who shall be the Governor
11 thereof. Pursuant to the laws of his party State, each Governor shall have the assistance of
12 an advisory body (including membership from mining industries, conservation interests,
13 and such other public and private interests as may be appropriate) in considering
14 problems relating to mining and in discharging his responsibilities as the commissioner of
15 his State on the Commission. In any instance where a Governor is unable to attend a
16 meeting of the Commission or perform any other function in connection with the business
17 of the Commission, he shall designate an alternate, from among the members of the
18 advisory body required by this paragraph, who shall represent him and act in his place and
19 stead. The designation of an alternate shall be communicated by the Governor to the
20 Commission in such manner as its bylaws may provide.

21 (b) The commissioners shall be entitled to one vote each on the Commission. No
22 action of the Commission making a recommendation pursuant to Article IV-3, IV-7, and
23 IV-8 or requesting, accepting or disposing of funds, services, or other property pursuant
24 to this paragraph, Articles V(g), V(h), or VII shall be valid unless taken at a meeting at
25 which a majority of the total number of votes on the Commission is cast in favor thereof.
26 All other action shall be by a majority of those present and voting; provided that action of
27 the Commission shall be only at a meeting at which a majority of the commissioners, or

1 their alternates, is present. The Commission may establish and maintain such facilities as
2 may be necessary for the transacting of its business. The Commission may acquire, hold,
3 and convey real and personal property and any interest therein.

4 (c) The Commission shall have a seal.

5 (d) The Commission shall elect annually, from among its members, a chairman, a
6 vice chairman, and a treasurer. The Commission shall appoint an Executive Director and
7 fix his duties and compensation. Such Executive Director shall serve at the pleasure of
8 the Commission. The Executive Director, the Treasurer, and such other personnel as the
9 Commission shall designate shall be bonded. The amount or amounts of such bond or
10 bonds shall be determined by the Commission.

11 (e) Irrespective of the civil service, personnel or other merit system laws of any of
12 the party States, the Executive Director with the approval of the Commission, shall
13 appoint, remove or discharge such personnel as may be necessary for the performance of
14 the Commission's functions, and shall fix the duties and compensation of such personnel.

15 (f) The Commission may establish and maintain independently or in conjunction
16 with a party State, a suitable retirement system for its employees. Employees of the
17 Commission shall be eligible for social security coverage in respect of old age and
18 survivor's insurance provided that the Commission takes such steps as may be necessary
19 pursuant to the laws of the United States, to participate in such program of insurance as a
20 governmental agency or unit. The Commission may establish and maintain or participate
21 in such additional programs of employee benefits as it may deem appropriate.

22 (g) The Commission may borrow, accept or contract for the services of personnel
23 from any State, the United States, or any other governmental agency, or from any person,
24 firm, association or corporation.

25 (h) The Commission may accept for any of its purposes and functions under this
26 compact any and all donations, and grants of money, equipment, supplies, materials and
27 services, conditional or otherwise, from any State, the United States, or any other

1 governmental agency, or from any person, firm, association or corporation, and may
2 receive, utilize and dispose of the same. Any donation or grant accepted by the
3 Commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of
4 this Article shall be reported in the annual report of the Commission. Such report shall
5 include the nature, amount and conditions, if any, of the donation, grant or services
6 borrowed and the identity of the donor or lender.

7 (i) The Commission shall adopt bylaws for the conduct of its business and shall
8 have the power to amend and rescind these bylaws. The Commission shall publish its
9 bylaws in convenient form and shall file a copy thereof and a copy of any amendment
10 thereto, with the appropriate agency or officer in each of the party States.

11 (j) The Commission annually shall make to the Governor, legislature and
12 advisory body required by Article V(a) of each party State a report covering the activities
13 of the Commission for the preceding year, and embodying such recommendations as may
14 have been made by the Commission. The Commission may make such additional reports
15 as it may deem desirable.

16 ARTICLE VI

17 Advisory, Technical, and Regional Committees

18 The Commission shall establish such advisory, technical, and regional committees
19 as it may deem necessary, membership on which shall include private persons and public
20 officials, and shall cooperate with and use the services of any such committees and the
21 organizations which the members represent in furthering any of its activities. Such
22 committees may be formed to consider problems of special interest to any party States,
23 problems dealing with particular commodities or types of mining operations, problems
24 related to reclamation, development, or use of mine land, or any other matters of concern
25 to the Commission.

26 ARTICLE VII

27 Finance

1 (a) The Commission shall submit to the Governor or designated officer or officers
2 of each party State a budget of its estimated expenditures for such period as may be
3 required by the laws of that party State for presentation to the legislature thereof.

4 (b) Each of the Commission's budgets of estimated expenditures shall contain
5 specific recommendations of the amount or amounts to be appropriated by each of the
6 party States. The total amount of appropriations requested under any such budget shall be
7 apportioned among the party States as follows: one-half in equal shares; and the
8 remainder in proportion to the value of minerals, ores, and other solid matter mined. In
9 determining such values, the Commission shall employ such available public source or
10 sources of information as, in its judgment, present the most equitable and accurate
11 comparisons among the party States. Each of the Commission's budgets of estimated
12 expenditures and requests for appropriations shall indicate the source or sources used in
13 obtaining information concerning value of minerals, ores, and other solid matter mined.

14 (c) The Commission shall not pledge the credit of any party State. The
15 Commission may meet any of its obligations in whole or in part with funds available to it
16 under Article V(h) of this compact: provided that the Commission takes specific action
17 setting aside such funds prior to incurring any obligation to be met in whole or in part in
18 such manner. Except where the Commission makes use of funds available to it under
19 Article V(h) hereof, the Commission shall not incur any obligation prior to the allotment
20 of funds by the party States adequate to meet the same.

21 (d) The Commission shall keep accurate accounts of all receipts and
22 disbursements. The receipts and disbursements of the Commission shall be subject to the
23 audit and accounting procedures established under its bylaws. All receipts and
24 disbursements of funds handled by the Commission shall be audited yearly by a qualified
25 public accountant and the report of the audit shall be included in and become part of the
26 annual report of the Commission.

27 (e) The accounts of the Commission shall be open at any reasonable time for

1 inspection by duly constituted officers of the party States and by any persons authorized
2 by the Commission.

3 (f) Nothing contained herein shall be construed to prevent Commission
4 compliance with laws relating to audit or inspection of accounts by or on behalf of any
5 government contributing to the support of the Commission.

6 ARTICLE VIII

7 Entry into Force and Withdrawal

8 (a) This compact shall enter into force when enacted into law by any four or more
9 States. Thereafter, this compact shall become effective as to any other State upon its
10 enactment thereof.

11 (b) Any party State may withdraw from this compact by enacting a statute
12 repealing the same, but no such withdrawal shall take effect until one year after the
13 Governor of the withdrawing State has given notice in writing of the withdrawal to the
14 Governors of all other party States. No withdrawal shall affect any liability already
15 incurred by or chargeable to a party State prior to the time of such withdrawal.

16 ARTICLE IX

17 Effect on Other Laws

18 Nothing in this compact shall be construed to limit, repeal or supersede any other
19 law of any party State.

20 ARTICLE X

21 Construction and Severability

22 This compact shall be liberally construed so as to effectuate the purposes thereof.
23 The provisions of this compact shall be severable and if any phrase, clause, sentence or
24 provision of this compact is declared to be contrary to the constitution of any State or of
25 the United States or the applicability thereof to any government, agency, person or
26 circumstance is held invalid, the validity of the remainder of this compact and the
27 applicability thereof to any government, agency, person or circumstance shall not be

1 affected thereby. If this compact shall be held contrary to the constitution of any State
2 participating herein, the compact shall remain in full force and effect as to the remaining
3 party States and in full force and effect as to the State affected as to all severable matters.

4 ➔Section 7. KRS 350.518 is amended to read as follows:

5 (1) In addition to the provisions of KRS 350.500 to 350.521, each permittee shall
6 submit a permit-specific bond in accordance with KRS 350.060(11) and all
7 administrative regulations promulgated thereunder.

8 (2) Each permittee subject to KRS 350.515(1) shall pay to the fund a fee for each ton of
9 coal mined and sold by surface and underground coal mining operations from each
10 permit area. For the purposes of assessing tonnage fees, all permits subject to
11 eligibility for expenditures from the fund shall be assigned to one (1) of the
12 following classifications:

13 (a) Surface coal mining operations, including auger and highwall mining, for
14 which an initial rate of seven and fifty-seven hundredths cents (\$0.0757) per
15 ton of coal shall be paid to the fund;

16 (b) Underground coal mining operations, for which an initial rate of three and
17 fifty-seven hundredths cents (\$0.0357) per ton of coal shall be paid to the
18 fund;

19 (c) Permits that consist of combined surface and underground mining operations
20 shall pay a fee in accordance with the predominant method of coal extraction;

21 (d) All permits previously subject to the voluntary bond pool fund at the time of
22 its repeal by 2013 Ky. Acts ch. 78, sec. 12, shall:

23 1. Be excluded from the start-up fee established in KRS 350.515;

24 2. Pay the tonnage fees set forth in paragraphs (a) and (b) of this subsection
25 to the fund in lieu of tonnage fees otherwise due under KRS 350.725(2);
26 and

27 3. Continue to receive subsidization of the reclamation bonding authorized

1 under KRS 350.500 to 350.521 and the administrative regulations
2 adopted pursuant thereto.

3 The fund shall continue to provide coverage for existing bonds previously
4 issued for them by the voluntary bond pool;

5 (e) Permits which are used exclusively for coal preparation and processing
6 operations, loading activities, disposal of refuse operations, coal haulage and
7 access roads, mine maintenance areas, and other support facilities, and other
8 permits not subject to the provisions of paragraphs (a) and (b) of this
9 subsection as determined by the commission, shall pay an annual fee of ten
10 dollars (\$10) per acre to the fund in equal quarterly installments; and

11 (f) Any permits, or expired permits, not subject to the fees in paragraphs (a) to (e)
12 of this subsection shall pay an annual fee of six dollars (\$6) per surface acre to
13 the fund in equal quarterly installments. The fee shall not apply to permits
14 that:

- 15 1. Have not been initially disturbed after permit issuance by the permittees;
- 16 2. Contain underground acreage only; or
- 17 3. Have received an initial bond release in accordance with KRS
18 350.093(4)(a).

19 (3) (a) The commission shall include in the fund under the terms set forth in
20 subsection (2)(d) of this section, future permits obtained by entities that are
21 members of the voluntary bond pool fund at the date of the establishment of
22 the fund, provided the entity and the entity's owners seeking permit coverage
23 have:

- 24 1. Never committed a violation for mining without having first obtained
25 the required permit under this chapter;
- 26 2. Never forfeited a bond or had a permit revoked under this chapter;
- 27 3. Never avoided forfeiture of a bond under this chapter because of a

- 1 surety-performed reclamation work to avoid forfeiture;
- 2 4. Never been determined to have demonstrated a pattern of violations
- 3 pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);
- 4 5. Not been issued more than four (4) orders for cessation and immediate
- 5 compliance pursuant to a failure to perform remediation within the time
- 6 or under the terms specified by the cabinet in a notice of noncompliance
- 7 and order for remedial measures in the most recent thirty-six (36)
- 8 months of operation and the order was abated as ordered by the cabinet
- 9 in a timely manner and was not for a violation of contemporaneous
- 10 reclamation requirements as prescribed in administrative regulations
- 11 promulgated by the cabinet and have reached final dispositions;
- 12 6. Not committed more than three (3) violations for contemporaneous
- 13 reclamation requirements as prescribed in administrative regulations
- 14 promulgated by the cabinet in the most recent thirty-six (36) months of
- 15 operation and the order was abated as ordered by the cabinet in a timely
- 16 manner and have reached final disposition, except the commission may
- 17 for good cause shown and by unanimous vote exclude violations that
- 18 have been terminated by the cabinet with no civil penalty;
- 19 7. Not committed more than eight (8) violations of surface mining
- 20 permanent program requirements set forth in this chapter or any
- 21 performance standards for mining established in administrative
- 22 regulations promulgated by the cabinet pursuant to this chapter and
- 23 which have reached final disposition on any one (1) permit in any twelve
- 24 (12) month period of the most recent thirty-six (36) months of operation,
- 25 except the commission may for good cause shown and by unanimous
- 26 vote exclude the twelve (12) month period on one (1) permit during
- 27 which the largest number of violations occurred and may for good cause

- 1 shown and by unanimous vote exclude violations that were timely
2 abated and terminated by the cabinet with no civil penalty; or
- 3 8. Not had civil penalties under this chapter or imposed pursuant to
4 administrative hearing of the cabinet remaining unpaid more than thirty
5 (30) days after they were due and payable, within the most recent thirty-
6 six (36) months of operation.
- 7 (b) The existing members of the voluntary bond pool are deemed to qualify as
8 members thereof under the provisions of this subsection, and the provisions of
9 this subsection shall only apply to the existing members of the voluntary bond
10 pool prospectively from March 22, 2013.
- 11 (4) The increase in the total amount of bonds issued to any one (1) member of the
12 voluntary bond pool under subsection (3) of this section shall not exceed twenty-
13 five percent (25%) of the greater of:
- 14 (a) The member's aggregate amount of bonds in force and issued by the voluntary
15 bond pool as of March 22, 2013; or
- 16 (b) The total of that member's aggregate amount of bonds in force and issued by
17 the voluntary bond pool as of March 22, 2013, plus fifty-five percent (55%) of
18 that total.
- 19 (5) The commission may consider for inclusion in the fund under the terms set forth in
20 subsection (2)(d) of this section permits obtained by an entity which is not a
21 participant of the fund as of March 22, 2013, provided the entity and the entity's
22 owners can meet eligibility standards established in administrative regulations
23 promulgated by the commission.
- 24 (6) Any permits accepted into the fund under the terms set forth in subsection (3) of
25 this section shall require payment of a permit-specific penal bond computed at a rate
26 of two thousand dollars (\$2,000) for each acre or fraction of an acre included in the
27 proposed permit area, and shall pay the actuarially determined tonnage rates set

- 1 forth in subsection (2)(a) to (c) of this section.
- 2 (7) Changes to the rates set forth in this section and others, including those set out in
3 subsection (2)(d) of this section, shall be made by the commission through
4 administrative regulation and shall be in an amount sufficient to maintain actuarial
5 soundness of the fund in accordance with the annual actuarial study.
- 6 (8) Reporting and payment of fees shall be made in accordance with administrative
7 regulations promulgated by the commission. The commission may request and
8 review documents and reports from the Kentucky Department for Natural Resources
9 and the United States Office of Surface Mining Reclamation and Enforcement to
10 verify production records submitted by permittees.
- 11 (9) Upon the receipt of notification from the commission that a permittee is in arrearage
12 in the payment of any fees assessed to a permit, the cabinet shall forthwith suspend
13 the permit. A suspension of a permit under this subsection may be appealed
14 pursuant to the hearing provisions of KRS 350.0301.
- 15 (10) A permit suspended by the cabinet under subsection (9) of this section shall have
16 that suspension immediately lifted upon notification by the commission that the
17 arrearage has been paid in full by the permittee.
- 18 ~~(11) Penalties collected pursuant to KRS 350.990(1) in excess of eight hundred thousand~~
19 ~~dollars (\$800,000) in any fiscal year shall be deposited in the following manner:~~
- 20 ~~(a) Fifty percent (50%) shall be applied to the fund for purposes set forth in this~~
21 ~~chapter; and~~
- 22 ~~(b) Fifty percent (50%) shall be applied to the abandoned mine land supplemental~~
23 ~~fund established in KRS 350.139.~~
- 24 ~~(12)~~ Any person who considers himself or herself to be aggrieved by any determination
25 made by the commission under KRS 350.500 to 350.521 shall have all of the rights
26 and remedies provided in KRS 350.0301.
- 27 ➔Section 8. KRS 350.990 is amended to read as follows:

1 (1) Any permittee, person, or operator who violates any of the provisions of this chapter
2 or administrative regulations promulgated pursuant thereto or who fails to perform
3 the duties imposed by these provisions, except the refusal or failure to obtain a
4 permit or other authorization as provided in this chapter, or who violates any
5 determination or order issued pursuant to the provisions of this chapter, may be
6 liable to a civil penalty of not more than five thousand dollars (\$5,000) for the
7 violation, and an additional civil penalty of not more than five thousand dollars
8 (\$5,000) for each day during which the violation continues, and in addition, may be
9 enjoined from continuing the violations provided in this section. Any permittee,
10 operator, or person who fails to abate a violation noted in a notice of noncompliance
11 or an order for immediate compliance and cessation within the time period
12 prescribed for the abatement shall be assessed a civil penalty of not less than seven
13 hundred fifty dollars (\$750) for each day during which the violation continues. Any
14 person issued an order pursuant to KRS 350.130(4) shall be assessed a civil penalty
15 of not more than five thousand dollars (\$5,000) for each violation cited in the
16 underlying notice of noncompliance issued therewith. No separate civil penalty
17 shall be assessed for the order issued pursuant to KRS 350.130(4). Each day of
18 continuing violation may be deemed a separate violation for purposes of penalty
19 assessment. The cabinet shall develop a method for calculating monetary penalties
20 and shall promulgate it as an administrative regulation. The secretary or a
21 designated representative, upon his or her own initiative or upon written request
22 received within fifteen (15) days after the cabinet mails its proposed penalty
23 assessment, may waive the use of the method for calculating monetary penalties if
24 he or she determines that, taking into account exceptional factors present in the
25 particular case, the penalty is demonstrably unjust. The basis for every waiver shall
26 be fully explained and documented in the records of the case. If the secretary or his
27 or her designated representative waives the use of the formula, he or she shall

1 determine the appropriate penalty upon consideration of the permittee's history of
2 previous violations at the particular surface coal mining operation, the seriousness
3 of the violation, whether the permittee was negligent, and the demonstrated good
4 faith of the permittee charged in attempting to achieve rapid compliance after
5 notification of the violation. The penalties shall be recoverable in an action brought
6 in the name of the Commonwealth of Kentucky by the cabinet. The Franklin Circuit
7 Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions
8 instituted by the cabinet for the enforcement of the provisions of this chapter or the
9 orders and administrative regulations of the cabinet promulgated pursuant thereto.
10 All sums recovered shall be placed in the State Treasury, except those moneys
11 collected in excess of eight hundred thousand dollars (\$800,000) in any fiscal year
12 shall be deposited into the restricted fund account of the Office of the
13 Commissioner of the Department for Natural Resources to be disbursed for the
14 purposes set out in KRS Chapters 350, 351, and 352~~[fifty percent (50%) in the~~
15 ~~reclamation guaranty fund for purposes set forth in KRS 350.500 to 350.521 and~~
16 ~~350.595 and fifty percent (50%) to the supplemental fund established under KRS~~
17 ~~350.139(1), and used for the purposes of that section]. All moneys previously~~
18 deposited in the abandoned mine land enhancement fund shall be redeposited in the
19 reclamation guaranty fund.

20 (2) Any person or operator who engages in surface coal mining operations without first
21 securing a permit, as provided in KRS 350.060, or any person who engages in coal
22 exploration operations, exclusive of core drilling, without proper authorization, as
23 required by the cabinet pursuant to KRS 350.057 or administrative regulations
24 promulgated pursuant thereto, or any person or operator who engages in other
25 mining operations, without proper authorization as required by this chapter or
26 administrative regulations promulgated pursuant thereto, shall be liable to a civil
27 penalty for damages to the Commonwealth of not less than five thousand dollars

1 (\$5,000) nor more than twenty-five thousand dollars (\$25,000) and in addition, may
2 be enjoined from continuing the violations. Each day shall constitute a separate
3 violation. In addition to the foregoing penalties, any permittee, person, or operator
4 who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057, as
5 noted in a notice of noncompliance or an order for immediate compliance and
6 cessation within the time period prescribed for the abatement, shall be assessed an
7 additional civil penalty of not less than seven hundred fifty dollars (\$750) for each
8 day during which the violation continues. However, the penalties provided in
9 subsection (1) of this section shall apply in lieu of the penalties provided in this
10 subsection where an operator or permittee through inadvertence has exceeded the
11 boundaries or expiration date of the permit in effect at that time.

12 (3) The cabinet shall bring an action for the recovery of penalties and bring an action
13 for a restraining order, temporary or permanent injunction, against any permittee,
14 operator, or person violating or threatening to violate any of the provisions of this
15 chapter or violating or threatening to violate any order or determination issued
16 pursuant to the provisions of this chapter. The Franklin Circuit Court shall hold
17 concurrent jurisdiction and venue of all civil and injunctive actions instituted by the
18 cabinet for the enforcement of the provisions of this chapter or the orders and
19 administrative regulations of the cabinet promulgated pursuant thereto.

20 (4) Any permittee, operator, or person who knowingly and willfully violates any of the
21 provisions of this chapter, except as provided in subsection (5) of this section, or
22 any determination or order issued pursuant to the sections of this chapter which
23 have become final, shall be guilty of a Class A misdemeanor. Each day on which
24 the violation occurs may constitute a separate offense.

25 (5) (a) Any person or operator who, in violation of KRS 350.060(1)(a) willfully and
26 knowingly engages in surface coal mining operations without first obtaining a
27 permit from the cabinet, or any person or operator who willfully and

- 1 knowingly engages in coal exploration operations, exclusive of core drilling,
2 without proper authorization, as required by the cabinet pursuant to KRS
3 350.057 or administrative regulations promulgated pursuant thereto, or any
4 person or operator who willfully and knowingly engages in other mining
5 operations without proper authorization as required by this chapter or
6 administrative regulations promulgated pursuant thereto, with the intent to
7 violate the laws, shall be guilty of a Class D felony.
- 8 (b) Any person or operator who in violation of KRS 350.060(1)(b) willfully and
9 knowingly receives, transports, sells, conveys, transfers, trades, exchanges,
10 donates, purchases, delivers, or in any way derives benefit from coal removed
11 from any surface mining operations conducted in violation of KRS
12 350.060(1)(a) or 350.057 shall be guilty of a Class D felony.
- 13 (6) Any person who violates any of the provisions of KRS 350.600 or administrative
14 regulations promulgated pursuant thereto shall be subject to civil penalties of not
15 more than twenty-five thousand dollars (\$25,000). Each day of continuing violation
16 shall be deemed a separate violation.
- 17 (7) Any permittee, operator, or person who knowingly makes any false statement,
18 representation, or certification, or knowingly fails to make any statement,
19 representation, or certification in any application, record, report, plan, or other
20 document filed or required to be maintained by the cabinet, shall upon conviction be
21 guilty of a Class A misdemeanor.
- 22 (8) Except as permitted by law, any permittee, operator, or person who willfully and
23 knowingly resists, prevents, impedes, or interferes with the secretary or other
24 personnel of the cabinet in the performance of duties pursuant to this chapter shall
25 be guilty of a Class A misdemeanor.
- 26 (9) When a corporate permittee violates any provision of this chapter or administrative
27 regulation promulgated pursuant thereto or fails or refuses to comply with any final

1 order issued by the secretary, any director, officer, or agent of the corporation who
2 willfully and knowingly authorized, ordered, or carried out the violation, failure, or
3 refusal shall be subject to the same civil penalties, fines, and imprisonment as may
4 be imposed upon a person pursuant to this section.

5 (10) Upon notice by the secretary that any surety has failed to comply with the
6 provisions of KRS 350.032(3), the commissioner of the Kentucky Department of
7 Insurance shall revoke the surety's certificate of authority to conduct insurance
8 business within the Commonwealth of Kentucky.

9 (11) The cabinet, upon written request by any permittee, person, or operator subject to
10 any penalty assessment under this section and pursuant to procedures, if any, set
11 forth by administrative regulation and after consultation with the local county fiscal
12 court, may allow as an alternative to the payment of any assessed penalty under this
13 section the performance of in-kind reclamation, environmental rehabilitation, or
14 similar action to correct environmental pollution. The in-kind work shall not
15 substitute for those remedial measures mandated by the cabinet for the correction of
16 any violations. The estimated cost of the in-kind work shall be greater than the
17 penalty assessment. The cabinet's Division of Abandoned Mine Lands shall have
18 the authority to approve proposed in-kind projects and to recommend projects to the
19 cabinet, and shall determine whether the estimated cost of the in-kind work exceeds
20 the penalty assessment. For the purposes of this subsection, the cost of the in-kind
21 work shall include only those expenditures for actual on-site reclamation or
22 rehabilitation work, including direct equipment, personnel, and material cost, but
23 excluding administrative overhead or transportation costs. Failure to perform the in-
24 kind work as agreed upon by the person or operator subject to the penalty
25 assessment shall reinstate the liability of the person, permittee, or operator for the
26 full amount of the assessed penalty. The cabinet may prepare and promulgate
27 administrative regulations as are necessary to implement and administer the

1 provisions of this subsection.

2 ➔Section 9. KRS 351.090 is amended to read as follows:

3 (1) The Governor shall appoint an adequate number of mine safety specialists to ensure
4 at least two (2) inspections annually at all surface mines, provided the mine is in
5 operation the entire year or the proportionate thereof, of all mines in the
6 Commonwealth and sufficient additional mine safety specialists to enable the
7 commissioner to provide adequate monitoring of coal mines where conditions or
8 management policy dictate that more inspections are needed to ensure the safety of
9 miners. Underground mines shall be inspected at least six (6) times annually; except
10 that the commissioner shall have the discretion to require up to three (3) of the six
11 (6) required mine safety inspections to be mine safety analysis visits pursuant to
12 KRS 351.242. At least one (1) inspection shall be a full electrical inspection. One
13 (1) or more of the appointees shall be designated as electrical mine inspectors. The
14 Governor shall also appoint an adequate number of mine safety specialists to
15 perform safety analysis and safety instruction. The term of office of each mine
16 safety specialist shall be during the period of capable, efficient service and good
17 behavior.

18 (2) All mine safety specialists shall have a thorough knowledge of first aid and mine
19 rescue and be able to instruct in first aid and mine rescue~~[, and shall possess~~
20 ~~thoroughly the knowledge required of the commissioner by KRS 351.060,]~~ and
21 shall have a thorough and practical knowledge of mining gained by at least five (5)
22 years' experience in coal mines in the Commonwealth. For the purposes of this
23 subsection, a degree in mining engineering from a recognized institution shall be
24 deemed equivalent to two (2) years of practical experience in coal mines or an
25 associate degree in mining technology from a recognized institution shall be
26 deemed equivalent to one (1) year practical experience in coal mines. A person
27 desiring to use a mining engineering or technology degree for practical experience

1 credit shall file proof of having received a degree prior to examination.

2 (3) No person shall be appointed to the office of mine safety specialist unless he or she
3 holds a current mine foreman's certificate. A person appointed as mine safety
4 specialist shall pass an examination administered by the department. The
5 commissioner may recommend to the Governor applicants for the positions of mine
6 safety specialist who have successfully passed the examination and are proved by
7 worth, training, and experience to be the most competent of the applicants.

8 (4) Mine safety specialists shall be of good moral character and temperate habits and
9 shall not, while holding office, act in any official capacity in operating any coal
10 mine.

11 (5) No reimbursement for traveling expenses shall be made except on an itemized
12 accounting for the expenses submitted by mine safety specialists who shall verify
13 upon oath that the expenses were incurred in the discharge of their official duties.

14 (6) Each mine safety specialist shall take oath, which shall be certified by the officer
15 administering it. The oath, in writing, and the certificate, shall be filed in the office
16 of the Secretary of State.

17 (7) Each mine inspector, mine safety analyst, electrical inspector, and mine safety
18 instructor shall give bond with surety approved by the Governor.

19 (8) Each mine safety specialist shall provide authorization to the division to perform a
20 criminal background check by means of a fingerprint check by the Department of
21 Kentucky State Police. The results of the state criminal background check shall be
22 sent to the director of the division. Any fee charged by the Department of Kentucky
23 State Police shall be an amount no greater than the actual cost of processing the
24 request and conducting the search.

25 ➔Section 10. KRS 351.182 is amended to read as follows:

26 (1) All applicants for certification as new miners and all initial applicants for all other
27 certifications provided for in this chapter shall provide proof of drug- and alcohol-

- 1 free status prior to certification in accordance with the provisions of this section.
- 2 (2) Proof of drug- and alcohol-free status shall be provided in one (1) of two (2)
- 3 methods:
- 4 (a) By participation in a drug and alcohol testing program offered by the division
- 5 and paid for by the applicant, in accordance with this section and KRS
- 6 351.183; or
- 7 (b) By the submission of drug and alcohol test results from other sources, as
- 8 provided in KRS 351.183(2).
- 9 (3) If a newly certified miner gains employment in the coal industry, the initial
- 10 employer shall reimburse the certified miner for the cost of one (1) drug and alcohol
- 11 test required by this section and KRS 351.183, 351.184, and 351.185.
- 12 (4) If the applicant is currently certified in any category other than that for which he is
- 13 applying by the division and the applicant is currently employed in the coal
- 14 industry, the applicant's employer shall reimburse the applicant for the cost of one
- 15 (1) drug and alcohol test required by this section and KRS 351.183, 351.184, and
- 16 351.185.
- 17 (5) The fee charged to an applicant for the drug and alcohol tests offered by the division
- 18 shall not exceed the actual cost of collection, analysis, and medical review officer
- 19 (MRO) review.
- 20 (6) The division shall provide, at each site of examinations for the certifications
- 21 provided for in Chapter 351, a breath alcohol testing device and a person certified in
- 22 the operation of the breath alcohol testing device. The breath alcohol test shall be
- 23 administered prior to examination to determine the applicant's alcohol-free status.
- 24 The division may satisfy the requirement to furnish an alcohol testing device and
- 25 certified personnel by:
- 26 (a) The use of equipment and appropriately certified personnel of the division;
- 27 (b) A memorandum of agreement with state or local police agencies for the

1 provision of equipment and appropriately trained personnel at the examination
2 site; or

3 (c) Inclusion of breath alcohol testing as part of the contract to provide drug
4 testing and collection services set out in KRS 351.183(1).

5 (7) A breath alcohol concentration of .04 shall be the maximum acceptable level of
6 concentration for participation in the examination and subsequent certification.

7 (8) Except for an alternative testing protocol provided for post-accident victims under
8 KRS 352.180(6) to (8)~~[352.180(5) to (7)]~~, the minimum testing protocol acceptable
9 for the establishment of drug-free status for certification under KRS Chapter 351
10 shall be at least a ten (10) panel urine test that shall include testing for the following
11 substances:

12 (a) Amphetamines;

13 (b) Cannabanoids/THC;

14 (c) Cocaine;

15 (d) Opiates;

16 (e) Phencyclidine (PCP);

17 (f) Benzodiazepines;

18 (g) Propoxyphene;

19 (h) Buprenorphine;

20 (i) Methadone;

21 (j) Barbiturates; and

22 (k) The remaining panels to be used in the urine test shall be set by order of the
23 Mine Safety Review Commission no later than June 1 of each year.

24 ➔Section 11. KRS 351.315 is amended to read as follows:

25 (1) No person shall detonate explosives in any blasting operation in which more than
26 five (5) pounds of explosives or the equivalent are used in a single charge or in
27 which less than five (5) pounds of explosives are used by a regular user, excluding

1 blasting for agriculture and underground coal, unless he is licensed by the
2 department. The department shall issue a license to use explosives to any person
3 who:

4 (a) Has worked in blasting operations for at least twenty-four (24) months under
5 the immediate supervision of an experienced blaster or has worked in blasting
6 operations for twelve (12) months and has completed a formal training
7 program approved by the department; and

8 (b) Has passed an examination prescribed by the department which shall test the
9 examinee's practice of blasting operations and the storage, moving, handling,
10 and detonation of explosives.

11 (2) Application for license shall be in writing upon a form furnished by the department
12 and shall be accompanied by a photograph of the applicant. If the applicant is
13 successful in passing the examination, a license indicating his competency to
14 detonate explosives shall be issued upon the payment of a fee of twenty-five dollars
15 (\$25).

16 (3) Any person who is a licensed blaster in another state where the qualifications
17 prescribed at the time of licensing were, in the opinion of the commissioner, equal
18 to those prescribed in the Commonwealth at the date of application, and where
19 reciprocal licensing privileges satisfactory to the department are granted to licensees
20 of the Commonwealth, may be granted a license without an examination, upon the
21 payment of a fee.

22 (4) Each blaster shall be required to renew his license every three (3) years by
23 application to the department, which application shall be accompanied by a fee and
24 subject to the following training requirements:

25 (a) Each applicant for renewal of a Kentucky blaster's license shall furnish proof
26 that during the preceding three (3) years, the blaster annually has attended a
27 minimum of eight (8) hours of department-approved blaster's training. No

- 1 more than four (4) hours of the annual blaster training may be attributed to
2 attending a conference unless otherwise approved by the department; and
- 3 (b) Each applicant for renewal of a limited Kentucky blaster's license shall furnish
4 proof that during the preceding three (3) years, the blaster has attended a
5 minimum of four (4) hours of blaster's training approved by the department.
- 6 (5) The department shall not issue a blaster's license to any person not entitled to
7 transport or receive explosives under existing federal law, including persons who:
- 8 (a) Are less than twenty-one (21) years of age; or
9 (b) Have been convicted in any court of a crime punishable by imprisonment for a
10 term exceeding one (1) year, unless the conviction has been specifically
11 exempted by the United States Bureau of Alcohol, Tobacco and Firearms or
12 its successor.
- 13 (6) All fees provided in this section shall be set by the department by administrative
14 regulation; however, the fee for an application shall not exceed forty dollars (\$40),
15 the fee for license renewal shall not exceed sixty dollars (\$60), and the fee for
16 reciprocal licensing shall not exceed sixty dollars (\$60).
- 17 (7) The commissioner may suspend any license for due cause, but no license may be
18 revoked until the licensee has been granted adequate opportunity for a hearing
19 before the cabinet's Office of Administrative Hearings~~[conducted in accordance~~
20 ~~with KRS Chapter 13B]~~.
- 21 ➔Section 12. KRS 351.345 is amended to read as follows:
- 22 (1) The commissioner, before revoking any license shall set the matter down for a
23 hearing before the cabinet's Office of Administrative Hearings~~[to be conducted in~~
24 ~~accordance with KRS Chapter 13B]~~.
- 25 (2) No person shall blast once his license has been revoked by the department.
- 26 ➔Section 13. KRS 351.350 is amended to read as follows:
- 27 (1) If upon inspection an authorized representative of the commissioner finds that an

1 explosive user or seller has violated any requirement of KRS 351.315 to 351.375, a
2 citation shall be issued to the violator. Each citation shall describe the alleged
3 violation, establish the time period permitted for correction by fixing a reasonable
4 date by which the alleged violation shall be eliminated, if applicable, and propose
5 the civil penalty to be paid. If within fifteen (15) working days from the receipt of
6 the citation the explosive user or seller fails to notify the commissioner that he
7 intends to contest the citation, then the citation shall be deemed a final order and not
8 be subject to review by any court or agency.

9 (2) If the explosive user or seller notifies the commissioner that he intends to challenge
10 a citation issued under KRS 351.315 to 351.375, then it shall be the duty of the
11 department or the *cabinet's Office of General Counsel*~~[Attorney General]~~ upon the
12 request of the commissioner, to bring an action for the recovery of the penalties
13 provided for herein.

14 (3) It shall be the duty of the *cabinet's Office of General Counsel*~~[Attorney General]~~,
15 upon the request of the commissioner, to bring an action for a restraining order,
16 temporary or permanent injunction against any operator or other person violating or
17 threatening to violate any of the provisions of KRS 351.315 to 351.375.

18 ➔Section 14. KRS 352.170 is amended to read as follows:

19 (1) All underground mines shall be worked exclusively by the use of approved electric
20 lamps for personal lighting.

21 (2) A mine operator shall provide an MSHA-approved, handheld, multigas detector that
22 can measure methane, oxygen, and carbon monoxide to each group of two (2) or
23 more miners working in close proximity of each other underground, the foreman,
24 fireboss, and to each person who works alone, such as pumpers, examiners, and
25 outby miners. The mine operator shall make available one (1) multigas detector at
26 the working face for use by any miner working on the section. Miners shall be
27 trained in the proper use and calibration of the multigas detectors and shall

1 document that the training has been provided. Signs shall be prominently posted at
2 places miners gather with instructions on the proper use of multi-gas detectors.

3 (3) No person shall at any time carry into any mine any intoxicants. No person shall at
4 any time enter any underground mine with matches, lighters, pipes, cigars,
5 cigarettes, or any device for making lights or fire not authorized or approved,
6 including but not limited to electronic cigarettes, cigars, or any component that
7 heats liquids or other material to produce vapor.~~and~~ The licensee shall at
8 frequent intervals search, or cause to be searched, any person entering or about to
9 enter the mine or inside the mine, to prevent the person from taking, carrying, or
10 using the articles therein.

11 ➔Section 15. KRS 352.180 is amended to read as follows:

12 (1) (a) The superintendent of a mine or, if he or she is absent, the mine manager,
13 or, if he or she is absent, the mine foreman in charge of the mine or his or
14 her designee, shall, within fifteen (15) minutes of having actual knowledge
15 of the occurrence of an accident as defined in 30 C.F.R. sec. 50.2(h)(1) to
16 (9), and having access to the communication system as required under KRS
17 352.630(3), give notice to the department and to the representative of the
18 miner, stating the particulars of the accident.

19 (b) No person shall alter the scene of a mining accident in a manner that will
20 interfere with the department's investigation of the accident, except to the
21 extent necessary to rescue an individual or to eliminate an imminent
22 danger~~Whenever a serious physical injury or loss of life occurs in a mine or~~
23 ~~in the machinery connected therewith or whenever a fire, explosion,~~
24 ~~entrapment of an individual for more than thirty (30) minutes, inundation of a~~
25 ~~mine by water or gases occurs, the superintendent of the mine, or, if he is~~
26 ~~absent, the mine manager, or if he is absent, the mine foreman in charge of the~~
27 ~~mine or his designee, shall within fifteen (15) minutes of having actual~~

1 knowledge of the occurrence and access to the communication system as
2 required under ~~KRS 352.630(3)~~ give notice to the department and to the
3 representative of the miner, stating the particulars of the accident. No person
4 shall alter the scene of a mining accident in a manner that will interfere with
5 the department's investigation of the accident, except to the extent necessary
6 to rescue an individual or to eliminate an imminent danger].

7 (2) **An occupational injury, as defined in 30 C.F.R. sec. 50.2(e), shall be reported in**
8 **writing to the department within ten (10) business days on the cabinet-approved**
9 **occupational injury form.**

10 (3) Upon receipt of notification of an occurrence set forth in subsection (1) of this
11 section, the mine safety specialist shall immediately go to the scene of the accident
12 and make an investigation and suggestions and render the assistance as he deems
13 necessary for the future safety of the employees, investigate the cause of the fire,
14 explosion, or accident, make a record thereof, and forward it to the commissioner.

15 ~~(4)(3)~~ The record of the investigations shall be preserved with the other records of
16 the commissioner's office. To aid in making the investigations, the commissioner or
17 the mine safety specialist may compel the attendance of witnesses and administer
18 oaths.

19 ~~(5)(4)~~ Failure to comply with the reporting requirements set forth in **subsection (1)**
20 **of** this section shall create a rebuttable presumption of an intentional order to violate
21 mine safety laws that places miners in imminent danger of serious physical injury or
22 death and shall be subject to revocation, suspension, or probation of the mine
23 license and a civil monetary penalty of not less than ten thousand dollars (\$10,000)
24 nor more than one hundred thousand dollars (\$100,000).

25 ~~(6)(5)~~ The Division of Mine Safety may require testing of certified persons to
26 determine whether the presence of intoxicants or controlled or illicit substances are
27 a contributing factor in any mine accident in which serious physical injury or loss of

1 life occurs or which was reported under this section. The director or his or her
2 designee may order the testing of certified persons who:

- 3 (a) Were working in the immediate area of the accident; or
4 (b) In the judgment of the director or his designee, may reasonably have
5 contributed to or witnessed the accident or fatality.

6 ~~(7)~~~~(6)~~ The post-accident testing permitted by subsection ~~(6)~~~~(5)~~ of this section shall:

- 7 (a) Meet all guidelines set forth in KRS 351.182, 351.183, 351.184, and 351.185;
8 (b) Be paid for by the Division of Mine Safety; and
9 (c) Be performed on samples obtained within eight (8) hours of the accident.

10 ~~(8)~~~~(7)~~ Toxicology screens and eleven-panel drug testing shall be performed on
11 victims when death occurs on mine property. The testing pursuant to this subsection
12 may be performed on specimens of either blood, saliva, or other appropriate bodily
13 fluids.

14 ~~(9)~~~~(8)~~ The commissioner or his or her authorized representative may compel the
15 attendance of witnesses and administer oaths to investigate allegations of unsafe
16 mining conditions or violations of mining laws even if no accident or injury has
17 occurred.

18 ➔Section 16. The following KRS section is repealed:

19 351.380 Agreements with Natural Resources and Environmental Protection Cabinet.