

1 AN ACT relating to the recognition and registration of professional employer
2 organizations.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
5 READ AS FOLLOWS:

6 *The General Assembly finds and declares that:*

7 *(1) Professional employer organizations provide a valuable service to commerce and*
8 *the citizens of this Commonwealth by increasing the opportunities of employers*
9 *to develop cost-effective methods of satisfying their personnel requirements and*
10 *providing employees with access to certain employment benefits which might not*
11 *otherwise be available; and*

12 *(2) Professional employer organizations operating in this Commonwealth should be*
13 *properly recognized and regulated.*

14 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
15 READ AS FOLLOWS:

16 *As used in Sections 1 to 11 of this Act, unless the context requires otherwise:*

17 *(1) "Client" means any person who enters into a professional employer agreement*
18 *with a professional employer organization.*

19 *(2) "Co-employer" means either a professional employer organization or a client.*

20 *(3) "Co-employment relationship" means a relationship which is intended to be an*
21 *ongoing relationship rather than a temporary or project-specific relationship*
22 *wherein the rights, duties, and obligations of an employer which arise out of an*
23 *employment relationship have been allocated between co-employers pursuant to a*
24 *professional employer agreement under Sections 1 to 11 of this Act, wherein:*

25 *(a) The professional employer organization is entitled to enforce only such*
26 *employer rights and is subject to only those obligations specifically allocated*
27 *to the professional employer organization by the professional employer*

1 agreement or Sections 1 to 11 of this Act;

2 (b) The client is entitled to enforce those rights, and obligated to provide and
3 perform those employer obligations, allocated to the client by the
4 professional employer agreement and Sections 1 to 11 of this Act; and

5 (c) The client is entitled to enforce any right and obligated to perform any
6 obligation of an employer not specifically obligated to the professional
7 employer organization by the professional employer agreement or Sections
8 1 to 11 of this Act.

9 (4) "Covered employee" means an individual having a co-employment relationship
10 with a professional employer organization and a client who meets the following
11 criteria:

12 (a) The individual has received written notice of co-employment with the
13 professional employer organization; and

14 (b) The individual's co-employment relationship is pursuant to a professional
15 employer agreement under Sections 1 to 11 of this Act.

16 Individuals who are officers, directors, shareholders, partners, and managers of
17 the client will be covered employees except to the extent the professional employer
18 organization and the client have expressly agreed in the professional employer
19 agreement that such individuals would not be covered employees, provided such
20 individuals meet the criteria of this subsection and act as operational managers
21 or perform day-to-day operational services for the client.

22 (5) "Professional employer organization group" means two (2) or more professional
23 employer organizations that are majority owned or commonly controlled by the
24 same entity, parent, or controlling person or persons.

25 (6) "Person" means any individual, partnership, corporation, limited liability
26 company, association, or any other form of legally recognized entity.

27 (7) "Professional employer agreement" means a written contract by and between a

1 client and a professional employer organization that provides for:

2 (a) The co-employment of covered employees;

3 (b) The allocation of employer rights and obligations between the client and the
4 professional employer organization with respect to the covered employees;
5 and

6 (c) The assumption of responsibilities required under Sections 1 to 11 of this
7 Act by the client and the professional employer organization.

8 (8) "Professional employer organization" means any person engaged in the business
9 of providing professional employer services or conducting business as a staff
10 leasing company, registered staff leasing company, employee leasing company,
11 administrative employer, or other similar name.

12 (9) The following shall not be considered to be a "professional employer
13 organization":

14 (a) Persons providing temporary help services;

15 (b) Independent contractor arrangements by which a person assumes
16 responsibility for the product produced or service performed by such person
17 or the person's agents and retains and exercises primary direction and
18 control over the work performed by the individuals whose services are
19 supplied under such arrangements; and

20 (c) Arrangements wherein a person, whose principal business activity is not
21 entering into professional employer arrangements and which does not hold
22 itself out as a professional employer organization, shares employees with a
23 commonly owned company within the meaning of Section 414(b) and (c) of
24 the Internal Revenue Code of 1986, as amended.

25 (10) "Professional employer services" means the service of entering into a co-
26 employment relationship under Sections 1 to 11 this Act in which all or a
27 majority of the employees providing services to a client or to a division or work

1 unit of a client are covered employees.

2 (11) "Registrant" means a professional employer organization registered under
3 Sections 1 to 11 this Act.

4 (12) "Temporary help service" means services consisting of a person:

5 (a) Recruiting and hiring its own employees;

6 (b) Finding other organizations that need the services of those employees;

7 (c) Assigning those employees to perform work at or services for the other
8 organizations to support or supplement the other organizations' workforce,
9 or to provide assistance in special work situations, such as but not limited to
10 employee absences, skill shortages, seasonal workloads, or performing
11 special assignments or projects; and

12 (d) Customarily attempting to reassign the employees to other organizations
13 when they finish each assignment.

14 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
15 READ AS FOLLOWS:

16 (1) Nothing in any professional employer agreement, or in Sections 1 to 11 this Act,
17 shall:

18 (a) Affect, modify, or amend any collective bargaining agreement, or the rights
19 or obligations of any covered employee, client, or professional employer
20 organization, covered by the federal Railway Labor Act or the National
21 Labor Relations Act;

22 (b) Affect, modify, or amend any contractual relationship or restrictive
23 covenant between a covered employee and any client in effect at the time a
24 professional employer agreement becomes effective or any contractual
25 relationship or restrictive covenant that is entered into subsequently
26 between a client and a covered employee. A professional employer
27 organization shall have no responsibility or liability in connection with, or

1 arising out of, any such existing or new contractual relationship or
2 restrictive covenant unless the professional employer organization has
3 specifically agreed otherwise in writing;

4 (c) Diminish, abolish, or remove rights of covered employees to a client or
5 obligations of such client to a covered employee existing prior to the
6 effective date of the professional employer agreement;

7 (d) Create any new or additional enforceable right of a covered employee
8 against a professional employer organization that is not specifically
9 provided by the professional employer agreement or Sections 1 to 11 of this
10 Act; or

11 (e) Affect, modify, or amend any state, local, or federal licensing, registration,
12 or certification requirement applicable to any client or covered employee. A
13 covered employee who must be licensed, registered, or certified according to
14 statute or regulation is deemed solely an employee of the client for purposes
15 of any such license, registration, or certification requirement. A
16 professional employer organization shall not be deemed to engage in any
17 occupation, trade, profession, or other activity that is subject to licensing,
18 registration, or certification requirements, or is otherwise regulated by a
19 governmental entity, solely by entering into and maintaining a co-
20 employment relationship with a covered employee who is subject to such
21 requirements or regulations. A client shall have the sole right of direction
22 and control of the professional or licensed activities of a covered employee
23 and of the client's business. Such covered employees and clients shall
24 remain subject to regulation by the regulatory agency responsible for
25 licensing, registration, or certification of such covered employees or clients.

26 (2) For purposes of determining tax credits or other economic incentives provided by
27 the Commonwealth based on employment, covered employees shall be deemed

1 employees solely of the client. A client shall be entitled to the benefit of any tax
2 credit, economic incentive, or other benefit arising as the result of the
3 employment of a covered employee of such client. Notwithstanding that the
4 professional employer organization is the federal form W-2 wage and tax
5 statement reporting employer, the client shall continue to qualify for such tax
6 credit, economic incentive, or benefit. If the grant or amount of any such
7 incentive is based on the number of employees, then each client shall be treated
8 as employing only those covered employees that are co-employed by each client.
9 Covered employees working for other clients of the professional employer
10 organization shall not be counted. Each professional employer organization shall
11 provide, upon request by a client or any state agency responsible for
12 administration of any such tax credit, economic incentive, or benefit, information
13 reasonably required to support any request, claim, application, or any other
14 action by a client seeking any such tax credit, economic incentive, or benefit,
15 including wage information, and locations and duties of covered employees.

16 (3) With respect to a bid, contract, purchase order, or agreement entered into with
17 the Commonwealth or any political subdivision of the Commonwealth, a client
18 company's status or certification as a small, minority-owned, disadvantaged, or
19 woman-owned business enterprise or as a historically underutilized business is
20 not affected because the client company has entered into an agreement with or
21 uses the services of a professional employer organization.

22 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
23 READ AS FOLLOWS:

24 (1) A person engaged in providing professional employer services pursuant to a co-
25 employment relationship in which all or a majority of the employees of a client
26 are covered employees shall be registered under Sections 1 to 11 of this Act. A
27 person who is not registered under Sections 1 to 11 of this Act shall not offer or

1 provide professional employer services in this Commonwealth and shall not use
2 the names professional employer organization, PEO, staff leasing company,
3 employee leasing company, administrative employer, or any other name or title
4 representing professional employer services.

5 (2) Each applicant for registration under Sections 1 to 11 of this Act shall provide
6 the Labor Cabinet with the following:

7 (a) The name or names under which the professional employer organization
8 conducts business;

9 (b) The address of the principal place of business of the professional employer
10 organization and the address of each office it maintains in this
11 Commonwealth;

12 (c) The professional employer organization's taxpayer identification number or
13 federal and state employer identification number;

14 (d) A list by jurisdiction of each name under which the professional employer
15 organization has operated in the preceding five (5) years, including any
16 alternative names, names of predecessors, and, if known, successor
17 business entities;

18 (e) A statement of ownership, which shall include the name and evidence of the
19 business experience of any person that, individually or acting in concert
20 with one or more other persons, owns or controls, directly or indirectly,
21 twenty-five percent (25%) or more of the equity interest in the professional
22 employer organization; and

23 (f) A financial statement setting forth the financial condition of the
24 professional employer organization or professional employer organization
25 group. At the time of the initial application for a new license, the applicant
26 shall submit the most recent audit of the applicant, which shall not be older
27 than thirteen (13) months. Thereafter, a professional employer organization

1 or professional employer organization group shall file a succeeding audit
2 on an annual basis within one hundred eighty (180) days after the end of
3 the fiscal year. An applicant may apply for an extension with the Labor
4 Cabinet but any such request shall be accompanied by a letter from the
5 auditors stating the reasons for the delay and the anticipated date for
6 completion of the audit. The financial statement shall be prepared in
7 accordance with generally accepted accounting principles and audited by an
8 independent certified public accountant licensed to practice in the
9 jurisdiction in which such accountant is located, and shall be without
10 qualification as to the going concern status of the professional employer
11 organization. A professional organization group may submit combined or
12 consolidated audited financial statements to meet the requirements of this
13 paragraph. A professional employer organization that has not had
14 sufficient operating history to have audited financial statements based on at
15 least twelve (12) months of operating history must meet the requirements in
16 Section 6 of this Act and present financial statements reviewed by a certified
17 public accountant.

18 (3) Each professional employer organization operating within this Commonwealth
19 as of the effective date of this Act shall complete its initial registration no later
20 than one hundred eighty (180) days after the effective date of this Act. The initial
21 registration shall be valid until one hundred and eighty (180) days from the end
22 of the professional employer organization's first fiscal year that is more than one
23 (1) fiscal year after the effective date of this Act.

24 (4) Each professional employer organization not operating within this
25 Commonwealth as of the effective date of this Act shall complete its initial
26 registration prior to initiating operations within this Commonwealth. If a
27 professional employer organization not operating within this Commonwealth

1 becomes aware that an existing client that is not based in this Commonwealth
2 had employees and operations in this Commonwealth, the professional employer
3 organization shall either decline to provide professional employer services for
4 those employees or notify the Labor Cabinet within five (5) business days of its
5 knowledge of this fact and file a limited registration application or file a full
6 business registration if there are more than fifty (50) covered employees. The
7 Labor Cabinet may issue an interim operating permit for the period the
8 registration applications are pending if the professional employer organization is
9 currently registered or licensed by another state and the Labor Cabinet
10 determines it to be in the best interests of the potential covered employees.

11 (5) Within one hundred eighty (180) days after the end of the fiscal year, such a
12 registrant shall renew its registration by notifying the Labor Cabinet of any
13 changes in the information provided in the registrant's most recent registration
14 or renewal. A registrant's existing registration shall remain in effect during the
15 pendency of a renewal application.

16 (6) Professional employer organizations in a professional employer organization
17 group may satisfy the reporting and financial requirements of Sections 1 to 11 of
18 this Act on a combined or consolidated basis provided that each member of the
19 professional employer organization group guarantees the financial capacity
20 obligations under Sections 1 to 11 of this Act of each other member of the
21 professional employer organization group. In the case of a professional employer
22 organization group that submits a combined or consolidated audited financial
23 statement that includes entities that are not professional employer organizations
24 or that are not in the professional employer organization group, the controlling
25 entity of the professional employer organization group under the consolidated or
26 combined statement must guarantee the obligations of the professional employer
27 organizations in the professional employer organization group.

- 1 (7) (a) A professional employer organization is eligible for a limited registration
2 under Sections 1 to 11 of this Act if the professional employer organization:
3 1. Submits a properly executed request for limited registration on a form
4 provided by the Labor Cabinet;
5 2. Is domiciled outside this Commonwealth and is licensed or registered
6 as a professional employer organization in another state;
7 3. Does not maintain an office in this Commonwealth or directly solicit
8 clients located or domiciled within this Commonwealth; or
9 4. Does not have more than fifty (50) covered employees domiciled or
10 employed in this Commonwealth on any given day.
- 11 (b) A limited registration is valid for one (1) year and may be renewed.
- 12 (c) A professional employer organization seeking limited registration under
13 this subsection shall provide the Labor Cabinet with information and
14 documentation necessary to show that the professional employer
15 organization qualifies for a limited registration.
- 16 (d) Section 6 of this Act does not apply to applicants for limited registration.
- 17 (8) The Labor Cabinet shall maintain a list of professional employer organizations
18 registered pursuant to Sections 1 to 11 of this Act that is readily available to the
19 public by electronic or other means.
- 20 (9) The Labor Cabinet shall to the extent practical permit by administrative
21 regulation the acceptance of electronic filings, including applications,
22 documents, reports, and other filings required under Sections 1 to 11 of this Act.
23 The Labor Cabinet may provide for the acceptance of electronic filings and other
24 assurance by an independent and qualified assurance organization approved by
25 the secretary that provides satisfactory assurance of compliance acceptable to the
26 Labor Cabinet consistent with or in lieu of the requirements of this section and
27 Section 6 of this Act, and other requirements of Sections 1 to 11 of this Act. The

1 secretary shall permit a professional employer organization to authorize such an
2 approved assurance organization to act on behalf of the professional employer
3 organization in complying with the registration requirements of Sections 1 to 11
4 of this Act, including electronic filings of information and payment of
5 registration fees. Use of such an approved assurance organization shall be
6 optional for a registrant. Nothing in this subsection shall limit or change the
7 Labor Cabinet's authority to register or terminate registration of a professional
8 employer organization or to investigate or enforce any provision of Sections 1 to
9 11 of this Act.

10 (10) All records, reports, and other information obtained from a professional
11 employer organization under Sections 1 to 11 of this Act, except to the extent
12 necessary for the proper administration of Sections 1 to 11 of this Act by the
13 Labor Cabinet, shall be confidential and shall not be published or open to public
14 inspection other than to public employees in the performance of their public
15 duties.

16 (11) The Labor Cabinet may promulgate administrative regulations and prescribe
17 forms necessary to promote the efficient administration of this section.

18 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) Upon filing an initial registration statement pursuant to Sections 1 to 11 of this
21 Act, a professional employer organization shall pay an initial registration fee not
22 to exceed five hundred dollars (\$500).

23 (2) Upon each annual renewal of a registration statement filed under Sections 1 to
24 11 of this Act, a professional employer organization shall pay a renewal fee not to
25 exceed two hundred fifty dollars (\$250).

26 (3) The Labor Cabinet shall determine by administrative regulation any fee to be
27 charged for initial registration, annual registration renewal, limited registration,

1 and group registration.

2 (4) Each professional employer organization seeking limited registration under
 3 Section 4 of this Act shall pay a fee in the amount not to exceed two hundred fifty
 4 dollars (\$250) upon initial application for the limited registration and upon each
 5 annual renewal of limited registration.

6 (5) No fee charged pursuant to Sections 1 to 11 of this Act shall exceed the amount
 7 reasonably necessary for the administration of Sections 1 to 11 of this Act.

8 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
 9 READ AS FOLLOWS:

10 Except as provided in Section 4 of this Act, each professional employer organization or
 11 collectively each professional employer organization group shall either:

12 (1) Maintain positive working capital as indicated by current assets minus current
 13 liabilities and defined by generally accepted accounting principles at registration
 14 as reflected in the financial statements submitted to the Labor Cabinet with the
 15 initial registration; or

16 (2) Provide a bond, irrevocable letter of credit, or securities with a minimum market
 17 value equaling the deficiency plus one hundred thousand dollars (\$100,000) to
 18 the Labor Cabinet if the professional employer organization or professional
 19 employer organization group does not have positive working capital. The bond
 20 shall be held by a depository designated by the Labor Cabinet, securing payment
 21 by the professional employer organization of all taxes, wages, benefits, or other
 22 entitlement due to or with respect to covered employees should the professional
 23 employer organization fail to make payments when due.

24 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
 25 READ AS FOLLOWS:

26 (1) Except as specifically provided in Sections 1 to 11 of this Act, or in a professional
 27 employer agreement, in each co-employment relationship:

- 1 (a) The client shall be entitled to exercise all rights, and shall be obligated to
2 perform all duties and responsibilities, otherwise applicable to an employer
3 in an employment relationship;
- 4 (b) The professional employer organization shall be entitled to exercise only
5 those rights, and shall be obligated to perform only those duties and
6 responsibilities, specifically required by Sections 1 to 11 of this Act or set
7 forth in the professional employer agreement. The rights, duties, and
8 obligations of the professional employer organization as co-employer with
9 respect to any covered employee shall be limited to those arising out of the
10 professional employer agreement and Sections 1 to 11 of this Act during the
11 term of co-employment by the professional employer organization of the
12 covered employee; and
- 13 (c) Unless otherwise expressly agreed by the professional employer
14 organization and the client in a professional employer agreement, the client
15 retains the exclusive right to direct and control the covered employees as
16 necessary to conduct the client's business, to discharge any of the client's
17 fiduciary responsibilities, or to comply with any licensure requirements
18 applicable to the client of the covered employees.
- 19 (2) Except as otherwise provided in Sections 1 to 11 of this Act, the co-employment
20 relationship between the client and the professional employer organization, and
21 between each co-employer and each covered employee, shall be governed by the
22 professional employer agreement. Each professional employer agreement shall:
- 23 (a) Include the allocation of rights, duties, and obligations as set forth in
24 subsection (1) of this section;
- 25 (b) Provide that the professional employer organization shall have
26 responsibility to pay wages to covered employees; to withhold, collect, report
27 and remit payroll and unemployment taxes; and, to the extent the

- 1 professional employer organization has assumed responsibility in the
2 professional employer agreement, to make payments for employee benefits
3 for covered employees as a result of the outsourcing of payroll duty to the
4 professional employer organization by the client. As used in this paragraph,
5 "wages" does not include any obligation between a client and a covered
6 employee for payments beyond or in addition to the covered employee's
7 salary, draw or regular rate of pay such as bonuses, commissions, severance
8 pay, deferred compensation, profit sharing, or vacation, sick, or other paid
9 time off, unless the professional employer organization has expressly agreed
10 to assume liability for payments in the professional employer agreement;
11 (c) Provide that the professional employer organization shall have a right to
12 hire, discipline, and terminate a covered employee as may be necessary to
13 fulfill the professional employer organization's responsibilities under
14 Section 1 to 11 of this Act and the professional employer agreement. The
15 client shall have a right to hire, discipline, and terminate a covered
16 employee; and
17 (d) Provide that the responsibility to obtain and maintain workers'
18 compensation coverage for covered employees from a carrier licensed to do
19 business in this Commonwealth and otherwise in compliance with all
20 applicable requirements shall be specifically allocated to either the client or
21 the professional employer organization in the professional employment
22 agreement.
23 (3) A professional employer organization shall provide written notice to each covered
24 employee affected by a professional employer agreement entered into by a
25 professional employer organization. The notice shall set forth the general nature
26 of the co-employment relationship between and among the professional employer
27 organization, the client, and the covered employees.

1 (4) Except to the extent otherwise expressly provided by the applicable professional
2 employer agreement:

3 (a) A client shall be solely responsible for the quality, adequacy, or safety of the
4 goods or services produced or sold in client's business;

5 (b) A client shall be solely responsible for directing, supervising, training, and
6 controlling the work of the covered employees with respect to the business
7 activities of the client and solely responsible for the acts, errors, or
8 omissions of the covered employees with regard to these activities;

9 (c) A client shall not be liable for the acts, errors, or omissions of a
10 professional employer organization, or of any covered employee of the client
11 and a professional employer organization when the covered employee is
12 acting under the express direction and control of the professional employer
13 organization;

14 (d) A professional employer organization shall not be liable for the acts, errors,
15 or omissions of a client or of any covered employee of the client when the
16 covered employee is acting under the express direction and control of the
17 client;

18 (e) Nothing in this subsection shall serve to limit any contractual liability or
19 obligation specifically provided in the written professional employer
20 agreement; and

21 (f) A covered employee is not, solely as a result of being a covered employee of
22 a professional employer organization, an employee of the professional
23 employer organization for the purposes of general liability insurance,
24 fidelity bonds, surety bonds, employer's liability which is not covered by
25 workers' compensation, or liquor liability insurance carried by the
26 professional employer organization unless the covered employees are
27 included by specific reference in the professional employer agreement and

1 applicable prearranged employment contract, insurance contract, or bond.

2 (5) A professional employer organization under Sections 1 to 11 of this Act is not
3 engaged in the sale of insurance or in acting as a third-party administrator by
4 offering, marketing, selling, administering, or providing professional employer
5 services which include services and employee benefit plans for covered
6 employees.

7 (6) For purposes of the Commonwealth or any city, county, or other political
8 subdivision thereof:

9 (a) Covered employees whose services are subject to sales tax shall be deemed
10 the employees of the client for purposes of collecting and levying sales tax
11 on the services performed by the covered employee. Nothing contained in
12 Sections 1 to 11 of this Act shall relieve a client of any sales tax liability
13 with respect to its goods or services;

14 (b) Any tax or assessment imposed upon professional employer services or any
15 business license or other fee which is based upon gross receipts shall allow
16 a deduction for the gross income or receipts of the business derived from
17 performing professional employer services that is equal to that portion of
18 the fee charged to a client that represents the actual cost of wages and
19 salaries, benefits, workers' compensation, payroll taxes, withholding, or
20 other assessments paid to or on behalf of a covered employee by the
21 professional employer organization under a professional employer
22 agreement;

23 (c) Any tax or assessment or mandated expenditure on a per capita or per
24 employee basis shall be assessed against the client for covered employees
25 and against the professional employer organization for its employees who
26 are not covered employees co-employed with a client. Benefits or monetary
27 consideration that meet the requirements of mandates imposed on a client

1 and that are received by covered employees through the professional
2 employer organization either through payroll or through benefit plans
3 sponsored by the professional employer organization shall be credited
4 against the client's obligation to fulfill the mandates; and

5 (d) In the case of a tax or assessment imposed or calculated upon the basis of
6 total payroll, the professional employer organization shall be eligible to
7 apply any small business allowance or exemption available to the client for
8 the covered employees for purpose of commuting the tax.

9 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
10 READ AS FOLLOWS:

11 (1) A client and a registered professional employer organization shall each be
12 deemed an employer under the laws of this Commonwealth for purposes of
13 sponsoring retirement and welfare benefits plans for its covered employees.

14 (2) A fully insured welfare benefit plan offered to the covered employees of a single
15 professional employer organization shall be treated for the purposes of state law
16 as a single employer welfare benefit plan.

17 (3) A professional employer organization shall be considered the employer of all of
18 its covered employees, and all covered employees of one (1) or more clients
19 participating in a health benefit plan sponsored by a single professional employer
20 organization shall be considered employees of that professional employer
21 organization.

22 (4) If a professional employer organization offers to its covered employees any health
23 benefit plan which is not fully insured by an authorized insurer, the plan shall:

24 (a) Utilize a third-party administrator licensed to do business in this
25 Commonwealth;

26 (b) Hold all plan assets, including participant contributions, in a trust account
27 consistent with the requirements of Section 403 of the federal Employee

1 Retirement Income Security Act of 1974; and
2 (c) Comply with the provisions of KRS 304.17A-800 to 304.17A-846 and all
3 other applicable requirements of state or federal law.

4 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) The responsibility to obtain and maintain workers' compensation coverage for
7 covered employees in compliance with the provisions of Chapter 342 shall be
8 specifically allocated in the professional employer agreement to either the client
9 or the professional employer organization.

10 (2) Coverage for both the directly employed workers of a client and the covered
11 employees of that client shall be all in the residual market or all in the voluntary
12 market.

13 (a) Workers' compensation coverage for covered employees in the voluntary
14 market may be obtained either by the client through a standard workers'
15 compensation policy or duly authorized self-insurance or by the
16 professional employer organization through a duly authorized self-
17 insurance insurance program, a master policy issued to the professional
18 employer organization by a carrier authorized to do business in this
19 Commonwealth, or a multiple coordinated policy issued by a carrier
20 authorized to do business in this Commonwealth in the name of the
21 professional employer organization or the client. A carrier providing
22 coverage through the professional employer organization or a professional
23 employer organization authorized to self-insure shall report to the
24 appropriate state and rating authorities such client-based information as is
25 necessary to maintain the client's experience rating.

26 (b) Workers' compensation for covered employees in the residual market may
27 be obtained either by the client through a residual market policy or by the

1 professional employer organization through a multiple coordinated policy
2 in either the name of the professional employer organization or the client
3 that provides to the appropriate state and rating authorities the client-based
4 information satisfactory to maintain the client's experience rating.

5 (3) Both the client and the professional employer organization shall be considered
6 the employer for purposes of coverage under Chapter 342. The protections of the
7 exclusive remedy provision of KRS 342.690 shall apply to the professional
8 employer organization, the client, and to all covered employees and other
9 employees of the client irrespective of which co-employer obtains workers'
10 compensation coverage.

11 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) For the purposes of KRS Chapter 341, covered employees of a registered
14 professional employer organization shall be considered employees of the
15 professional employer organization, which shall be responsible for the payment
16 of contributions, penalties, and interest on wages paid by the professional
17 employer organization to its covered employees during the term of the applicable
18 professional employer agreement.

19 (2) The professional employer organization shall report and pay all required
20 contributions to the unemployment insurance fund using the state employer
21 identification number and the contribution rate of the professional employer
22 organization.

23 (3) Upon the termination of a contract between a professional employer organization
24 and a client or the failure of a professional employer organization to submit
25 reports or make tax payments as required by Sections 1 to 11 of this Act, the
26 client shall be treated as a new employer without a previous experience record
27 unless that client is otherwise eligible for an experience rating.

1 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) A person shall not knowingly:

4 (a) Offer or provide professional employer services or use the names
5 professional employer organization, PEO, staff leasing, employee leasing,
6 administrative employer, or other title representing professional employer
7 services without first becoming registered under Sections 1 to 11 of this Act;
8 or

9 (b) Provide false or fraudulent information to the Labor Cabinet in
10 conjunction with any registration, renewal, or in any report required under
11 Sections 1 to 11 of this Act.

12 (2) Action may be taken by the Labor Cabinet:

13 (a) Against any person for violation of subsection (1) of this section;

14 (b) Against a professional employer organization or the controlling person of a
15 professional employer organization upon the conviction of a professional
16 employer organization or the controlling person of a professional employer
17 organization of a crime that relates to the operation of the professional
18 employer organization or the ability of the registrant or the controlling
19 person of the registrant to operate the professional employer organization;

20 (c) Against a professional employer organization or the controlling person of a
21 professional employer organization for knowingly making a material
22 misrepresentation to the Labor Cabinet or any other state agency; or

23 (d) Against a professional employer organization or the controlling person of a
24 professional employer organization for a willful violation of Sections 1 to 11
25 of this Act or any order or administrative regulation issued by the Labor
26 Cabinet under the provisions of Sections 1 to 11 of this Act.

27 (3) Upon finding that a professional employer organization or the controlling person

1 of a professional employer organization has violated any provision of Sections 1
 2 to 11 this Act, the Labor Cabinet may:

3 (a) Deny an application for a license;

4 (b) Revoke, restrict, or refuse a license;

5 (c) Impose a civil penalty not to exceed one thousand dollars (\$1,000) for each
 6 violation;

7 (d) Place a license on probation and subject to conditions specified by the
 8 Labor Cabinet; or

9 (e) Issue a cease and desist order.

10 ➔Section 12. KRS 336.990 is amended to read as follows:

11 (1) Upon proof that any person employed by the Labor Cabinet as a labor inspector has
 12 taken any part in any strike, lockout or similar labor dispute, the person shall forfeit
 13 his or her office.

14 (2) The following civil penalties shall be imposed, in accordance with the provisions in
 15 KRS 336.985, for violations of the provisions of this chapter:

16 (a) Any person who violates KRS 336.110, ~~or~~ 336.130, or Section 11 of this
 17 Act shall for each offense be assessed a civil penalty of not less than one
 18 hundred dollars (\$100) nor more than one thousand dollars (\$1,000);

19 (b) Any corporation, association, organization, or person that violates KRS
 20 336.190 and 336.200 shall be assessed a civil penalty of not less than one
 21 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each
 22 offense. Each act of violation, and each day during which such an agreement
 23 remains in effect, shall constitute a separate offense;

24 (c) Any employer who violates the provisions of KRS 336.220 shall be assessed a
 25 civil penalty of not less than one hundred dollars (\$100) nor more than one
 26 thousand dollars (\$1,000) for each violation; and

27 (d) Any labor organization who violates KRS 336.135 shall be assessed a civil

1 penalty of not less than one hundred dollars (\$100) nor more than one
2 thousand dollars (\$1,000) for each offense.

3 (3) Any labor organization, employer, or other person who directly or indirectly
4 violates KRS 336.130(3) shall be guilty of a Class A misdemeanor.

5 (4) Any person aggrieved as a result of any violation or threatened violation of KRS
6 336.130(3) may seek abatement of the violation or threatened violation by
7 petitioning a court of competent jurisdiction for injunctive relief and shall be
8 entitled to costs and reasonable attorney fees if he or she prevails in the action.

9 (5) Any person injured as a result of any violation or threatened violation of KRS
10 336.130(3) may recover all damages resulting from the violation or threatened
11 violation and shall be entitled to costs and reasonable attorney fees if he or she
12 prevails in the action.

13 **(6) Any person who violates the provisions of subsection (1) of Section 11 of this Act**
14 **shall be guilty of a Class A misdemeanor.**

15 ➔Section 13. KRS 342.0011 is amended to read as follows:

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

17 (1) "Injury" means any work-related traumatic event or series of traumatic events,
18 including cumulative trauma, arising out of and in the course of employment which
19 is the proximate cause producing a harmful change in the human organism
20 evidenced by objective medical findings. "Injury" does not include the effects of the
21 natural aging process, and does not include any communicable disease unless the
22 risk of contracting the disease is increased by the nature of the employment.
23 "Injury" when used generally, unless the context indicates otherwise, shall include
24 an occupational disease and damage to a prosthetic appliance, but shall not include
25 a psychological, psychiatric, or stress-related change in the human organism, unless
26 it is a direct result of a physical injury;

27 (2) "Occupational disease" means a disease arising out of and in the course of the

- 1 employment;
- 2 (3) An occupational disease as defined in this chapter shall be deemed to arise out of
3 the employment if there is apparent to the rational mind, upon consideration of all
4 the circumstances, a causal connection between the conditions under which the
5 work is performed and the occupational disease, and which can be seen to have
6 followed as a natural incident to the work as a result of the exposure occasioned by
7 the nature of the employment and which can be fairly traced to the employment as
8 the proximate cause. The occupational disease shall be incidental to the character of
9 the business and not independent of the relationship of employer and employee. An
10 occupational disease need not have been foreseen or expected but, after its
11 contraction, it must appear to be related to a risk connected with the employment
12 and to have flowed from that source as a rational consequence;
- 13 (4) "Injurious exposure" shall mean that exposure to occupational hazard which would,
14 independently of any other cause whatsoever, produce or cause the disease for
15 which the claim is made;
- 16 (5) "Death" means death resulting from an injury or occupational disease;
- 17 (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the
18 liability of employers under this chapter and includes a self-insurer;
- 19 (7) "Self-insurer" is an employer who has been authorized under the provisions of this
20 chapter to carry his own liability on his employees covered by this chapter;
- 21 (8) "Department" means the Department of Workers' Claims in the Labor Cabinet;
- 22 (9) "Commissioner" means the commissioner of the Department of Workers' Claims
23 under the direction and supervision of the secretary of the Labor Cabinet;
- 24 (10) "Board" means the Workers' Compensation Board;
- 25 (11) (a) "Temporary total disability" means the condition of an employee who has not
26 reached maximum medical improvement from an injury and has not reached a
27 level of improvement that would permit a return to employment;

- 1 (b) "Permanent partial disability" means the condition of an employee who, due to
2 an injury, has a permanent disability rating but retains the ability to work; and
- 3 (c) "Permanent total disability" means the condition of an employee who, due to
4 an injury, has a permanent disability rating and has a complete and permanent
5 inability to perform any type of work as a result of an injury, except that total
6 disability shall be irrebuttably presumed to exist for an injury that results in:
- 7 1. Total and permanent loss of sight in both eyes;
 - 8 2. Loss of both feet at or above the ankle;
 - 9 3. Loss of both hands at or above the wrist;
 - 10 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at
11 or above the wrist;
 - 12 5. Permanent and complete paralysis of both arms, both legs, or one (1)
13 arm and one (1) leg;
 - 14 6. Incurable insanity or imbecility; or
 - 15 7. Total loss of hearing;
- 16 (12) "Income benefits" means payments made under the provisions of this chapter to the
17 disabled worker or his dependents in case of death, excluding medical and related
18 benefits;
- 19 (13) "Medical and related benefits" means payments made for medical, hospital, burial,
20 and other services as provided in this chapter, other than income benefits;
- 21 (14) "Compensation" means all payments made under the provisions of this chapter
22 representing the sum of income benefits and medical and related benefits;
- 23 (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical
24 rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- 25 (16) "Person" means any individual, partnership, limited partnership, limited liability
26 company, firm, association, trust, joint venture, corporation, or legal representative
27 thereof;

- 1 (17) "Wages" means, in addition to money payments for services rendered, the
2 reasonable value of board, rent, housing, lodging, fuel, or similar advantages
3 received from the employer, and gratuities received in the course of employment
4 from persons other than the employer as evidenced by the employee's federal and
5 state tax returns;
- 6 (18) "Agriculture" means the operation of farm premises, including the planting,
7 cultivation, producing, growing, harvesting, and preparation for market of
8 agricultural or horticultural commodities thereon, the raising of livestock for food
9 products and for racing purposes, and poultry thereon, and any work performed as
10 an incident to or in conjunction with the farm operations, including the sale of
11 produce at on-site markets and the processing of produce for sale at on-site markets.
12 It shall not include the commercial processing, packing, drying, storing, or canning
13 of such commodities for market, or making cheese or butter or other dairy products
14 for market;
- 15 (19) "Beneficiary" means any person who is entitled to income benefits or medical and
16 related benefits under this chapter;
- 17 (20) "United States," when used in a geographic sense, means the several states, the
18 District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the
19 territories of the United States;
- 20 (21) "Alien" means a person who is not a citizen, a national, or a resident of the United
21 States or Canada. Any person not a citizen or national of the United States who
22 relinquishes or is about to relinquish his residence in the United States shall be
23 regarded as an alien;
- 24 (22) "Insurance carrier" means every insurance carrier or insurance company authorized
25 to do business in the Commonwealth writing workers' compensation insurance
26 coverage and includes the Kentucky Employers Mutual Insurance Authority and
27 every self-insured group operating under the provisions of this chapter;

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

7 (b) "Engaged in severance or processing of coal" shall include all individuals,
8 partnerships, limited partnerships, limited liability companies, corporations,
9 joint ventures, associations, or any other business entity in the Commonwealth
10 which has employees on its payroll who perform any of the acts stated in
11 paragraph (a) of this subsection, regardless of whether the acts are performed
12 as owner of the coal or on a contract or fee basis for the actual owner of the
13 coal. A business entity engaged in the severance or processing of coal,
14 including but not limited to administrative or selling functions, shall be
15 considered wholly engaged in the severance or processing of coal for the
16 purpose of this chapter. However, a business entity which is engaged in a
17 separate business activity not related to coal, for which a separate premium
18 charge is not made, shall be deemed to be engaged in the severance or
19 processing of coal only to the extent that the number of employees engaged in
20 the severance or processing of coal bears to the total number of employees.
21 Any employee who is involved in the business of severing or processing of
22 coal and business activities not related to coal shall be prorated based on the
23 time involved in severance or processing of coal bears to his total time;

24 (24) "Premium" for every self-insured group means any and all assessments levied on its
25 members by such group or contributed to it by the members thereof. For special
26 fund assessment purposes, "premium" also includes any and all membership dues,
27 fees, or other payments by members of the group to associations or other entities

1 used for underwriting, claims handling, loss control, premium audit, actuarial, or
2 other services associated with the maintenance or operation of the self-insurance
3 group;

4 (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for
5 insurance companies means direct written premiums as reported in the annual
6 statement to the Department of Insurance by insurance companies, except that
7 "premiums received" includes premiums charged off or deferred, and, on
8 insurance policies or other evidence of coverage with provisions for
9 deductibles, the calculated cost for coverage, including experience
10 modification and premium surcharge or discount, prior to any reduction for
11 deductibles. The rates, factors, and methods used to calculate the cost for
12 coverage under this paragraph for insurance policies or other evidence of
13 coverage with provisions for deductibles shall be the same rates, factors, and
14 methods normally used by the insurance company in Kentucky to calculate the
15 cost for coverage for insurance policies or other evidence of coverage without
16 provisions for deductibles, except that, for insurance policies or other
17 evidence of coverage with provisions for deductibles effective on or after
18 January 1, 1995, the calculated cost for coverage shall not include any
19 schedule rating modification, debits, or credits. For policies with provisions
20 for deductibles with effective dates on or after January 1, 1995, assessments
21 shall be imposed on premiums received as calculated by the deductible
22 program adjustment. The cost for coverage calculated under this paragraph by
23 insurance companies that issue only deductible insurance policies in Kentucky
24 shall be actuarially adequate to cover the entire liability of the employer for
25 compensation under this chapter, including all expenses and allowances
26 normally used to calculate the cost for coverage. For policies with provisions
27 for deductibles with effective dates of May 6, 1993, through December 31,

1 1993, for which the insurance company did not report premiums and remit
2 special fund assessments based on the calculated cost for coverage prior to the
3 reduction for deductibles, "premiums received" includes the initial premium
4 plus any reimbursements invoiced for losses, expenses, and fees charged
5 under the deductibles. The special fund assessment rates in effect for
6 reimbursements invoiced for losses, expenses, or fees charged under the
7 deductibles shall be those percentages in effect on the effective date of the
8 insurance policy. For policies covering covered~~leased~~ employees having a
9 co-employment relationship with a professional employer organization and
10 a client as defined in Section 2 of this Act~~[KRS 342.615]~~, "premiums
11 received" means premiums calculated using the experience modification
12 factor of each client~~lessee~~ as defined in Section 2 of this Act~~[KRS 342.615]~~
13 for each covered~~leased~~ employee for that portion of the payroll pertaining to
14 the covered~~leased~~ employee.

15 (b) "Direct written premium" for insurance companies means the gross premium
16 written less return premiums and premiums on policies not taken but
17 including policy and membership fees.

18 (c) "Premium," for policies effective on or after January 1, 1994, for insurance
19 companies means all consideration, whether designated as premium or
20 otherwise, for workers' compensation insurance paid to an insurance company
21 or its representative, including, on insurance policies with provisions for
22 deductibles, the calculated cost for coverage, including experience
23 modification and premium surcharge or discount, prior to any reduction for
24 deductibles. The rates, factors, and methods used to calculate the cost for
25 coverage under this paragraph for insurance policies or other evidence of
26 coverage with provisions for deductibles shall be the same rates, factors, and
27 methods normally used by the insurance company in Kentucky to calculate the

1 cost for coverage for insurance policies or other evidence of coverage without
2 provisions for deductibles, except that, for insurance policies or other
3 evidence of coverage with provisions for deductibles effective on or after
4 January 1, 1995, the calculated cost for coverage shall not include any
5 schedule rating modifications, debits, or credits. For policies with provisions
6 for deductibles with effective dates on or after January 1, 1995, assessments
7 shall be imposed as calculated by the deductible program adjustment. The cost
8 for coverage calculated under this paragraph by insurance companies that
9 issue only deductible insurance policies in Kentucky shall be actuarially
10 adequate to cover the entire liability of the employer for compensation under
11 this chapter, including all expenses and allowances normally used to calculate
12 the cost for coverage. For policies with provisions for deductibles with
13 effective dates of May 6, 1993, through December 31, 1993, for which the
14 insurance company did not report premiums and remit special fund
15 assessments based on the calculated cost for coverage prior to the reduction
16 for deductibles, "premium" includes the initial consideration plus any
17 reimbursements invoiced for losses, expenses, or fees charged under the
18 deductibles.

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

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

- 24 1. Schedule rating modifications, debits, or credits;
- 25 2. Deductible credits; or
- 26 3. Modifications to the cost of coverage from inception through and
27 including any audit that are based on negotiated retrospective rating

1 arrangements, including but not limited to large risk alternative rating
2 options;

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

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

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

13 (a) The base period shall be the earliest three (3) calendar years of the five (5)
14 calendar years immediately preceding the calendar year for which the
15 calculation is made. The commissioner shall identify each claim of the
16 employer which has an injury date or date of last injurious exposure to the
17 cause of an occupational disease during each one (1) of the three (3) calendar
18 years to be used as the base, and shall assign a value to each claim. The value
19 shall be the total of the indemnity benefits paid to date and projected to be
20 paid, adjusted to current benefit levels, plus the medical benefits paid to date
21 and projected to be paid for the life of the claim, plus the cost of medical and
22 vocational rehabilitation paid to date and projected to be paid. Adjustment to
23 current benefit levels shall be done by multiplying the weekly indemnity
24 benefit for each claim by the number obtained by dividing the statewide
25 average weekly wage which will be in effect for the year for which the
26 premium is being calculated by the statewide average weekly wage in effect
27 during the year in which the injury or date of the last exposure occurred. The

1 total value of the claims using the adjusted weekly benefit shall then be
2 calculated by the commissioner. Values for claims in which awards have been
3 made or settlements reached because of findings of permanent partial or
4 permanent total disability shall be calculated using the mortality and interest
5 discount assumptions used in the latest available statistical plan of the
6 advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The
7 sum of all calculated values shall be computed for all claims in the base
8 period;

9 (b) The commissioner shall obtain the annual payroll for each of the three (3)
10 years in the base period for each employer carrying his own risk from records
11 of the department and from the records of the Department of Workforce
12 Investment, Education and Workforce Development Cabinet. The
13 commissioner shall multiply each of the three (3) years of payroll by the
14 number obtained by dividing the statewide average weekly wage which will
15 be in effect for the year in which the premium is being calculated by the
16 statewide average weekly wage in effect in each of the years of the base
17 period;

18 (c) The commissioner shall divide the total of the adjusted claim values for the
19 three (3) year base period by the total adjusted payroll for the same three (3)
20 year period. The value so calculated shall be multiplied by 1.25 and shall then
21 be multiplied by the employer's most recent annualized payroll, calculated
22 using records of the department and the Department of Workforce Investment
23 data which shall be made available for this purpose on a quarterly basis as
24 reported, to obtain the premium for the next calendar year for assessment
25 purposes under KRS 342.122;

26 (d) For November 1, 1987, through December 31, 1988, premium for each
27 employer carrying its own risk shall be an amount calculated by the board

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

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

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

- 1 (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated
2 as set forth in this subsection; and
- 3 (h) Notwithstanding any other provision of this subsection, the premium of any
4 employer authorized to carry its own risk for purposes of assessments due
5 under this chapter shall be no less than thirty cents (\$0.30) per one hundred
6 dollars (\$100) of the employer's most recent annualized payroll for employees
7 covered by this chapter;
- 8 (29) "SIC code" as used in this chapter means the Standard Industrial Classification
9 Code contained in the latest edition of the Standard Industrial Classification Manual
10 published by the Federal Office of Management and Budget;
- 11 (30) "Investment interest" means any pecuniary or beneficial interest in a provider of
12 medical services or treatment under this chapter, other than a provider in which that
13 pecuniary or investment interest is obtained on terms equally available to the public
14 through trading on a registered national securities exchange, such as the New York
15 Stock Exchange or the American Stock Exchange, or on the National Association of
16 Securities Dealers Automated Quotation System;
- 17 (31) "Managed health care system" means a health care system that employs gatekeeper
18 providers, performs utilization review, and does medical bill audits;
- 19 (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists,
20 podiatrists, and osteopathic and chiropractic practitioners acting within the scope of
21 their license issued by the Commonwealth;
- 22 (33) "Objective medical findings" means information gained through direct observation
23 and testing of the patient applying objective or standardized methods;
- 24 (34) "Work" means providing services to another in return for remuneration on a regular
25 and sustained basis in a competitive economy;
- 26 (35) "Permanent impairment rating" means percentage of whole body impairment caused
27 by the injury or occupational disease as determined by the "Guides to the Evaluation

1 of Permanent Impairment";

2 (36) "Permanent disability rating" means the permanent impairment rating selected by an
3 administrative law judge times the factor set forth in the table that appears at KRS
4 342.730(1)(b); and

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

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

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

10 ➔Section 14. KRS 342.990 is amended to read as follows:

11 (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed
12 in this section.

13 (2) When the commissioner receives information that he or she deems sufficient to
14 determine that a violation of this chapter has occurred, he or she shall seek civil
15 penalties pursuant to subsections (3) to (7) of this section, criminal penalties
16 pursuant to subsections (8) and (9) of this section, or both.

17 (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously
18 citing the appropriate party for the offense and stating the civil penalty to be paid.

19 (4) If, within fifteen (15) working days from the receipt of the citation, a cited party
20 fails to notify the commissioner that he or she intends to contest the citation, then
21 the citation shall be deemed final.

22 (5) If a cited party notifies the commissioner that he or she intends to challenge a
23 citation issued under this section, the commissioner shall cause the matter to be
24 heard as soon as practicable by an administrative law judge and in accordance with
25 the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney
26 representing the commissioner to prove the offense stated in the citation by a
27 preponderance of the evidence. The parties shall stipulate to uncontested facts and

1 issues prior to the hearing before the administrative law judge. The administrative
2 law judge shall issue a ruling within sixty (60) days following the hearing.

3 (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit
4 Court in conformity with KRS 13B.140.

5 (7) The following civil penalties shall be applicable for violations of particular
6 provisions of this chapter:

7 (a) Any employer, insurer, or payment obligor subject to this chapter who fails to
8 make a report required by KRS 342.038 within fifteen (15) days from the date
9 it was due, shall be fined not less than one hundred dollars (\$100) nor more
10 than one thousand dollars (\$1,000) for each offense;

11 (b) Any employer, insurer, or payment obligor acting on behalf of an employer
12 who fails to make timely payment of a statement for services under KRS
13 342.020(4) without having reasonable grounds to delay payment may be fined
14 not less than one hundred dollars (\$100) nor more than one thousand dollars
15 (\$1,000) for each offense;

16 (c) Any person who violates KRS 342.020(12), 342.035(2), 342.040, 342.340,
17 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars
18 (\$100) nor more than one thousand dollars (\$1,000) for each offense. With
19 respect to employers who fail to maintain workers' compensation insurance
20 coverage on their employees, each employee of the employer and each day of
21 violation shall constitute a separate offense. With respect to KRS 342.040, any
22 employer's insurance carrier or other party responsible for the payment of
23 workers' compensation benefits shall be fined for failure to notify the
24 commissioner of a failure to make payments when due if a report indicating
25 the reason payment of income benefits did not commence within twenty-one
26 (21) days of the date the employer was notified of an alleged work-related
27 injury or disease is not filed with the commissioner within twenty-one (21)

- 1 days of the date the employer received notice, and if the employee has not
2 returned to work within that period of time. The date of notice indicated in the
3 report filed with the department pursuant to KRS 342.038(1), shall raise a
4 rebuttable presumption of the date on which the employer received notice;
- 5 (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
6 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two
7 hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each
8 offense. With respect to KRS 342.395, each required notice of rejection form
9 executed by an employee or potential employee of an employer shall
10 constitute a separate offense;
- 11 (e) Any person who fails to comply with the data reporting provisions of
12 administrative regulations promulgated by the commissioner pursuant to KRS
13 342.039, or with utilization review and medical bill audit administrative
14 regulations promulgated pursuant to KRS 342.035(5), shall be fined not less
15 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
16 for each violation;
- 17 (f) Except as provided in paragraph (g) of this subsection, a person who violates
18 any of the provisions of KRS 342.335(1) or (2) where the claim,
19 compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less
20 than or equal to three hundred dollars (\$300) shall be fined per occurrence not
21 more than one thousand dollars (\$1,000) per individual nor five thousand
22 dollars (\$5,000) per corporation, or twice the amount of gain received as a
23 result of the violation, whichever is greater;
- 24 (g) Any person who violates any of the provisions of KRS 342.335(1) or (2)
25 where the claim, compensation, benefit, or money referred to in KRS
26 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per
27 occurrence not more than five thousand dollars (\$5,000) per individual nor ten

- 1 thousand dollars (\$10,000) per corporation, or twice the amount of gain
2 received as a result of the violation, whichever is greater;
- 3 (h) Any person who violates the employee leasing provision of this chapter shall
4 be fined not less than five hundred dollars (\$500) nor more than five thousand
5 dollars (\$5,000) for each violation;
- 6 (i) Any violation of the provisions of this chapter relating to self-insureds shall
7 constitute grounds for decertification of such self-insured, a fine of not less
8 than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000)
9 per occurrence, or both; and
- 10 (j) Actions to collect the civil penalties imposed under this subsection shall be
11 instituted in the Franklin District Court and the Franklin Circuit Court.
- 12 (8) The commissioner shall initiate enforcement of a criminal penalty by causing a
13 complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to
14 act on the violation within twenty (20) days following the filing of the complaint,
15 the commissioner shall certify the inaction by the local prosecutor to the Attorney
16 General who shall initiate proceedings to prosecute the violation. The provisions of
17 KRS 15.715 shall not apply to this section.
- 18 (9) The following criminal penalties shall be applicable for violations of particular
19 provisions of this chapter:
- 20 (a) Any person who violates KRS 342.020(12), 342.035(2), 342.040, 342.400,
21 342.420, or 342.630, shall, for each offense, be fined not less than one
22 hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or
23 imprisoned for not less than thirty (30) days nor more than one hundred eighty
24 (180) days, or both;
- 25 (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
26 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than
27 two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or

1 imprisoned for not less than thirty (30) days nor more than one hundred and
2 eighty (180) days, or both; **and**

3 (c) ~~[Any corporation, partnership, sole proprietorship, or other form of business
4 entity and any officer, general partner, agent, or representative of the
5 foregoing who knowingly utilizes or participates in any employee leasing
6 arrangement or mechanism as defined in KRS 342.615 for the purpose of
7 depriving one (1) or more insurers of premium otherwise properly payable or
8 for the purpose of depriving the Commonwealth of any tax or assessment due
9 and owing and based upon said premium shall upon conviction thereof be
10 subject to a fine of not less than five hundred dollars (\$500) nor more than
11 five thousand dollars (\$5,000), or imprisonment for not more than one
12 hundred eighty (180) days, or both, for each offense; and~~

13 ~~(d)~~ Notwithstanding any other provisions of this chapter to the contrary, when
14 any employer, insurance carrier, or individual self-insured fails to comply with
15 this chapter for which a penalty is provided in subparagraphs (7), (8), and (9)
16 above, such person, if the person is an owner in the case of a sole
17 proprietorship, a partner in the case of a partnership, a principal in the case of
18 a limited liability company, or a corporate officer in the case of a corporation,
19 who knowingly authorized, ordered, or carried out the violation, failure, or
20 refusal shall be personally and individually liable, both jointly and severally,
21 for the penalties imposed in the above cited subparagraphs. Neither the
22 dissolution nor withdrawal of the corporation, partnership, or other entity from
23 the state, nor the cessation of holding status as a proprietor, partner, principal,
24 or officer shall discharge the foregoing liability of any person.

25 (10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall
26 be paid into the self-insurance fund established in KRS 342.920.

27 (11) In addition to the penalties provided in this section, the commissioner and any

1 administrative law judge or court of jurisdiction may order restitution of a benefit
2 secured through conduct proscribed by this chapter.

3 ➔Section 15. The following KRS section is repealed:

4 342.615 Registration of employee leasing companies -- Coverage requirements for
5 lessees -- Status of temporary help service.

6 ➔Section 16. If any provisions of this Act or the application thereof to any person
7 or circumstance is held invalid, the invalidity shall not affect other provisions or
8 applications of the Act that can be given effect without the invalid provision or
9 application, and to this end the provisions of this Act are severable.