

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2020 REGULAR SESSION
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Amend printed copy of **SB 27/SCS 1**

Beginning on page 1, after the enacting clause and ending on page 6, by deleting all sections of SB 27/SCS 1 and inserting in lieu thereof:

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

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

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

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

(2) Every employer prior to or currently engaging in construction work, or the severance, preparation, or transportation of minerals shall furnish financial assurance to the commissioner sufficient to ensure payment of gross payroll of at least two (2) weeks' wages operating at full capacity or production to employees, excluding wages of owners, officers, and directors except for the following:

(a) Employers with twenty (20) or fewer employees;

(b) Employers who have been doing business for at least one (1) year and have made payroll payment of accrued wages to their employees for at least twelve (12) months out of the last twenty-four (24) months with no incidents of failing to make payroll payments of accrued wages to their employees during that twenty-four (24) month

Amendment No. _____

Rep. Sen. Phillip Wheeler

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

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- period;
- (c) Employers who are owned directly or indirectly by a person engaged in construction work, or the severance, preparation, or transportation of minerals who have been doing business for at least one (1) year in this state and that person and all other persons under that person's direct or indirect ownership in this state have made payroll payments of accrued wages to their employees for at least twelve (12) months out of the last twenty-four (24) months with no incidents of failing to make payroll payments of accrued wages to their employees during that twenty-four (24) month period; or
- (d) Railroads and water transporters [~~in the state for five (5) consecutive years, every employer engaged in construction work, or the severance, preparation, or transportation of minerals, shall furnish on a form prescribed by the commissioner a performance bond to assure the payment of all wages due from the employer. Surety for the bond shall be an amount of money equal to the employer's gross payroll operating at full capacity for four (4) weeks. Any employee whose wages are secured by a bond may obtain payment of those wages, liquidated damages, and attorney's fees as provided by law on presentation to the commissioner of a final judgment entered by a court of competent jurisdiction. The bond may be terminated, with the approval of the commissioner, on submission of the employer's statement, lawfully administered under oath, that the employer has ceased doing business in the state and that all due wages have been paid].~~
- (3) The employer may provide financial assurance in any form approved by the commissioner including:
- (a) Surety bonding;
- (b) Collateral bonding which may include cash and securities;

- (c) Letter of credit;
- (d) Establishment of an escrow account or trust; or
- (e) A combination of any such methods.
- (4) As an alternative to providing required financial assurance directly, employers may satisfy the requirement for the financial assurance required in subsection (2) of this section in the following manners:

 - (a) Another person may submit the required financial assurance to the commissioner to satisfy the amount required for the employer's payroll;
 - (b) Another person may submit a guarantee of payment to the commissioner to satisfy the amount required for the employer's payroll; or
 - (c) The employer may provide proof of financial capacity and cash flow to demonstrate the employer's ability to make full and timely payment of wages to its employees.
- (5) An employer may request and shall receive a waiver from the requirements for financial assurance under this section if:

 - (a) The employer provides proof that the failure to make at least twelve (12) consecutive months of payroll payments of accrued wages to its employees was for one (1) or more reasons beyond the employer's reasonable control and that employees have been paid their accrued wages;
 - (b) The employer provides proof of financial capacity and cash flow to make timely payment of accrued wages to its employees and has no past record of failure to pay its employees; or
 - (c) The employer is:

 - 1. Acquiring or has acquired a facility, operation, or other asset through a bankruptcy court, receivership, or otherwise as a result of the insolvency of a person;

2. Making a statement, under oath or affirmation lawfully administered, to the commissioner that the purpose of the acquisition is to return the facility, operation, or other asset to active operations or other productive use; and
 3. Demonstrating to the commissioner that the facility, operation, or other asset could not be returned to active operations or other productive uses if not for the acquisition.
- (6) The financial assurance provided by the employer to the commissioner shall be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that:
- (a) The employer has ceased doing business and the commissioner has verified that all accrued wages have been paid to employees;
 - (b) The employer has been doing business in this state for at least one (1) year and the commissioner has verified that all accrued wages have been paid to employees; or
 - (c) The employer has been granted a waiver by the commissioner from the requirement to provide financial assurance under subsection (5) of this section.
- (7) The cabinet may promulgate administrative regulations to implement the provisions of this Section and Sections 2, 3, and 4 of this Act.

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

- (1) Any employee with accrued unpaid wages secured by financial assurance under Section 1 of this Act may:
- (a) Notify the commissioner, in writing, of the claim for accrued unpaid wages; and
 - (b) Request payment of those accrued unpaid wages from the financial assurance provided by the employer to the commissioner.
- (2) Upon receipt of employee's notice for accrued unpaid wages, the commissioner shall:

- (a) Notify the employer in writing, with return receipt, of the employee's claim; and
- (b) Demand that the employer either:
1. Pay the accrued unpaid wages; or
 2. Dispute the employee's claim for accrued unpaid wages from posted financial assurance.
- (3) If the employer disputes the employee's accrued unpaid wage claim, the employer shall have thirty (30) days from the receipt of written notice to submit to the commissioner a written dispute of the claim stating all applicable reasons for the employer's denial of the unpaid wage claim. If the employer fails to respond to the notice given in subsection (2) of this section, the commissioner may order the payment of the accrued unpaid wage claim from the financial assurance required under Section 1 of this Act.
- (4) Any employee whose wages are secured by financial assurance under Section 1 of this Act may obtain the following, upon receipt of a final judgment entered by a court of competent jurisdiction or by an agreement executed between the employer and the employee:
- (a) Payment of accrued unpaid wages;
 - (b) Liquidated damages;
 - (c) Litigation costs;
 - (d) Court costs;
 - (e) Reasonable attorney fees; and
 - (f) Any other sum awarded by a court or agreed to by the employer.
- Nothing contained in this subsection limits the right of an employee to pursue claims against an employer for unpaid wages.

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

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(1) In the event the commissioner receives notice of a court order entered by a court of competent jurisdiction or an admission by an employer that the employer engaged in the severance, preparation, or transportation of minerals, excluding railroads and water transporters, has failed to make payment of accrued wages to its employees within thirty (30) days of the date when accrued wages were due to be paid, the commissioner may issue an order to the employer prohibiting the employer from removing or facilitating the removal of minerals from the site of employment of the unpaid employees until:

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

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

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

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

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

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

(a) At the request of the commissioner, make the payment of the accrued unpaid wages

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- to the employee from unappropriated general fund surplus in the State Treasury and identify the payment as a necessary governmental expense; and
- (b) Request the Attorney General to initiate any necessary action to recover from the employer or other responsible party the entire amount of the funds paid, plus pre-judgment interest, post-judgment interest, litigation costs, court costs, and reasonable attorney's fees.
- (3) Any such recovery by the Attorney General shall be deposited into the unappropriated general funds surplus in the State Treasury.

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