

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

1 their license issued by the Commonwealth;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 assessments or taxes on workers' compensation premiums.

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

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

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

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

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

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

1 special fund assessment data.

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

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

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

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

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

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

27 Assessments levied and expenses owed pursuant to KRS 342.122 and Sections 5 and 6



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

8 ➔Section 4. KRS 342.1231 is amended to read as follows:

9 (1) The funding commission may mail to the **assessment payer**~~[taxpayer]~~ a notice of  
10 any assessment assessed by it. The assessment shall be final if not protested in  
11 writing to the funding commission within thirty (30) days from the date of notice.

12 **Payment for the assessment, penalty and interest, and expenses shall be received**  
13 **by the funding commission within thirty (30) days from the date the notice**  
14 **becomes final.** The protest shall be accompanied by a supporting statement setting  
15 forth the grounds upon which the protest is made. Upon written request, the funding  
16 commission may extend the time for filing the supporting statement if it appears the  
17 delay is necessary and unavoidable. The refusal of such extension may be reviewed  
18 in the same manner as a protested assessment.

19 (2) After a timely protest has been filed, the **assessment payer**~~[taxpayer]~~ may request a  
20 conference with the funding commission. The request shall be granted in writing  
21 stating the date and time set for the conference. The **assessment payer**~~[taxpayer]~~  
22 may appear in person or by representative. Further conferences may be held by  
23 mutual agreement.

24 (3) After considering the **assessment payer's**~~[taxpayer's]~~ protest, including any matters  
25 presented at the final conference, the funding commission shall issue a final ruling  
26 on any matter still in controversy, which shall be mailed to the **assessment**  
27 **payer**~~[taxpayer]~~. The ruling shall state that it is a final ruling of the funding

1 commission, generally state the issues in controversy, the funding commission's  
2 position thereon and set forth the procedure for prosecuting an appeal to the  
3 Kentucky Claims Commission pursuant to KRS 49.220.

4 (4) The assessment payer~~[taxpayer]~~ may request in writing a final ruling at any time  
5 after filing a timely protest and supporting statement. When a final ruling is  
6 requested, the funding commission shall issue such ruling within sixty (60)~~[thirty~~  
7 ~~(30)]~~ days or at the next board of directors meeting, whichever is later, from the  
8 date the request is received by the funding commission.

9 (5) After a final ruling has been issued, the assessment payer~~[taxpayer]~~ may appeal to  
10 the Kentucky Claims Commission pursuant to KRS 49.220.

11 (6) The expenses incurred by the funding commission in conducting audits required in  
12 this chapter shall be paid by the audited entities~~[insurance companies]~~ in  
13 accordance with administrative regulations promulgated by the funding  
14 commission.

15 (7) Notwithstanding any provision to the contrary, a notice of assessment under  
16 subsection (1) of this section shall not be collected unless the notice of assessment  
17 is mailed to the assessment payer not later than seven (7) years from the due date  
18 of the quarterly premium report or the date the amended quarterly premium  
19 report is filed, whichever is later. A quarterly premium report shall not be  
20 amended later than one (1) year after the due date of the quarterly premium  
21 report.

22 (8) Assessment payers shall preserve, retain, and provide all documents relevant to  
23 quarterly premium reports and subject to audits to the funding commission upon  
24 request during the completion of the audit.

25 (9) (a) The funding commission may mail the assessment payer notice of a refund  
26 amount to be returned to an insured. The insurance carrier shall pay the  
27 amount of the refund to the insured within sixty (60) days from the date of

1           notice sent by the funding commission. If, after good faith efforts, the  
 2           refund cannot be returned to the insured, the refund amount shall be  
 3           remitted to the funding commission within thirty (30) days from the last  
 4           date of attempting the refund.

5           **(b) If a refund amount to an insured is unpaid on the date on which it is due,**  
 6           **then that amount shall bear a penalty of one and one-half percent (1.5%)**  
 7           **per month from that due date. The funding commission shall have the**  
 8           **authority to waive part or all of the penalty where failure to pay is shown, to**  
 9           **the satisfaction of the funding commission, to be for a reasonable cause.**

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

12          ➔Section 5. KRS 342.1242 is amended to read as follows:

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

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

- 1 (3) (a) For the purpose of funding the liabilities of the Kentucky coal workers'  
2 pneumoconiosis fund and financing the administration and operation of the  
3 Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the  
4 Commonwealth enacted by the General Assembly, a Kentucky coal workers'  
5 pneumoconiosis fund assessment at the rate of three percent (3%) is hereby  
6 imposed upon the amount of workers' compensation premiums received on  
7 and after January 1, 1997, through December 31, 1997, by every insurance  
8 carrier writing workers' compensation insurance in the Commonwealth and by  
9 every self-insured group operating under the provisions of KRS 342.350(4)  
10 and Chapter 304, from employers engaged in the severance or processing of  
11 coal. Likewise, on and after January 1, 1997, through December 31, 1997, an  
12 assessment at the rate of three percent (3%) of premium shall be paid by every  
13 employer engaged in the severance or processing of coal who is carrying his  
14 or her own risk.
- 15 (b) In addition to the assessment imposed in paragraph (a) of this subsection, an  
16 additional Kentucky coal workers' pneumoconiosis fund assessment at the rate  
17 of two and one-half cents (\$0.025) per ton is hereby imposed upon the total  
18 annual amount of tons of coal severed on or after January 1, 1997, through  
19 December 31, 1997, by every entity engaged in the severance of coal as  
20 required pursuant to KRS Chapter 143.
- 21 (c) As of June 30, 2018, and each year thereafter until the liabilities of the fund  
22 are fully funded, the Funding Commission and the Kentucky Employers'  
23 Mutual Insurance Authority shall determine the assets of the fund and the  
24 claim liability incurred by the fund for all previous years and shall establish  
25 the rates under the provisions of paragraphs (a) and (b) of this subsection  
26 necessary as of January 1 of the next year to fund claim liabilities through  
27 December 31 of the next year of operations. The assessment rate authorized

1 by this section for premiums received and tons of coal severed shall be set so  
2 as to receive fifty percent (50%) of the needed revenue from each assessment.  
3 Notice of any rate changes shall be provided no later than October 1 of the  
4 year preceding the rate change.

5 (4) All assessments imposed by this section shall be paid to the Kentucky Workers'  
6 Compensation Funding Commission and shall be transferred to the Kentucky  
7 Employers' Mutual Insurance Authority, which is administering the coal workers'  
8 pneumoconiosis fund. In addition, the powers and responsibilities of the Kentucky  
9 Workers' Compensation Funding Commission including its fiduciary duties and  
10 responsibilities relating to assessments collected for the special fund pursuant to  
11 KRS 342.122, Section 3 of this Act, 342.1222, 342.1223, 342.1226, 342.1229, and  
12 342.1231 shall apply to assessments collected for the Kentucky coal workers'  
13 pneumoconiosis fund created pursuant to this section. Each entity subject to  
14 assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any  
15 and all information requested by the Kentucky Workers' Compensation Funding  
16 Commission necessary to carry out its powers and responsibilities relating thereto.

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

- 1 (6) Notwithstanding any other provisions of this section or this chapter to the contrary,  
2 the total amount of funds collected pursuant to the assessment rates adopted by the  
3 funding commission shall not be limited to the provisions of this section.
- 4 (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis  
5 shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers'  
6 pneumoconiosis fund shall be liable for payment of a part of the liability only for  
7 employees of employers engaged in the severance or processing of coal as defined  
8 in KRS 342.0011(23)(a) and (b).
- 9 (8) Assessments issued pursuant to this section shall cease to be imposed once the  
10 liabilities of the fund are fully funded. After the liabilities are fully funded, any  
11 excess assessments shall be refunded to the employers on a pro rata basis.

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

16 ➔Section 6. KRS 342.1243 is amended to read as follows:

- 17 (1) Notwithstanding any provisions of this chapter or any other provisions to the  
18 contrary, the Kentucky coal workers' pneumoconiosis fund shall have no liability  
19 for income benefits for coal workers' pneumoconiosis claims filed or reopened on or  
20 after July 1, 2017.
- 21 (2) Notwithstanding any provisions of this chapter or any other provisions to the  
22 contrary, as soon as practically possible after July 1, 2017, all of the assets and  
23 liabilities of the Kentucky coal workers' pneumoconiosis fund shall be transferred  
24 from the Kentucky Workers' Compensation Funding Commission and Division of  
25 Workers' Compensation Funds to the Kentucky Employers' Mutual Insurance  
26 Authority through a loss portfolio transfer agreement. The Kentucky Employers'  
27 Mutual Insurance Authority shall have full authority and responsibility over the

1 Kentucky coal workers' pneumoconiosis fund's claims and shall administer the  
2 claims as permitted pursuant to KRS Chapter 342.

3 (3) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation  
4 Funding Commission shall impose an assessment at an annual rate of fourteen  
5 percent (14%) upon the amount of workers' compensation premiums received on or  
6 after January 1, 2017, through December 31, 2017, by every insurance carrier  
7 writing workers' compensation insurance in the Commonwealth and by every self-  
8 insured group operating under the provisions of KRS 342.350(4) and KRS Chapter  
9 304, from employers engaged in the severance or processing of coal. Likewise, on  
10 or after January 1, 2017, through December 31, 2017, an assessment at the rate of  
11 fourteen percent (14%) of premium shall be paid by every employer engaged in the  
12 severance or processing of coal who is carrying his or her own risk.

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

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

- 1 (6) The assessments imposed by this section shall supersede any assessment imposed  
2 pursuant to KRS 342.1242 for the calendar years of 2017 and 2018. Any amount  
3 paid and collected that exceeds the assessment imposed by this section in calendar  
4 year 2017 shall be reimbursed to the employer or credited to the employer's account  
5 subject to the preference of the employer.
- 6 (7) Assessments pursuant to this section and KRS 342.1242 that are collected by the  
7 Kentucky Worker's Compensation Funding Commission shall be transferred to the  
8 Kentucky Employers' Mutual Insurance Authority.
- 9 (8) When the Kentucky Workers' Compensation Funding Commission and the  
10 Kentucky Employers' Mutual Insurance Authority have determined final audits are  
11 closed and the liability of the fund is fully funded~~that the Kentucky coal workers'~~  
12 ~~pneumoconiosis fund has fully funded its liabilities~~, then the authority for imposing  
13 assessment rates~~assessments~~ pursuant to this section and KRS 342.1242 shall  
14 cease to exist~~, and the Kentucky coal workers' pneumoconiosis fund shall be~~  
15 ~~abolished~~. Any remaining assessments received following the exhaustion of  
16 liabilities shall be refunded pro rata to all employers who have paid an assessment  
17 in the year that liabilities are fully funded. When all claim payouts are completed,  
18 the Kentucky coal workers' pneumoconiosis fund shall be abolished.