

1 AN ACT relating to mining permits and making an appropriation therefor.

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

3 ➔Section 1. KRS 337.200 is amended to read as follows:

4 **(1) As used in this section, and Sections 2, 3, and 4 of this Act:**

5 **(a) "Construction work" does not include construction performed for the**  
6 **owner or tenant of a single or multi-family dwelling, a family farming**  
7 **enterprise, or any project which is government financed; and**

8 **(b) "Person" has the same meaning as in KRS 11A.010.**

9 **(2) Except for employers with twenty (20) or fewer employees and except for**  
10 **employers who have been doing business for at least one (1) year and provide**  
11 **proof to the commissioner of at least twelve (12) months of making full payroll**  
12 **payments to their employees out of the last twenty-four (24) months with no**  
13 **incidents of failing to make full payroll payments to their employees during that**  
14 **twenty-four (24) month period**~~[in the state for five (5) consecutive years]~~, every  
15 employer **prior to engaging**~~[engaged]~~ in construction work, or the severance,  
16 preparation, or transportation of minerals, **excluding railroads and water**  
17 **transporters**, shall furnish **financial assurance to the commissioner sufficient to**  
18 **ensure payment of gross payroll of at least two (2) weeks' wages operating at full**  
19 **capacity or production to employees, excluding wages of owners, officers, and**  
20 **directors.**

21 **(3) The employer may provide financial assurance in any form approved by the**  
22 **commissioner including:**

23 **(a) Surety bonding;**

24 **(b) Collateral bonding which may include cash and securities;**

25 **(c) Letter of credit;**

26 **(d) Establishment of an escrow account or trust; or**

27 **(e) A combination of any such methods.**

- 1 (4) As an alternative to providing required financial assurance directly, employers  
2 may satisfy the requirement for the financial assurance required in subsection (2)  
3 of this section in the following manners:
- 4 (a) Another person may submit the required financial assurance to the  
5 commissioner to satisfy the amount required for the employer's payroll;
- 6 (b) Another person may submit a guarantee of payment to the commissioner to  
7 satisfy the amount required for the employer's payroll; or
- 8 (c) The employer may provide proof of financial capacity and cash flow to  
9 demonstrate the employer's ability to make full and timely payment of  
10 wages to its employees.
- 11 (5) An employer may request and shall receive a waiver from the requirements for  
12 financial assurance under this section if:
- 13 (a) The employer provides proof that the failure to make at least twelve (12)  
14 consecutive months of full payroll payments to its employees was for one (1)  
15 or more reasons beyond the employer's reasonable control and that  
16 employees have been paid their wages in full;
- 17 (b) The employer provides proof of financial capacity and cash flow to make  
18 full and timely payment of wages to its employees and has no past record of  
19 failure to pay its employees; or
- 20 (c) The employer is:
- 21 1. Acquiring or has acquired a facility, operation, or other asset through  
22 a bankruptcy court, receivership, or otherwise as a result of the  
23 insolvency of a person;
- 24 2. Making a statement, under oath or affirmation lawfully administered,  
25 to the commissioner that the purpose of the acquisition is to return the  
26 facility, operation, or other asset to active operations or other  
27 productive use; and

1           3. Demonstrating to the commissioner that the facility, operation, or  
2           other asset could not be returned to active operations or other  
3           productive uses if not for the acquisition.

4   (6) The financial assurance provided by the employer to the commissioner shall be  
5   terminated, with the approval of the commissioner, after an employer submits a  
6   statement, under oath or affirmation lawfully administered, to the commissioner  
7   that:

8           (a) The employer has ceased doing business and the commissioner has verified  
9           that all wages have been paid to employees;

10          (b) The employer has been doing business in this state for at least one (1) year  
11          and the commissioner has verified that all wages have been paid to  
12          employees; or

13          (c) The employer has been granted a waiver by the commissioner from the  
14          requirement to provide financial assurance under subsection (5) of this  
15          section.

16   (7) The cabinet may promulgate administrative regulations to implement the  
17   provisions of this section.

18   ~~[on a form prescribed by the commissioner a performance bond to assure the payment of~~  
19   ~~all wages due from the employer. Surety for the bond shall be an amount of money~~  
20   ~~equal to the employer's gross payroll operating at full capacity for four (4) weeks.~~  
21   ~~Any employee whose wages are secured by a bond may obtain payment of those~~  
22   ~~wages, liquidated damages, and attorney's fees as provided by law on presentation~~  
23   ~~to the commissioner of a final judgment entered by a court of competent~~  
24   ~~jurisdiction. The bond may be terminated, with the approval of the commissioner,~~  
25   ~~on submission of the employer's statement, lawfully administered under oath, that~~  
26   ~~the employer has ceased doing business in the state and that all due wages have~~  
27   ~~been paid.]~~

1           ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO  
2 READ AS FOLLOWS:

3 (1) Any employee with unpaid wages secured by financial assurance under Section 1  
4 of this Act may:

5 (a) Notify the commissioner, in writing, of the claim for unpaid wages; and

6 (b) Request payment of those wages from the financial assurance provided by  
7 the employer to the commissioner.

8 (2) Upon receipt of employee's notice for unpaid wages, the commissioner shall:

9 (a) Notify the employer in writing, with return receipt, of the employee's claim;  
10 and

11 (b) Demand that the employer either:

12 1. Pay the unpaid wages; or

13 2. Dispute the employee's claim for unpaid wages from posted financial  
14 assurance.

15 (3) If the employer disputes the employee's wage claim, the employer shall have  
16 thirty (30) days from the receipt of written notice to submit to the commissioner a  
17 written dispute of the claim stating all applicable reasons for the employer's  
18 denial of the unpaid wage claim. If the employer fails to respond to the notice  
19 given in subsection (2) of this section, the commissioner may order the payment  
20 of the unpaid wage claim from the financial assurance required under Section 1  
21 of this Act.

22 (4) Any employee whose wages are secured by financial assurance under Section 1  
23 of this Act may obtain the following, upon receipt of a final judgment entered by  
24 a court of competent jurisdiction or by an agreement executed between the  
25 employer and the employee:

26 (a) Payment of wages;

27 (b) Liquidated damages;

1        (c) *Litigation costs;*

2        (d) *Court costs;*

3        (e) *Reasonable attorney fees; and*

4        (f) *Any other sum awarded by a court or agreed to by the employer.*

5        *Nothing contained in this subsection limits the right of an employee to pursue*  
 6        *claims against an employer for unpaid wages.*

7        ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO  
 8        READ AS FOLLOWS:

9        (1) *In the event that an employer engaged in the severance, preparation, or*  
 10        *transportation of minerals, excluding railroads and water transporters, fails to*  
 11        *make full payment of wages to its employees within thirty (30) days of the date*  
 12        *when wages were due to be paid, the commissioner may issue an order to the*  
 13        *employer prohibiting the employer from removing or facilitating the removal of*  
 14        *minerals from the site of employment of the unpaid employees until:*

15        (a) *The employees have been paid in full; or*

16        (b) *A court of competent jurisdiction adjudicates the rights to the minerals.*

17        (2) *The commissioner is authorized to file an action in court to enforce its order to*  
 18        *stop the removal or facilitation of the removal of minerals from the site of*  
 19        *employment of the unpaid employees through injunctive or other relief as*  
 20        *determined by the court.*

21        ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO  
 22        READ AS FOLLOWS:

23        (1) *An employee with unpaid wages from an employer engaged in the severance,*  
 24        *preparation, and transportation of minerals, excluding railroads and water*  
 25        *transporters, may submit a request to the commissioner that his or her claim for*  
 26        *unpaid wages be paid from unappropriated general fund surplus in the State*  
 27        *Treasury for reason of the employer's financial insolvency.*

1 (2) If after prompt and reasonable investigation, the commissioner determines that  
2 the employee has a good faith claim to the unpaid wages and that there is no  
3 reasonable prospect of payment of the unpaid wages to the employee within thirty  
4 (30) days of the employee's request to the commissioner, the secretary of the  
5 Finance and Administration Cabinet may:

6 (a) At the request of the commissioner, make the payment of the unpaid wages  
7 to the employee from unappropriated general fund surplus in the State  
8 Treasury and identify the payment as a necessary governmental expense;  
9 and

10 (b) Request the Attorney General to initiate any necessary action to recover  
11 from the employer or other responsible party the entire amount of the funds  
12 paid, plus pre-judgment interest, post-judgement interest, litigation costs,  
13 court costs, and reasonable attorney's fees.

14 (3) Any such recovery by the Attorney General shall be deposited into the  
15 unappropriated general funds surplus in the State Treasury.

16 ➔Section 5. Whereas the hardships faced by companies in the natural resources  
17 sector have forced several companies into bankruptcy and put their employees at financial  
18 risk, an emergency is declared to exist and the provisions of this Act shall take effect  
19 upon its passage and approval by the Governor or upon its otherwise becoming a law.