AN ACT relating to the Workers' Compensation Funding Commission.

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

Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

(1) The Governor.
(2) Lieutenant Governor.
(3) Department of State.
   (a) Secretary of State.
   (b) Board of Elections.
   (c) Registry of Election Finance.
(4) Department of Law.
   (a) Attorney General.
(5) Department of the Treasury.
   (a) Treasurer.
(6) Department of Agriculture.
(a) Commissioner of Agriculture.
(b) Kentucky Council on Agriculture.
(7) Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

(1) Justice and Public Safety Cabinet:
(a) Department of Kentucky State Police.
(b) Department of Criminal Justice Training.
(c) Department of Corrections.
(d) Department of Juvenile Justice.
(e) Office of the Secretary.
(f) Office of Drug Control Policy.
(g) Office of Legal Services.
(h) Office of the Kentucky State Medical Examiner.
(i) Parole Board.
(j) Kentucky State Corrections Commission.
(k) Office of Legislative and Intergovernmental Services.
(m) Department of Public Advocacy.

(2) Education and Workforce Development Cabinet:
(a) Office of the Secretary.
  1. Governor's Scholars Program.
  2. Governor's School for Entrepreneurs Program.
  3. Office of the Kentucky Workforce Innovation Board.
  4. Foundation for Adult Education.
(b) Office of Legal and Legislative Services.
  1. Client Assistance Program.
(c) Office of Communication.
(d) Office of Administrative Services.

1. Division of Human Resources.
3. Division of Fiscal Management.
(e) Office of Technology Services.
(f) Office of Educational Programs.
(g) Office of the Kentucky Center for Statistics.
(h) Board of the Kentucky Center for Statistics.
(i) Board of Directors for the Center for School Safety.
(j) Department of Education.

1. Kentucky Board of Education.
2. Kentucky Technical Education Personnel Board.
(k) Department for Libraries and Archives.
(l) Department of Workforce Investment.

1. Office of Vocational Rehabilitation.
   a. Division of Kentucky Business Enterprise.
   b. Division of the Carl D. Perkins Vocational Training Center.
   c. Division of Blind Services.
   d. Division of Field Services.
   e. Statewide Council for Vocational Rehabilitation.
2. Office of Unemployment Insurance.
   a. Division of Apprenticeship.
4. Office of Career Development.
5. Office of Adult Education.
(m) Foundation for Workforce Development.
(n) Kentucky Workforce Investment Board.
(o) Education Professional Standards Board.
1. Division of Educator Preparation.
2. Division of Certification.
3. Division of Professional Learning and Assessment.
4. Division of Legal Services.
(p) Kentucky Commission on the Deaf and Hard of Hearing.
(q) Kentucky Educational Television.
(r) Kentucky Environmental Education Council.
(3) Energy and Environment Cabinet:
(a) Office of the Secretary.
1. Office of Legislative and Intergovernmental Affairs.
2. Office of Legal Services.
   a. Legal Division I.
   b. Legal Division II.
3. Office of Administrative Hearings.
(b) Department for Environmental Protection.
1. Office of the Commissioner.
2. Division for Air Quality.
3. Division of Water.
4. Division of Environmental Program Support.
1. Office of the Commissioner.
2. Division of Mine Permits.
3. Division of Mine Reclamation and Enforcement.
4. Division of Abandoned Mine Lands.
5. Division of Oil and Gas.
6. Division of Mine Safety.
7. Division of Forestry.
8. Division of Conservation.
11. Division of Energy Assistance.
13. Division of Human Resources Management.
15. Division of Information Services.
17. Office of the Secretary.
18. Office of Communications and Public Outreach.
20. Insurance Legal Division.
21. Charitable Gaming Legal Division.
22. Alcoholic Beverage Control Legal Division.
1. Office of Executive Director.
   a. Division of Pari-mutuel Wagering and Compliance.
   b. Division of Stewards.
   c. Division of Licensing.
   d. Division of Enforcement.
   e. Division of Incentives and Development.
   f. Division of Veterinary Services.

(e) Department of Alcoholic Beverage Control.
   1. Division of Distilled Spirits.
   2. Division of Malt Beverages.
   3. Division of Enforcement.

(f) Department of Charitable Gaming.
   1. Division of Licensing and Compliance.
   2. Division of Enforcement.

(g) Department of Financial Institutions.
   1. Division of Depository Institutions.
   2. Division of Non-Depository Institutions.
   3. Division of Securities.
1 (h) Department of Housing, Buildings and Construction.
   1. Division of Fire Prevention.
   2. Division of Plumbing.
   3. Division of Heating, Ventilation, and Air Conditioning.

6 (i) Department of Insurance.
   1. Division of Insurance Product Regulation.
   2. Division of Administrative Services.
   3. Division of Financial Standards and Examination.
   4. Division of Agent Licensing.
   5. Division of Insurance Fraud Investigation.
   6. Division of Consumer Protection.

13 (j) Department of Professional Licensing.
   1. Real Estate Authority.

15 (5) Labor Cabinet.
   (a) Office of the Secretary.
   1. Office of General Counsel.
      a. Workplace Standards Legal Division.
      b. Workers’ Claims Legal Division.
   2. Office of Administrative Services.
      a. Division of Human Resources Management.
      b. Division of Fiscal Management.
      c. Division of Professional Development and Organizational Management.
      d. Division of Information Technology and Support Services.

27 (b) Department of Workplace Standards.
1. Division of Occupational Safety and Health Compliance.
2. Division of Occupational Safety and Health Education and Training.
3. Division of Wages and Hours.

(c) Department of Workers' Claims.
1. Division of Workers' Compensation Funds.
3. Division of Claims Processing.
4. Division of Security and Compliance.
5. Division of Information Services.
6. Division of Specialist and Medical Services.

(d) Workers' Compensation Funding Commission.
(e) Occupational Safety and Health Standards Board.
(f) State Labor Relations Board.
(g) Employers' Mutual Insurance Authority.
(h) Kentucky Occupational Safety and Health Review Commission.
(i) Workers' Compensation Nominating Committee.

(6) Transportation Cabinet:
(a) Department of Highways.
1. Office of Project Development.
2. Office of Project Delivery and Preservation.
4. Highway District Offices One through Twelve.
(b) Department of Vehicle Regulation.
(c) Department of Aviation.
(d) Department of Rural and Municipal Aid.
1. Office of Local Programs.
2. Office of Rural and Secondary Roads.

(e) Office of the Secretary.
2. Office for Civil Rights and Small Business Development.
3. Office of Budget and Fiscal Management.

(f) Office of Support Services.
(g) Office of Transportation Delivery.
(h) Office of Audits.
(i) Office of Human Resource Management.
(j) Office of Information Technology.
(k) Office of Legal Services.

(7) Cabinet for Economic Development:
(a) Office of the Secretary.
1. Office of Legal Services.
2. Department for Business Development.
   b. Finance and Personnel Division.
   c. IT and Resource Management Division.
   d. Compliance Division.
   e. Incentive Administration Division.
   a. Communications Division.
5. Office of Workforce, Community Development, and Research.
6. Office of Entrepreneurship.

(8) Cabinet for Health and Family Services:
   (a) Office of the Secretary.
      1. Office of Health Data and Analytics.
      2. Office of the Ombudsman and Administrative Review.
   (b) Office of Finance and Budget.
   (c) Office of Human Resource Management.
   (d) Office of Administrative Services.
   (e) Office of Application Technology Services.
   (f) Department for Public Health.
   (g) Department for Medicaid Services.
   (h) Department for Behavioral Health, Developmental and Intellectual Disabilities.
   (i) Department for Aging and Independent Living.
   (j) Department for Community Based Services.
   (k) Department for Income Support.
   (l) Department for Family Resource Centers and Volunteer Services.
   (m) Office for Children with Special Health Care Needs.
   (n) Office of Legislative and Regulatory Affairs.

(9) Finance and Administration Cabinet:
   (a) Office of the Secretary.
   (b) Office of the Inspector General.
1  (c) Office of Legislative and Intergovernmental Affairs.
2  (d) Office of General Counsel.
3  (e) Office of the Controller.
4  (f) Office of Administrative Services.
5  (g) Office of Policy and Audit.
6  (h) Department for Facilities and Support Services.
7  (i) Department of Revenue.
8  (j) Commonwealth Office of Technology.
9  (k) State Property and Buildings Commission.
11 (m) Kentucky Employees Retirement Systems.
12 (n) Commonwealth Credit Union.
13 (o) State Investment Commission.
14 (p) Kentucky Housing Corporation.
15 (q) Kentucky Local Correctional Facilities Construction Authority.
16 (r) Kentucky Turnpike Authority.
17 (s) Historic Properties Advisory Commission.
18 (t) Kentucky Tobacco Settlement Trust Corporation.
19 (u) Kentucky Higher Education Assistance Authority.
20 (v) Kentucky River Authority.
21 (w) Kentucky Teachers' Retirement System Board of Trustees.
22 (x) Executive Branch Ethics Commission.
23  (10) Tourism, Arts and Heritage Cabinet:
24  (a) Kentucky Department of Tourism.
25       1. Division of Tourism Services.
26       2. Division of Marketing and Administration.
27       3. Division of Communications and Promotions.
(b) Kentucky Department of Parks.
   1. Division of Information Technology.
   2. Division of Human Resources.
   4. Division of Facilities Management.
   5. Division of Facilities Maintenance.
   7. Division of Recreation.
   8. Division of Golf Courses.
   9. Division of Food Services.
  10. Division of Rangers.
  11. Division of Resort Parks.
  12. Division of Recreational Parks and Historic Sites.

(c) Department of Fish and Wildlife Resources.
   1. Division of Law Enforcement.
   2. Division of Administrative Services.
   3. Division of Engineering, Infrastructure, and Technology.
   4. Division of Fisheries.
   5. Division of Information and Education.
   6. Division of Wildlife.
   7. Division of Marketing.

(d) Kentucky Horse Park.
   1. Division of Support Services.
   2. Division of Buildings and Grounds.
   3. Division of Operational Services.

(e) Kentucky State Fair Board.
   1. Office of Administrative and Information Technology Services.
2. Office of Human Resources and Access Control.
3. Division of Expositions.
4. Division of Kentucky Exposition Center Operations.
5. Division of Kentucky International Convention Center.
6. Division of Public Relations and Media.
7. Division of Venue Services.
8. Division of Personnel Management and Staff Development.
9. Division of Sales.
10. Division of Security and Traffic Control.
11. Division of Information Technology.
12. Division of the Louisville Arena.
14. Division of Access Control.

(f) Office of the Secretary.
1. Office of Finance.
2. Office of Government Relations and Administration.
3. Office of Film and Tourism Development.

(g) Office of Legal Affairs.
(h) Office of Human Resources.

(i) Office of Public Affairs and Constituent Services.
(j) Office of Arts and Cultural Heritage.

(l) Kentucky Foundation for the Arts.
(m) Kentucky Humanities Council.
(n) Kentucky Heritage Council.
(o) Kentucky Arts Council.
(p) Kentucky Historical Society.
1. Division of Museums.
2. Division of Oral History and Educational Outreach.
3. Division of Research and Publications.
4. Division of Administration.
(q) Kentucky Center for the Arts.
1. Division of Governor's School for the Arts.
(r) Kentucky Artisans Center at Berea.
(s) Northern Kentucky Convention Center.
(t) Eastern Kentucky Exposition Center.

(11) Personnel Cabinet:
(a) Office of the Secretary.
(b) Department of Human Resources Administration.
(c) Office of Employee Relations.
(d) Kentucky Public Employees Deferred Compensation Authority.
(e) Office of Administrative Services.
(f) Office of Legal Services.
(g) Governmental Services Center.
(h) Department of Employee Insurance.
(i) Office of Diversity, Equality, and Training.
(j) Office of Public Affairs.

III. Other departments headed by appointed officers:
(1) Council on Postsecondary Education.
(2) Department of Military Affairs.
(3) Department for Local Government.
(4) Kentucky Commission on Human Rights.
(5) Kentucky Commission on Women.
(6) Department of Veterans' Affairs.
(7) Kentucky Commission on Military Affairs.

(8) Office of Minority Empowerment.

(9) Governor’s Council on Wellness and Physical Activity.

(10) Kentucky Communications Network Authority.

Section 2. KRS 336.020 is amended to read as follows:

(1) The Department of Workplace Standards shall be headed by a commissioner appointed by the Governor in accordance with KRS 12.040 and shall be divided for administrative purposes into the Division of Occupational Safety and Health Compliance, the Division of Occupational Safety and Health Education and Training, and the Division of Wages and Hours. Each of these divisions shall be headed by a director appointed by the secretary and approved by the Governor in accordance with KRS 12.050.

(2) The Department of Workers’ Claims shall be headed by a commissioner appointed by the Governor, and confirmed by the Senate in accordance with KRS 342.228. The department shall be divided for administrative purposes into the Office of Administrative Law Judges, the Division of Claims Processing, the Division of Security and Compliance, [the Division of Workers’ Compensation Funds,] and the Division of Specialist and Medical Services. The Office of Administrative Law Judges shall be headed by a chief administrative law judge appointed in accordance with KRS 342.230. Each division in the department shall be headed by a director appointed by the secretary and approved by the Governor in accordance with KRS 12.050. The Workers’ Compensation Board shall be attached to the Department of Workers’ Claims for administrative purposes only.

(3) The Office of General Counsel for the Labor Cabinet, the Office of Administrative Services, and the Office of Inspector General are attached to the Office of the Secretary of the Labor Cabinet.

(4) (a) The Office of General Counsel for the Labor Cabinet shall be headed by a
general counsel appointed by the secretary with approval by the Governor in accordance with KRS 12.050 and 12.210.

(b) The Office of General Counsel shall be divided for administrative purposes into the Workplace Standards Legal Division and the Workers' Claims Legal Division.

(c) Each legal division shall be headed by a general counsel appointed by the secretary with approval by the Governor in accordance with KRS 12.050 and 12.210.

(5) (a) The Office of Administrative Services shall be headed by an executive director appointed by the Governor in accordance with KRS 12.040.

(b) The Office of Administrative Services shall be divided for administrative purposes into the Division of Fiscal Management, the Division of Human Resources Management, the Division of Information Technology and Support Services, and the Division of Professional Development and Organizational Management. Each division shall be headed by a director appointed by the secretary and approved by the Governor in accordance with KRS 12.050.

(6) The Office of Inspector General shall be headed by an executive director appointed by the Governor in accordance with KRS 12.040.

§ Section 3. KRS 342.120 is amended to read as follows:

(1) **The Kentucky Workers' Compensation Funding Commission**[There is created the Division of Workers' Compensation Funds in the Department of Workers' Claims which] shall be responsible for the administration of the special fund [and the coal workers' pneumoconiosis fund] and the maintenance of records regarding the payment of claims by **this fund** these funds. The Division of Workers' Compensation Funds shall have no responsibility for the coal workers' pneumoconiosis fund once the assets and liabilities have been transferred to the Kentucky Employers' Mutual Insurance Authority, which will administer the fund
pursuant to KRS 342.1243. The Division of Workers' Compensation Funds shall be
headed by a director appointed by the secretary of the Labor Cabinet, with the prior
written approval of the Governor pursuant to KRS 12.050. The director shall be
responsible for overseeing the administration of the funds and the maintenance of
records regarding the payment of claims by the funds].

(2) The special fund shall have no liability upon any claim in which the injury occurred,
or for cumulative trauma, the disability became manifest, or, for occupational
disease, if the date of injury or last exposure occurred, after December 12, 1996.

(3) Where the employer has settled its liability for income benefits and thereafter a
determination has been made of the special fund's liability, the special fund portion
of the benefit rate shall be paid over the maximum period provided for by statute for
that disability, with the period of payment beginning on the date settlement was
approved by an administrative law judge. This provision is remedial and shall apply
to all pending and future claims.

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

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

(2) The commission shall:

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

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

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

(d) Recommend to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, changes deemed necessary in the level of the assessments imposed in this chapter;

(e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, a proposed budget for the biennium beginning July 1 following the even-numbered-year regular session of the General Assembly;

(f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;

(g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Department of Revenue, of all entities subject to the assessments imposed in this chapter;[ and]

(h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures; and

(i) **Administer the special fund and maintain records regarding the payment of claims by the special fund.**

(3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:

(a) To sue and be sued, complain, or defend, in its name;
(b) To elect, appoint, or hire officers, agents, and employees, and define their
duties and fix their compensation within the limits of its budget approved by
the General Assembly. Notwithstanding any provision of KRS Chapter 18A to
the contrary, officers and employees of the funding commission may be
exempted from the classified service;

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

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

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

(f) To make and promulgate administrative regulations.

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

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

Section 5. KRS 342.1243 is amended to read as follows:

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

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

(3) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation Funding Commission shall impose an assessment at an annual rate of fourteen percent (14%) upon the amount of workers' compensation premiums received on or after January 1, 2017, through December 31, 2017, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and KRS Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on or after January 1, 2017, through December 31, 2017, an assessment at the rate of fourteen percent (14%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation Funding Commission shall impose an assessment at an annual rate of fourteen percent (14%) upon the amount of workers' compensation premiums received on or after January 1, 2018, through December 31, 2018, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on or after January 1, 2018, through December 31, 2018, an assessment at the rate of fourteen percent (14%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.

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

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

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

When the Kentucky Workers' Compensation Funding Commission and the Kentucky Employers' Mutual Insurance Authority have determined final audits are closed and the liability of the fund is fully funded, then the authority for imposing assessment rates pursuant to this section and KRS 342.1242 shall cease to exist.
Any remaining assessments received following the exhaustion of liabilities shall be refunded pro rata to all employers who have paid an assessment in the year that liabilities are fully funded. When all claim payouts are completed, the Kentucky coal workers' pneumoconiosis fund shall be abolished.

Section 6. KRS 342.232 is amended to read as follows:

(1) The boards of directors of the following funds shall make quarterly reports according to generally accepted accounting principles of all money received and disbursed by the listed funds during each quarter to the Legislative Research Commission. The funds which shall be reported are:

(a) Kentucky individual self-insurance guaranty fund;

(b) Kentucky group self-insurance fund; and

(c) Kentucky coal employers self-insurance fund.

(2) The Kentucky Workers' Compensation Funding Commission and the Kentucky Employers' Mutual Insurance Authority shall make annual reports according to generally accepted accounting principles of all money received and disbursed by the coal workers' pneumoconiosis fund to the Legislative Research Commission.

(3) The Department of Workers' Claims shall make quarterly reports to the Legislative Research Commission on the status of the provisions of this chapter.

Section 7. KRS 342.265 is amended to read as follows:

(1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement signed by the parties or their representatives shall be filed with the commissioner, and, if approved by an administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less
than ten (10) days prior to submission of the agreement for approval. This provision
shall not be construed to prevent the voluntary payment of compensation for the
periods and in the amounts prescribed by this chapter, but nothing shall operate as a
final settlement except a memorandum of agreement filed with the commissioner
and approved by the administrative law judge. Upon claims settled after December
12, 1996, the special fund shall have the option of settling its liability for income
benefits on the same terms as those reached between the employee and employer.
Notice of the special fund exercise of the option granted in this subsection shall be
made by letter of the executive director of the Kentucky [Division of] Workers' Compensation [Funds] mailed to the parties within ten (10) days of receipt by the executive director of a copy of the agreement.

(2) Settlement agreements concluded after July 14, 2000, providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than one hundred dollars ($100) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.

(3) Upon lump-sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall be fixed by the commissioner. Before January 1 of each year commencing in 2001, the commissioner shall fix the discount rate to be utilized in the succeeding year based at one-half of one percent (0.5%) below the interest rate paid upon ten (10) year United States Treasury notes as of August 1 of the preceding year. However, upon lump-sum settlement of future periodic payments in weekly amounts that are forty dollars ($40) or less, the commissioner shall fix the discount rate used in the succeeding year based at the interest rate paid upon ten (10) year United States Treasury notes as of August 1 of the preceding year.
(4) If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.

(5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay.

Section 8. KRS 342.760 is amended to read as follows:

(1) There is hereby authorized in the Labor Cabinet an uninsured employers' fund established pursuant to this section prior to the effective date of this Act is hereby transferred to the Kentucky Workers' Compensation Funding Commission for the purpose of making payments in accordance with the provisions of subsection (3) of this section. The board of directors of the Kentucky Workers' Compensation Funding Commission shall be the custodian of the fund, and all moneys and securities in the fund shall be held in trust by the board of directors of the Kentucky Workers' Compensation Funding Commission and shall not be considered a part of the general funds of the state.

(2) The board of directors of the Kentucky Workers' Compensation Funding Commission is authorized to disburse moneys from the fund only upon written order of the administrative law judge or the board.

(3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.

(4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to
the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of all the amounts authorized to be paid therefrom under the authority of this subsection including reimbursement of the special fund of all liability apportioned to it and for the purposes of enforcing this liability the Kentucky Workers’ Compensation Funding Commission[Labor Cabinet], for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. This provision shall apply to all pending claims upon which a final order has not been entered.

(4) In furtherance of this purpose, the Attorney General shall appoint a member or members of his or her staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund.[ The Labor Cabinet shall be responsible for the administration of the uninsured employers’ fund and shall be charged with the conservation of the assets of the fund.

(6) On December 29, 1987, the liabilities of the uninsured employers’ fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers’ fund created within the Labor Cabinet pursuant to this section.]

Section 9. KRS 342.765 is amended to read as follows:

(1) Notwithstanding the provisions of this[ KRS] chapter[342] to the contrary, the Office of the Attorney General shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund. Funds to reimburse the Attorney General's office for expenses incurred in litigation and administration in defense of the uninsured employers' fund shall be transferred upon request of the Attorney General's office and approval by the board of directors of the Kentucky Workers’ Compensation Funding Commission[secretary of the Labor Cabinet].
(2) The Office of the Attorney General shall report monthly to the Interim Joint Committee on Appropriations and Revenue, the Interim Joint Committee on Economic Development and Workforce Investment [Labor and Industry], and the commissioner the amount of the agency fund expenditures in each month for the uninsured employers' fund and the nature of these expenditures. In addition, the Office of the Attorney General shall report quarterly to the commissioner on the amount of funds recouped from uninsured employers.

Section 10. KRS 393.082 is amended to read as follows:

(1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.

(2) The commissioner of the Department of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The commissioner or his or her designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, offices, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the Kentucky Workers' Compensation Funding Commission [Labor Cabinet]. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.
A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the commissioner of the Department of Workers' Claims, or the commissioner's designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.

Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the payment of the workers' compensation liabilities of a bankrupt employer has been collected by the commissioner of the Department of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.

In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the commissioner or the commissioner's designee shall deduct special fund payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.
(6) If the bankrupt employer ceased business operations at least three (3) years prior to
establishment of a trust account pursuant to this section, only claimants who file
workers' compensation claims within sixty (60) days of the establishment of the
trust account or before shall be eligible to receive payments from the trust fund.

(7) All claimants shall cooperate with information requests from the Department of
Workers' Claims concerning prior payments of workers' compensation benefits. The
commissioner of the Department of Workers' Claims or his or her designee may
subpoena witnesses, including present or past managers and officers of the bankrupt
employer, and may conduct evidentiary hearings under oath relating to the past and
present workers' compensation liabilities of the bankrupt employer or information
relevant to unpaid workers' compensation benefits. Administrative subpoenas issued
under the authority of the commissioner of the Department of Workers' Claims for
this purpose may be enforced in the Franklin Circuit Court.

(8) The Attorney General shall provide representation of the comprehensive
distribution plan as a named defendant in the event the establishment of the trust
fund is challenged.

(9) The provisions of KRS 393.080(3) or this section shall not be construed to
constitute an admission of the validity of any workers' compensation claims, nor
shall these provisions be interpreted in a manner that would transfer or create
liability on behalf of the commissioner of the Department of Workers' Claims, any
agency, or employee, beyond that expressly set forth in a comprehensive
distribution plan.

(10) The special fund shall issue trust fund checks in the amounts and to the claimants or
claimants' representatives as directed by the commissioner of the Department of
Workers' Claims.

(11) The personnel and other costs of administering a trust fund established pursuant to
this section shall be paid out of the investment income of the trust fund.
(12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by KRS 342.320, as well as the approval of the commissioner or his or her designee.

(13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the commissioner of the Department of Workers' Claims or the commissioner's designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

Section 11. KRS 342.0015 is amended to read as follows:

The substantive provisions of 1996 (1st Extra. Sess.) Ky. Acts ch. 1 shall apply to any claim arising from an injury or last exposure to the hazards of an occupational disease occurring on or after December 12, 1996. Procedural provisions of 1996 (1st Extra. Sess.) Ky. Acts ch. 1 shall apply to all claims irrespective of the date of injury or last exposure, including, but not exclusively, the mechanisms by which claims are decided and workers are referred for medical evaluations. The provisions of KRS 342.120(3), 342.125(8), 342.213(2)(e), 342.265, 342.270(3), 342.320, 342.610(3), 342.760(3)(4), and 342.990(11) are remedial.