

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. *For policies with provisions*
8 *for deductibles with effective dates on or after January 1, 1995, assessments*
9 *shall be imposed on premiums received as calculated by the deductible*
10 *program adjustment.* The cost for coverage calculated under this paragraph
11 by insurance companies that issue only deductible insurance policies in
12 Kentucky shall be actuarially adequate to cover the entire liability of the
13 employer for compensation under this chapter, including all expenses and
14 allowances normally used to calculate the cost for coverage. For policies with
15 provisions for deductibles with effective dates of May 6, 1993, through
16 December 31, 1993, for which the insurance company did not report
17 premiums and remit special fund assessments based on the calculated cost for
18 coverage prior to the reduction for deductibles, "premiums received" includes
19 the initial premium plus any reimbursements invoiced for losses, expenses,
20 and fees charged under the deductibles. The special fund assessment rates in
21 effect for reimbursements invoiced for losses, expenses, or fees charged under
22 the deductibles shall be those percentages in effect on the effective date of the
23 insurance policy. For policies covering leased employees as defined in KRS
24 342.615, "premiums received" means premiums calculated using the
25 experience modification factor of each lessee as defined in KRS 342.615 for
26 each leased employee for that portion of the payroll pertaining to the leased
27 employee.

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

1 assessments based on the calculated cost for coverage prior to the reduction
2 for deductibles, "premium" includes the initial consideration plus any
3 reimbursements invoiced for losses, expenses, or fees charged under the
4 deductibles.

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

8 **(e) "Deductible program adjustment" means calculating premium and**
9 **premiums received on a gross basis without regard to the following:**

10 **1. Schedule rating modifications, debits, or credits;**

11 **2. Deductible credits; or**

12 **3. Modifications to the cost of coverage from inception through and**
13 **including any audit that are based on negotiated retrospective rating**
14 **arrangements, including but not limited to large risk alternative rating**
15 **options;**

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

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

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

26 (a) The base period shall be the earliest three (3) calendar years of the five (5)
27 calendar years immediately preceding the calendar year for which the

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

- 22 (b) The commissioner shall obtain the annual payroll for each of the three (3)
23 years in the base period for each employer carrying his own risk from records
24 of the department and from the records of the Office of Employment and
25 Training, Education and Workforce Development Cabinet. The commissioner
26 shall multiply each of the three (3) years of payroll by the number obtained by
27 dividing the statewide average weekly wage which will be in effect for the

1 year in which the premium is being calculated by the statewide average
2 weekly wage in effect in each of the years of the base period;

3 (c) The commissioner shall divide the total of the adjusted claim values for the
4 three (3) year base period by the total adjusted payroll for the same three (3)
5 year period. The value so calculated shall be multiplied by 1.25 and shall then
6 be multiplied by the employer's most recent annualized payroll, calculated
7 using records of the department and the Office of Employment and Training
8 data which shall be made available for this purpose on a quarterly basis as
9 reported, to obtain the premium for the next calendar year for assessment
10 purposes under KRS 342.122;

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

24 (e) If an employer having fewer than five (5) years of doing business in this state
25 applies to carry its own risk and is so certified, its premium for the purposes of
26 KRS 342.122 shall be based on the lesser number of years of experience as
27 may be available including the two (2) most recent years if necessary to create

1 a three (3) year base period. If the employer has less than two (2) years of
2 operation in this state available for the premium calculation, then its premium
3 shall be the greater of the value obtained by the calculation called for in this
4 subsection or the amount of security required by the commissioner pursuant to
5 KRS 342.340(1);

6 (f) If an employer is certified to carry its own risk after having previously insured
7 the risk, its premium shall be calculated using values obtained from claims
8 incurred while insured for as many of the years of the base period as may be
9 necessary to create a full three (3) year base. After the employer is certified to
10 carry its own risk and has paid all amounts due for assessments upon
11 premiums paid while insured, the employer shall be assessed only upon the
12 premium calculated under this subsection;

13 (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated
14 as set forth in this subsection; and

15 (h) Notwithstanding any other provision of this subsection, the premium of any
16 employer authorized to carry its own risk for purposes of assessments due
17 under this chapter shall be no less than thirty cents (\$0.30) per one hundred
18 dollars (\$100) of the employer's most recent annualized payroll for employees
19 covered by this chapter;

20 (29) "SIC code" as used in this chapter means the Standard Industrial Classification
21 Code contained in the latest edition of the Standard Industrial Classification Manual
22 published by the Federal Office of Management and Budget;

23 (30) "Investment interest" means any pecuniary or beneficial interest in a provider of
24 medical services or treatment under this chapter, other than a provider in which that
25 pecuniary or investment interest is obtained on terms equally available to the public
26 through trading on a registered national securities exchange, such as the New York
27 Stock Exchange or the American Stock Exchange, or on the National Association of

1 Securities Dealers Automated Quotation System;

2 (31) "Managed health care system" means a health care system that employs gatekeeper
3 providers, performs utilization review, and does medical bill audits;

4 (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists,
5 podiatrists, and osteopathic and chiropractic practitioners acting within the scope of
6 their license issued by the Commonwealth;

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

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

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

14 (36) "Permanent disability rating" means the permanent impairment rating selected by an
15 administrative law judge times the factor set forth in the table that appears at KRS
16 342.730(1)(b); and

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

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

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

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

23 (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose
24 of funding and prefunding the liabilities of the special fund, financing the
25 administration and operation of the Kentucky Workers' Compensation
26 Funding Commission, and financing the expenditures for all programs in the
27 Labor Cabinet, except the Division of Apprenticeship and Division of Wages

1 and Hours in the Department of Workplace Standards, as reflected in the
2 enacted budget of the Commonwealth and enacted by the General Assembly,
3 the funding commission shall impose a special fund assessment rate of nine
4 percent (9%) upon the amount of workers' compensation premiums received
5 on and after January 1, 1997, through December 31, 1997, by every insurance
6 carrier writing workers' compensation insurance in the Commonwealth, by
7 every self-insured group operating under the provisions of KRS 342.350(4)
8 and Chapter 304, and against the premium, as defined in KRS 342.0011, of
9 every employer carrying his or her own risk.

- 10 (b) The funding commission shall, for calendar year 1998 and thereafter, establish
11 for the special fund an assessment rate to be assessed against all premium
12 received during that calendar year which shall produce enough revenue to
13 amortize on a level basis the unfunded liability of the special fund as of June
14 30 preceding January 1 of each year, for the period remaining until December
15 31, 2029. The interest rate to be used in this calculation shall reflect the
16 funding commission's investment experience to date and the current
17 investment policies of the commission. This assessment shall be imposed
18 upon the amount of workers' compensation premiums received by every
19 insurance carrier writing workers' compensation insurance in the
20 Commonwealth, by every self-insured group operating under the provisions of
21 KRS 342.350(4) and Chapter 304, and against the premium, as defined in
22 KRS 342.0011, of every employer carrying its own risk. On or before October
23 1 of each year, the commission shall notify each insurance carrier writing
24 workers' compensation insurance in the Commonwealth, every group of self-
25 insured employers, and each employer carrying its own risk, of the rates which
26 shall become effective on January 1 of each year, unless modified by the
27 General Assembly.

1 (c) All assessments imposed by this section shall be paid to the Kentucky
2 Workers' Compensation Funding Commission and shall be credited to the
3 benefit reserve fund within the Kentucky Workers' Compensation Funding
4 Commission.

5 (d) The assessments imposed in this chapter shall be in lieu of all other
6 assessments or taxes on workers' compensation premiums.

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

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

21 (3) The assessments imposed by this section may be collected by the insurance carrier
22 from the insured. However, the insurance carrier shall not collect from the employer
23 any amount exceeding the assessments imposed pursuant to this section. If the
24 insurance carrier collects the assessment from an insured, the assessment shall be
25 collected at the same time and in the same proportion as the premium is collected.
26 The assessment for an insurance policy or other evidence of coverage providing a
27 deductible may be collected in accordance with this chapter on a premium amount

1 that equates to the premium that would have applied without the deductible. Each
2 statement from an insurance carrier presented to an insured reflecting premium and
3 assessment amounts shall clearly identify and distinguish the amount to be paid for
4 premium and the amount to be paid for assessments. No insurance carrier shall
5 collect from an insured an amount in excess of the assessment percentages imposed
6 by this chapter. The assessment for an insurance policy or other evidence of
7 coverage providing a deductible may be collected in accordance with this chapter on
8 a premium amount that equates to the premium that would have applied without the
9 deductible. The percentages imposed by this chapter for an insurance policy issued
10 by an insurance company shall be those percentages in effect on the annual effective
11 date of the policy, regardless of the date that the premium is actually received by the
12 insurance company.

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

20 (5) The funding commission, as part of the collection and auditing of the special fund
21 assessments required by this section, shall annually require each insurance carrier
22 and each self-insured group to provide a list of employers which it has insured or
23 which are members and the amount collected from each employer. Additionally, the
24 funding commission shall require each entity paying a special fund assessment to
25 report the SIC code for each employer and the amount of premium collected from
26 each SIC code. An insurance carrier or self-insured group may require its insureds
27 or members to furnish the SIC code for each of their employees. However, the

1 failure of any employer to furnish said codes shall not relieve the insurance carrier
2 or self-insured group from the obligation to furnish same to the funding
3 commission. The Office of Employment and Training, Education and Workforce
4 Development Cabinet, is hereby directed to make available the SIC codes assigned
5 in its records to specific employers to aid in the reporting and recording of the
6 special fund assessment data.

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

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

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

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

25 (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS
26 342.122 shall forever remain applicable to premiums received on policies with
27 effective dates prior to January 1, 1997, by every insurance carrier writing workers'

1 compensation insurance in the Commonwealth, by every self-insured group
2 operating under the provision of KRS 342.350(4) and Chapter 304, and against the
3 premium, as defined in KRS 342.0011, of every employer carrying its own risk.

4 →Section 3. KRS 342.1221 is amended to read as follows:

5 Assessments levied and expenses owed pursuant to KRS 342.122 and Sections 6 and 7
6 of this Act and unpaid on the date on which they are due and payable shall bear interest at
7 the rate specified in KRS 131.183 plus a penalty of one and one-half percent (1.5%) per
8 month or portion thereof without proration from the date on which the assessment or
9 expenses are~~[was]~~ due and payable. The funding commission shall have the authority to
10 waive part or all of the penalty, but not the interest, where it is shown to the satisfaction
11 of the commission that failure to timely pay assessments is due to reasonable cause. This
12 authority shall extend to the coal workers' pneumoconiosis fund until it ceases to exist.

13 →Section 4. KRS 342.1223 is amended to read as follows:

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

17 (2) The commission shall:

18 (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS
19 342.122 and its other funds separate and apart from all "state funds" or "public
20 funds," as defined in KRS Chapter 446;

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

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

1 *to the contrary, officers and employees of the funding commission may be*
2 *exempted from the classified service;*

3 (c) To contract for investment counseling, legal, actuarial, auditing, and other
4 professional services in accordance with the provisions relating to personal
5 service contracts contained in KRS Chapter 45A;

6 (d) To appoint, hire, and contract with banks, trust companies, and other entities
7 to serve as depositories and custodians of its investment receipts and other
8 funds;

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

11 (f) To make and promulgate administrative regulations.

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

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

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

- 2 (1) The funding commission may mail to the assessment payer~~{taxpayer}~~ a notice of
3 any assessment assessed by it. The assessment shall be final if not protested in
4 writing to the funding commission within thirty (30) days from the date of notice.
5 Payment for the assessment, penalty and interest, and expenses shall be received
6 by the funding commission within thirty (30) days from the date the notice
7 becomes final. The protest shall be accompanied by a supporting statement setting
8 forth the grounds upon which the protest is made. Upon written request, the funding
9 commission may extend the time for filing the supporting statement if it appears the
10 delay is necessary and unavoidable. The refusal of such extension may be reviewed
11 in the same manner as a protested assessment.
- 12 (2) After a timely protest has been filed, the assessment payer~~{taxpayer}~~ may request a
13 conference with the funding commission. The request shall be granted in writing
14 stating the date and time set for the conference. The assessment payer~~{taxpayer}~~
15 may appear in person or by representative. Further conferences may be held by
16 mutual agreement.
- 17 (3) After considering the assessment payer's~~{taxpayer's}~~ protest, including any matters
18 presented at the final conference, the funding commission shall issue a final ruling
19 on any matter still in controversy, which shall be mailed to the assessment
20 payer~~{taxpayer}~~. The ruling shall state that it is a final ruling of the funding
21 commission, generally state the issues in controversy, the funding commission's
22 position thereon and set forth the procedure for prosecuting an appeal to the
23 Kentucky Claims Commission pursuant to KRS 49.220.
- 24 (4) The assessment payer~~{taxpayer}~~ may request in writing a final ruling at any time
25 after filing a timely protest and supporting statement. When a final ruling is
26 requested, the funding commission shall issue such ruling within sixty (60)~~{thirty~~
27 ~~{30}}~~ days or at the next board of directors meeting, whichever is later, from the

- 1 date the request is received by the funding commission.
- 2 (5) After a final ruling has been issued, the assessment payer~~[taxpayer]~~ may appeal to
3 the Kentucky Claims Commission pursuant to KRS 49.220.
- 4 (6) The expenses incurred by the funding commission in conducting audits required in
5 this chapter shall be paid by the audited entities~~[insurance companies]~~ in
6 accordance with administrative regulations promulgated by the funding
7 commission.
- 8 (7) Notwithstanding any provision to the contrary, a notice of assessment under
9 subsection (1) of this section shall not be collected unless the notice of assessment
10 is mailed to the assessment payer not later than five (5) years from the due date of
11 the quarterly premium report or the date the amended quarterly premium report
12 is filed, whichever is later. A quarterly premium report shall not be amended later
13 than one (1) year after the due date of the quarterly premium report.
- 14 (8) Assessment payers shall preserve, retain, and provide all documents relevant to
15 quarterly premium reports and subject to audits to the funding commission upon
16 request during the completion of the audit.
- 17 (9) (a) The funding commission may mail the assessment payer notice of a refund
18 amount to be returned to an insured. The insurance carrier shall pay the
19 amount of the refund to the insured within sixty (60) days from the date of
20 notice sent by the funding commission. If, after good faith efforts, the
21 refund cannot be returned to the insured, the refund amount shall be
22 remitted to the funding commission within thirty (30) days from the last
23 date of attempting the refund.
- 24 (b) If a refund amount to an insured is unpaid on the date on which it is due,
25 then that amount shall bear a penalty of one and one-half percent (1.5%)
26 per month from that due date. The funding commission shall have the
27 authority to waive part or all of the penalty where failure to pay is shown, to

1 *the satisfaction of the funding commission, to be for a reasonable cause.*

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

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

5 (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have
6 one-half (1/2) of the liability for income benefits, including retraining benefits,
7 payable for claims brought under KRS 342.732 for last exposure incurred on or
8 after December 12, 1996, which are filed on or before June 30, 2017. Income
9 benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made
10 contemporaneous with the payments made by the employer, except that the
11 employer shall make all payments due under a final award or approved settlement
12 for any claims filed after June 30, 2017.

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

20 (3) (a) For the purpose of funding the liabilities of the Kentucky coal workers'
21 pneumoconiosis fund and financing the administration and operation of the
22 Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the
23 Commonwealth enacted by the General Assembly, a Kentucky coal workers'
24 pneumoconiosis fund assessment at the rate of three percent (3%) is hereby
25 imposed upon the amount of workers' compensation premiums received on
26 and after January 1, 1997, through December 31, 1997, by every insurance
27 carrier writing workers' compensation insurance in the Commonwealth and by

1 every self-insured group operating under the provisions of KRS 342.350(4)
2 and Chapter 304, from employers engaged in the severance or processing of
3 coal. Likewise, on and after January 1, 1997, through December 31, 1997, an
4 assessment at the rate of three percent (3%) of premium shall be paid by every
5 employer engaged in the severance or processing of coal who is carrying his
6 or her own risk.

7 (b) In addition to the assessment imposed in paragraph (a) of this subsection, an
8 additional Kentucky coal workers' pneumoconiosis fund assessment at the rate
9 of two and one-half cents (\$0.025) per ton is hereby imposed upon the total
10 annual amount of tons of coal severed on or after January 1, 1997, through
11 December 31, 1997, by every entity engaged in the severance of coal as
12 required pursuant to KRS Chapter 143.

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

24 (4) All assessments imposed by this section shall be paid to the Kentucky Workers'
25 Compensation Funding Commission and shall be transferred to the Kentucky
26 Employers' Mutual Insurance Authority, which is administering the coal workers'
27 pneumoconiosis fund. In addition, the powers and responsibilities of the Kentucky

1 Workers' Compensation Funding Commission including its fiduciary duties and
2 responsibilities relating to assessments collected for the special fund pursuant to
3 KRS 342.122, Section 3 of this Act, 342.1222, 342.1223, 342.1226, 342.1229, and
4 342.1231 shall apply to assessments collected for the Kentucky coal workers'
5 pneumoconiosis fund created pursuant to this section. Each entity subject to
6 assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any
7 and all information requested by the Kentucky Workers' Compensation Funding
8 Commission necessary to carry out its powers and responsibilities relating thereto.

9 (5) These assessments shall be paid quarterly not later than the thirtieth day of the
10 month following the end of the quarter in which the premium is received or the coal
11 is processed or severed. Receipt shall be considered timely through actual physical
12 receipt or by postmark by the United States Postal Service. Employers carrying their
13 own risk and employers defined in KRS 342.630(2) shall pay the annual
14 assessments in four (4) equal quarterly installments. Penalty and interest penalties
15 imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers'
16 Compensation Funding Commission to waive part or all of the penalty shall apply
17 to assessments for the Kentucky coal workers' pneumoconiosis fund in the same
18 manner and amount as they are imposed on assessments for the special fund under
19 KRS 342.122.

20 (6) Notwithstanding any other provisions of this section or this chapter to the contrary,
21 the total amount of funds collected pursuant to the assessment rates adopted by the
22 funding commission shall not be limited to the provisions of this section.

23 (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis
24 shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers'
25 pneumoconiosis fund shall be liable for payment of a part of the liability only for
26 employees of employers engaged in the severance or processing of coal as defined
27 in KRS 342.0011(23)(a) and (b).

1 (8) Assessments issued pursuant to this section shall cease to be imposed once the
2 liabilities of the fund are fully funded. After the liabilities are fully funded, any
3 excess assessments shall be refunded to the employers on a pro rata basis.

4 **(9) The Kentucky Employers' Mutual Insurance Authority shall reimburse the**
5 **funding commission for any expenses incurred with regard to the collection of**
6 **assessments for the coal workers' pneumoconiosis fund and other incurred**
7 **expenses related to the coal workers' pneumoconiosis fund.**

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

9 (1) Notwithstanding any provisions of this chapter or any other provisions to the
10 contrary, the Kentucky coal workers' pneumoconiosis fund shall have no liability
11 for income benefits for coal workers' pneumoconiosis claims filed or reopened on or
12 after July 1, 2017.

13 (2) Notwithstanding any provisions of this chapter or any other provisions to the
14 contrary, as soon as practically possible after July 1, 2017, all of the assets and
15 liabilities of the Kentucky coal workers' pneumoconiosis fund shall be transferred
16 from the Kentucky Workers' Compensation Funding Commission and Division of
17 Workers' Compensation Funds to the Kentucky Employers' Mutual Insurance
18 Authority through a loss portfolio transfer agreement. The Kentucky Employers'
19 Mutual Insurance Authority shall have full authority and responsibility over the
20 Kentucky coal workers' pneumoconiosis fund's claims and shall administer the
21 claims as permitted pursuant to KRS Chapter 342.

22 (3) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation
23 Funding Commission shall impose an assessment at an annual rate of fourteen
24 percent (14%) upon the amount of workers' compensation premiums received on or
25 after January 1, 2017, through December 31, 2017, by every insurance carrier
26 writing workers' compensation insurance in the Commonwealth and by every self-
27 insured group operating under the provisions of KRS 342.350(4) and KRS Chapter

1 304, from employers engaged in the severance or processing of coal. Likewise, on
2 or after January 1, 2017, through December 31, 2017, an assessment at the rate of
3 fourteen percent (14%) of premium shall be paid by every employer engaged in the
4 severance or processing of coal who is carrying his or her own risk.

5 (4) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation
6 Funding Commission shall impose an assessment at an annual rate of fourteen
7 percent (14%) upon the amount of workers' compensation premiums received on or
8 after January 1, 2018, through December 31, 2018, by every insurance carrier
9 writing workers' compensation insurance in the Commonwealth and by every self-
10 insured group operating under the provisions of KRS 342.350(4) and Chapter 304,
11 from employers engaged in the severance or processing of coal. Likewise, on or
12 after January 1, 2018, through December 31, 2018, an assessment at the rate of
13 fourteen percent (14%) of premium shall be paid by every employer engaged in the
14 severance or processing of coal who is carrying his or her own risk.

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

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

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

1 (8) When the Kentucky Workers' Compensation Funding Commission and the
2 Kentucky Employers' Mutual Insurance Authority have determined **final audits are**
3 **closed and the liability of the fund is fully funded**~~[that the Kentucky coal workers'~~
4 ~~pneumoconiosis fund has fully funded its liabilities]~~, then the authority for imposing
5 **assessment rates**~~[assessments]~~ pursuant to this section and KRS 342.1242 shall
6 cease to exist~~[, and the Kentucky coal workers' pneumoconiosis fund shall be~~
7 ~~abolished]~~. Any remaining assessments received following the exhaustion of
8 liabilities shall be refunded pro rata to all employers who have paid an assessment
9 in the year that liabilities are fully funded. **When all claim payouts are completed,**
10 **the Kentucky coal workers' pneumoconiosis fund shall be abolished.**