

1 AN ACT relating to workers' compensation.

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

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

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

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

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

- 1 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at
2 or above the wrist;
- 3 5. Permanent and complete paralysis of both arms, both legs, or one (1)
4 arm and one (1) leg;
- 5 6. Incurable insanity or imbecility; or
- 6 7. Total loss of hearing;
- 7 (12) "Income benefits" means payments made under the provisions of this chapter to the
8 disabled worker or his dependents in case of death, excluding medical and related
9 benefits;
- 10 (13) "Medical and related benefits" means payments made for medical, hospital, burial,
11 and other services as provided in this chapter, other than income benefits;
- 12 (14) "Compensation" means all payments made under the provisions of this chapter
13 representing the sum of income benefits and medical and related benefits;
- 14 (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical
15 rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- 16 (16) "Person" means any individual, partnership, limited partnership, limited liability
17 company, firm, association, trust, joint venture, corporation, or legal representative
18 thereof;
- 19 (17) "Wages" means, in addition to money payments for services rendered, the
20 reasonable value of board, rent, housing, lodging, fuel, or similar advantages
21 received from the employer, and gratuities received in the course of employment
22 from persons other than the employer as evidenced by the employee's federal and
23 state tax returns;
- 24 (18) "Agriculture" means the operation of farm premises, including the planting,
25 cultivation, producing, growing, harvesting, and preparation for market of
26 agricultural or horticultural commodities thereon, the raising of livestock for food
27 products and for racing purposes, and poultry thereon, and any work performed as

1 an incident to or in conjunction with the farm operations, including the sale of
2 produce at on-site markets and the processing of produce for sale at on-site markets.
3 It shall not include the commercial processing, packing, drying, storing, or canning
4 of such commodities for market, or making cheese or butter or other dairy products
5 for market;

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

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

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

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

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

25 (b) "Engaged in severance or processing of coal" shall include all individuals,
26 partnerships, limited partnerships, limited liability companies, corporations,
27 joint ventures, associations, or any other business entity in the Commonwealth

1 which has employees on its payroll who perform any of the acts stated in
2 paragraph (a) of this subsection, regardless of whether the acts are performed
3 as owner of the coal or on a contract or fee basis for the actual owner of the
4 coal. A business entity engaged in the severance or processing of coal,
5 including but not limited to administrative or selling functions, shall be
6 considered wholly engaged in the severance or processing of coal for the
7 purpose of this chapter. However, a business entity which is engaged in a
8 separate business activity not related to coal, for which a separate premium
9 charge is not made, shall be deemed to be engaged in the severance or
10 processing of coal only to the extent that the number of employees engaged in
11 the severance or processing of coal bears to the total number of employees.
12 Any employee who is involved in the business of severing or processing of
13 coal and business activities not related to coal shall be prorated based on the
14 time involved in severance or processing of coal bears to his total time;

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

22 (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for
23 insurance companies means direct written premiums as reported in the annual
24 statement to the Department of Insurance by insurance companies, except that
25 "premiums received" includes premiums charged off or deferred, and, on
26 insurance policies or other evidence of coverage with provisions for
27 deductibles, the calculated cost for coverage, including experience

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

1 client as defined in KRS Chapter 336, "premiums received" means premiums
2 calculated using the experience modification factor of each client as defined
3 in KRS Chapter 336 for each covered employee for that portion of the payroll
4 pertaining to the covered employee.

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

8 (c) "Premium," for policies effective on or after January 1, 1994, for insurance
9 companies means all consideration, whether designated as premium or
10 otherwise, for workers' compensation insurance paid to an insurance company
11 or its representative, including, on insurance policies with provisions for
12 deductibles, the calculated cost for coverage, including experience
13 modification and premium surcharge or discount, prior to any reduction for
14 deductibles. The rates, factors, and methods used to calculate the cost for
15 coverage under this paragraph for insurance policies or other evidence of
16 coverage with provisions for deductibles shall be the same rates, factors, and
17 methods normally used by the insurance company in Kentucky to calculate
18 the cost for coverage for insurance policies or other evidence of coverage
19 without provisions for deductibles, except that, for insurance policies or other
20 evidence of coverage with provisions for deductibles effective on or after
21 January 1, 1995, the calculated cost for coverage shall not include any
22 schedule rating modifications, debits, or credits. For policies with provisions
23 for deductibles with effective dates on or after January 1, 1995, assessments
24 shall be imposed as calculated by the deductible program adjustment. The cost
25 for coverage calculated under this paragraph by insurance companies that
26 issue only deductible insurance policies in Kentucky shall be actuarially
27 adequate to cover the entire liability of the employer for compensation under

1 this chapter, including all expenses and allowances normally used to calculate
2 the cost for coverage. For policies with provisions for deductibles with
3 effective dates of May 6, 1993, through December 31, 1993, for which the
4 insurance company did not report premiums and remit special fund
5 assessments based on the calculated cost for coverage prior to the reduction
6 for deductibles, "premium" includes the initial consideration plus any
7 reimbursements invoiced for losses, expenses, or fees charged under the
8 deductibles.

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

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

- 14 1. Schedule rating modifications, debits, or credits;
- 15 2. Deductible credits; or
- 16 3. Modifications to the cost of coverage from inception through and
17 including any audit that are based on negotiated retrospective rating
18 arrangements, including but not limited to large risk alternative rating
19 options;

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

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

26 (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1)
27 shall be the projected value of the employer's workers' compensation claims for the

1 next calendar year as calculated by the commissioner using generally-accepted
2 actuarial methods as follows:

3 (a) The base period shall be the earliest three (3) calendar years of the five (5)
4 calendar years immediately preceding the calendar year for which the
5 calculation is made. The commissioner shall identify each claim of the
6 employer which has an injury date or date of last injurious exposure to the
7 cause of an occupational disease during each one (1) of the three (3) calendar
8 years to be used as the base, and shall assign a value to each claim. The value
9 shall be the total of the indemnity benefits paid to date and projected to be
10 paid, adjusted to current benefit levels, plus the medical benefits paid to date
11 and projected to be paid for the life of the claim, plus the cost of medical and
12 vocational rehabilitation paid to date and projected to be paid. Adjustment to
13 current benefit levels shall be done by multiplying the weekly indemnity
14 benefit for each claim by the number obtained by dividing the statewide
15 average weekly wage which will be in effect for the year for which the
16 premium is being calculated by the statewide average weekly wage in effect
17 during the year in which the injury or date of the last exposure occurred. The
18 total value of the claims using the adjusted weekly benefit shall then be
19 calculated by the commissioner. Values for claims in which awards have been
20 made or settlements reached because of findings of permanent partial or
21 permanent total disability shall be calculated using the mortality and interest
22 discount assumptions used in the latest available statistical plan of the
23 advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The
24 sum of all calculated values shall be computed for all claims in the base
25 period;

26 (b) The commissioner shall obtain the annual payroll for each of the three (3)
27 years in the base period for each employer carrying his own risk from records

1 of the department and from the records of the Department of Workforce
2 Development, Education and Labor Cabinet. The commissioner shall multiply
3 each of the three (3) years of payroll by the number obtained by dividing the
4 statewide average weekly wage which will be in effect for the year in which
5 the premium is being calculated by the statewide average weekly wage in
6 effect in each of the years of the base period;

7 (c) The commissioner shall divide the total of the adjusted claim values for the
8 three (3) year base period by the total adjusted payroll for the same three (3)
9 year period. The value so calculated shall be multiplied by 1.25 and shall then
10 be multiplied by the employer's most recent annualized payroll, calculated
11 using records of the department and the Department of Workforce
12 Development data which shall be made available for this purpose on a
13 quarterly basis as reported, to obtain the premium for the next calendar year
14 for assessment purposes under KRS 342.122;

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

- 1 (e) If an employer having fewer than five (5) years of doing business in this state
2 applies to carry its own risk and is so certified, its premium for the purposes
3 of KRS 342.122 shall be based on the lesser number of years of experience as
4 may be available including the two (2) most recent years if necessary to create
5 a three (3) year base period. If the employer has less than two (2) years of
6 operation in this state available for the premium calculation, then its premium
7 shall be the greater of the value obtained by the calculation called for in this
8 subsection or the amount of security required by the commissioner pursuant to
9 KRS 342.340(1);
- 10 (f) If an employer is certified to carry its own risk after having previously insured
11 the risk, its premium shall be calculated using values obtained from claims
12 incurred while insured for as many of the years of the base period as may be
13 necessary to create a full three (3) year base. After the employer is certified to
14 carry its own risk and has paid all amounts due for assessments upon
15 premiums paid while insured, the employer shall be assessed only upon the
16 premium calculated under this subsection;
- 17 (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated
18 as set forth in this subsection; and
- 19 (h) Notwithstanding any other provision of this subsection, the premium of any
20 employer authorized to carry its own risk for purposes of assessments due
21 under this chapter shall be no less than thirty cents (\$0.30) per one hundred
22 dollars (\$100) of the employer's most recent annualized payroll for employees
23 covered by this chapter;
- 24 (29) "SIC code" as used in this chapter means the Standard Industrial Classification
25 Code contained in the latest edition of the Standard Industrial Classification Manual
26 published by the Federal Office of Management and Budget;
- 27 (30) "Investment interest" means any pecuniary or beneficial interest in a provider of

- 1 medical services or treatment under this chapter, other than a provider in which that
2 pecuniary or investment interest is obtained on terms equally available to the public
3 through trading on a registered national securities exchange, such as the New York
4 Stock Exchange or the American Stock Exchange, or on the National Association
5 of Securities Dealers Automated Quotation System;
- 6 (31) "Managed health care system" means a health care system that employs gatekeeper
7 providers, performs utilization review, and does medical bill audits;
- 8 (32) "Physician" means physicians and surgeons, audiologists holding a doctorate in
9 audiology, psychologists, optometrists, dentists, podiatrists, and osteopathic and
10 chiropractic practitioners acting within the scope of the license or other credentials
11 required by his or her specialty of practice in the United States jurisdiction in which
12 he or she is authorized to practice;
- 13 (33) "Objective medical findings" means information gained through direct observation
14 and testing of the patient applying objective or standardized methods;
- 15 (34) "Work" means providing services to another in return for remuneration on a regular
16 and sustained basis in a competitive economy;
- 17 (35) "Permanent impairment rating" means percentage of whole body impairment
18 caused by the injury or occupational disease as determined by the "Guides to the
19 Evaluation of Permanent Impairment";
- 20 (36) "Permanent disability rating" means the permanent impairment rating selected by
21 an administrative law judge times the factor set forth in the table that appears at
22 KRS 342.730(1)(b); and
- 23 (37) "Guides to the Evaluation of Permanent Impairment" means, except as provided in
24 KRS 342.262:
- 25 (a) The fifth edition published by the American Medical Association; and
26 (b) For psychological impairments, Chapter 12 of the second edition published by
27 the American Medical Association.

1 ➔Section 2. KRS 342.213 is amended to read as follows:

- 2 (1) The Governor shall make all appointments to the board, and appoint the
3 administrative law judges of the Department of Workers' Claims, subject to the
4 consent of the Senate in accordance with KRS 11.160, and in accordance with this
5 section and KRS 342.215 and 342.230 by choosing from names presented to him or
6 her by the Workers' Compensation Nominating Committee.
- 7 (2) The Workers' Compensation Nominating Committee shall consist of five (5)
8 members appointed by the Governor as follows:
- 9 (a) 1. One (1) member of the political party having the largest number of
10 registered voters and one (1) member of the political party having the
11 second largest number of registered voters shall serve a term of two (2)
12 years;
- 13 2. One (1) member of the political party having the largest number of
14 registered voters shall serve a term of three (3) years; and
- 15 3. Thereafter, upon the expiration of a term, the vacancy created shall be
16 filled by an appointee from the same political party for a term of four (4)
17 years;
- 18 (b) 1. Two (2) members who shall be attorneys with experience in the practice
19 of workers' compensation, one (1) who customarily represents claimants
20 and one (1) who customarily represents employers, each of whom shall
21 serve a term of four (4) years; and
- 22 2. Thereafter, upon expiration of a term, the vacancy shall be filled by an
23 appointee who meets the same required qualifications or criteria and
24 who shall serve a term of four (4) years;
- 25 (c) Appointments to fill the unexpired term of a member due to the resignation of
26 a member, removal of a member pursuant to KRS 63.080, or any other reason
27 shall be for the remainder of the term, and the new appointee shall meet the

- 1 same required qualifications or criteria as stated in this section; and
- 2 (d) At the first meeting of each calendar year, the members shall select a
3 chairman of the nominating committee who shall serve as chairman for the
4 duration of that calendar year.
- 5 (3) Notwithstanding the provisions of subsection (2) of this section, at least two (2)
6 members of the Workers' Compensation Nominating Committee shall be
7 individuals who directly derive no earned income from the workers' compensation
8 program. In order to satisfy the requirement of this subsection, the Governor shall
9 remove any existing member of the Workers' Compensation Nominating
10 Committee who directly derives earned income from the workers' compensation
11 program and replace that member with an individual who does not derive earned
12 income from the workers' compensation program.
- 13 (4) The commissioner shall monitor the workload of the administrative law judges and,
14 whenever a vacancy occurs, determine whether filling the position is necessary to
15 expeditious resolution of claims brought under this chapter. **One hundred fifty**
16 **(150) days**~~[One hundred twenty (120) days]~~ prior to the expiration of the terms of
17 the administrative law judges, and when a vacancy occurs under other
18 circumstances, the commissioner shall certify to the Workers' Compensation
19 Nominating Committee that filling the position is necessary and the Workers'
20 Compensation Nominating Committee shall act to fill only such positions as have
21 been certified as necessary by the commissioner.
- 22 (5) (a) The Workers' Compensation Nominating Committee shall consult with the
23 commissioner, chief administrative law judge, and a member of the Workers'
24 Compensation Board as to the performance in office of the administrative law
25 judges. The Workers' Compensation Nominating Committee may recommend
26 retention of any sitting administrative law judge **or board member**, or present
27 to the Governor the names of three (3) qualified individuals nominated for the

1 position. The Workers' Compensation Nominating Committee shall report its
2 recommendation for retention to the Governor no later than thirty (30) days
3 after receipt from the commissioner of certification of the necessity to fill the
4 position and shall render to the Governor its list of nominees to fill vacancies
5 within sixty (60) days of receipt of the commissioner's certification. The name
6 of an individual who has been rejected by the Governor when recommended
7 for retention shall not be presented thereafter as a nominee for the same
8 position. No sitting administrative law judge shall be nominated to fill more
9 than one (1) vacancy except for separate vacancies as an administrative law
10 judge.

11 (b) Within thirty (30) days of receipt of the recommendation, the Governor may
12 reject recommendations of retention, in which event the Workers'
13 Compensation Nominating Committee shall, within thirty (30) days,
14 reconvene and present a list of the names of three (3) nominees for each
15 position for which a recommendation for retention has been rejected by the
16 Governor.

17 (6) The commissioner shall be subject to Senate confirmation in accordance with KRS
18 11.160.

19 (7) (a) The Governor shall appoint the members of the Workers' Compensation
20 Board. *If a sitting board member is not retained, the*~~The~~ nominating
21 committee shall present to the Governor a list of three (3) candidates for
22 appointment to the board no later than thirty (30) days prior to the expiration
23 of a board member's term. For the purpose of filling vacancies on the board
24 which occur for reasons other than an expiration of term, the nominating
25 committee shall present a list of three (3) names to the Governor no later than
26 sixty (60) days after a vacancy occurs.

27 (b) If the Governor fails to appoint a member of the board within thirty (30) days

1 following receipt of a list of names from the nominating committee, the
 2 previous appointee may remain in the position until adjournment of the
 3 Senate the year following the expiration of his or her term~~[the ninetieth day~~
 4 ~~following the date the nominating committee provided the Governor with its~~
 5 ~~list of names]~~, at which time he or she shall vacate the position.

6 (c) Each newly appointed member of the board shall not assume his or her
 7 office until thirty (30) days after confirmation by the Senate. Members who
 8 are reappointed shall continue to serve in their capacity until the
 9 reappointment is confirmed by the Senate or the Senate adjourns without
 10 confirming the appointment.

11 (8) (a) The nominating committee shall meet as often as necessary to perform its
 12 statutory responsibilities, including but not limited to the mandates
 13 enumerated in this section, and a majority of the members shall constitute a
 14 quorum for the transaction of business; and

15 (b) The members shall be reimbursed from funds collected pursuant to KRS
 16 342.122 for necessary expenses in the manner and amounts prescribed for
 17 state employees by KRS 45.101 and the administrative regulations
 18 promulgated under the authority of that statute. Members of the nominating
 19 committee shall not be paid for their attendance at any meeting.

20 ➔Section 3. KRS 342.215 is amended to read as follows:

21 (1) The Workers' Compensation Board is hereby created and established. The board
 22 shall rule on appeals of decisions rendered by administrative law judges under this
 23 chapter. The board shall rule on an appeal of a decision of an administrative law
 24 judge no later than sixty (60) days following the date on which the last appeal brief
 25 was filed.

26 (2) The Workers' Compensation Board shall consist of three (3) members appointed by
 27 the Governor. Each member shall hold no other public office and shall devote his or

1 her full time to the duties of his or her office. Each member shall be exempt from
 2 the classified service, and his or her support staff may be exempt from the classified
 3 service.

4 (3) Of the members of the board appointed under this section, any member appointed
 5 to fill an unexpired term shall immediately assume the office subject to the
 6 confirmation by the Senate in accordance with KRS 11.160 for the remainder of
 7 the term. Any member not currently pending reappointment by the Senate with a
 8 term expiring on or before:

9 (a) December 1, 2025, shall continue serving a term that shall expire on June
 10 1, 2026;

11 (b) December 1, 2026, shall continue serving a term that shall expire on June
 12 1, 2027; or

13 (c) December 1, 2027, shall continue serving a term that shall expire on June
 14 1, 2028~~[one (1) shall serve a term that shall expire on January 4, 2002; one (1)~~
 15 ~~shall serve a term that shall expire on January 4, 2003; and one (1) shall serve~~
 16 ~~a term that shall expire on January 4, 2004, as designated by the Governor at~~
 17 ~~the time of appointment].~~

18 Thereafter, each term of a board member shall run for four (4) years from the date
 19 of expiration of the term for which the member's predecessor was appointed, except
 20 that a person appointed to fill a vacancy prior to the expiration of a term shall be
 21 appointed for the remainder of the term. The Governor shall not appoint a member
 22 of the board to fill the unexpired term of another board member, nor shall the
 23 Governor reappoint a member of the board who has been removed from his or her
 24 position prior to the expiration of his or her term. The members of the board shall
 25 have the qualifications required of appeals court judges, except for residence in a
 26 district, and shall receive the same salary and shall be subject to the same standards
 27 of conduct. The Governor shall designate a member of the board to serve as

1 chairman. Any vacancy in the chairmanship shall be filled by the Governor. The
2 Governor may at any time remove any member for cause after furnishing the
3 member with a written copy of the charges against him or her and giving the
4 member a public hearing if he or she requests it.

5 (4) A decision concurred in by any two (2) of the three (3) members shall constitute a
6 decision of the board.

7 (5) Members of the Workers' Compensation Board and the administrative law judges
8 shall be members of the Kentucky Employees Retirement System.

9 (6) The Workers' Compensation Board shall be attached to the Department of Workers'
10 Claims in the Education and Labor Cabinet.

11 ➔Section 4. KRS 342.230 is amended to read as follows:

12 (1) The commissioner with the assistance of the board shall train and instruct the
13 administrative law judges on an ongoing basis; assign cases; and monitor the
14 caseloads of the administrative law judges and the Workers' Compensation Board to
15 ensure timely disposition of cases; keep and be the custodian of the records of the
16 board and the administrative law judges; annually report the activities of the board
17 and the administrative law judges to the Governor; and devote his or her full time to
18 the duties of his or her office. The commissioner shall be paid a salary not less than
19 the salary of a member of the board.

20 (2) The Governor shall appoint, with the consent of the Senate in accordance with KRS
21 11.160 for a term of four (4) years, not more than nineteen (19) administrative law
22 judges, each of whom shall be an attorney and shall have five (5) years' experience
23 in the Commonwealth in the practice of workers' compensation law or a related
24 field, and extensive knowledge of workers' compensation law, and shall be paid the
25 same salary as a Circuit Judge. **Each newly appointed administrative law judge**
26 **shall not assume his or her office until June 1 following confirmation by the**
27 **Senate. Administrative law judges who are reappointed shall continue to serve in**

1 *their capacity until the reappointment is confirmed by the Senate or the Senate*
2 *adjourns without confirming the appointment.* Each administrative law judge shall
3 be exempt from the classified service, and his or her support staff may be exempt
4 from the classified service. Each administrative law judge may be employed for
5 additional terms with the consent of the Senate in accordance with KRS 11.160.
6 The Governor, at least thirty (30) days prior to the expiration of a term of an
7 administrative law judge, shall provide the name of the individual whom he *or she*
8 intends to appoint to the position to the chairman of the *Senate Standing*
9 *Committee on Economic Development, Tourism, and Labor*~~Senate Economic~~
10 ~~Development and Workforce Investment Committee~~. These administrative law
11 judges shall conduct hearings, and otherwise supervise the presentation of evidence
12 and perform any other duties assigned to them by statute and shall render final
13 decisions, orders, or awards. Administrative law judges may, in receiving evidence,
14 make rulings affecting the competency, relevancy, and materiality of the evidence
15 about to be presented and upon motions presented during the taking of evidence as
16 will expedite the preparation of the case.

17 (3) To ensure that the administrative law judges perform their responsibilities
18 competently and issue decisions consistent with this chapter, the commissioner
19 shall, at least twice annually, conduct training and education seminars in workers'
20 compensation law; administrative law; and methods and procedures for writing
21 well-reasoned, clear, correct, and concise opinions, orders, or awards.

22 (4) The Governor may at any time remove the commissioner or any member of the
23 board. The commissioner may remove any administrative law judge. A member of
24 the board or an administrative law judge may be removed for good cause, including
25 violation of the code of judicial ethics or the code of ethics applicable to the
26 executive branch of the Commonwealth. In addition, an administrative law judge or
27 a member of the board may be removed for the persistent or repeated failure to

1 perform satisfactorily the specific duties assigned in this chapter, including the
 2 requirement of timely disposition of cases, review of attorney's fees, and failure to
 3 attend training and continuing education programs required by this section.

4 (5) Any vacancy in the term of an administrative law judge, which occurs prior to the
 5 expiration of the term, shall be filled if necessary by appointment of the Governor
 6 in accordance with subsection (2) of this section within sixty (60) days from the
 7 date the vacancy occurs, with the consent of the Senate in accordance with KRS
 8 11.160, for the remainder of the term. *An administrative law judge appointed to fill*
 9 *an unexpired term shall immediately assume the office subject to the*
 10 *confirmation by the Senate in accordance with KRS 11.160 for the remainder of*
 11 *the term.*

12 (6) *Any administrative law judge not currently pending confirmation by the Senate*
 13 *with a term expiring on or before:*

14 *(a) December 1, 2025, shall continue serving a term that shall expire on June*
 15 *1, 2026;*

16 *(b) December 1, 2026, shall continue serving a term that shall expire on June*
 17 *1, 2027;*

18 *(c) December 1, 2027, shall continue serving a term that shall expire on June*
 19 *1, 2028, or*

20 *(d) December 1, 2028, shall continue serving a term that shall expire on June*
 21 *1, 2029*~~[(a) On January 1, 1998, the Governor shall make four (4) year~~

22 ~~appointments to fill as many of these positions as are necessary to fulfill the~~
 23 ~~duties assigned to administrative law judges under this chapter.~~

24 ~~(b) On January 1, 2000, the Governor shall make four (4) year appointments to~~
 25 ~~fill as many of these positions as are necessary to fulfill the duties assigned to~~
 26 ~~administrative law judges under this chapter].~~

27 (7) One (1) of the administrative law judges appointed pursuant to this section shall be

1 appointed as a chief administrative law judge, to have the same qualifications,
2 powers, duties, and requirements as those of other administrative law judges. The
3 chief administrative law judge shall not be assigned regular dockets but shall
4 instead assist the commissioner by doing all scheduling of the administrative law
5 judges, handling dockets assigned to the administrative law judges in case of an
6 emergency, providing supervision of the administrative law judges, and providing
7 educational opportunities for the administrative law judges. The chief
8 administrative law judge shall be paid at the same rate as the administrative law
9 judges plus an additional three thousand dollars (\$3,000) per year. At any time the
10 commissioner may replace the chief administrative law judge with one (1) of the
11 other administrative law judges at which time the former chief administrative law
12 judge shall resume the duties assigned to the other administrative law judges
13 pursuant to this chapter. On January 1, 1998, the commissioner shall employ a
14 person in this position for a four (4) year term.

15 ➔Section 5. KRS 342.315 is amended to read as follows:

- 16 (1) For workers who have had injuries or occupational hearing loss, the commissioner
17 shall contract with the University of Kentucky, ~~and~~ the University of Louisville,
18 and the University of Pikeville medical schools to evaluate workers. For workers
19 who have become affected by occupational diseases, the commissioner shall
20 contract with the University of Kentucky, ~~and~~ the University of Louisville, and
21 the University of Pikeville medical schools, or other physicians otherwise duly
22 qualified as "B" readers who are licensed in the Commonwealth and are board-
23 certified pulmonary specialists. Referral for evaluation may be made whenever a
24 medical question is at issue.
- 25 (2) The physicians and institutions performing evaluations pursuant to this section shall
26 render reports encompassing their findings and opinions in the form prescribed by
27 the commissioner. Except as otherwise provided in KRS 342.316, the clinical

1 findings and opinions of the designated evaluator shall be afforded presumptive
2 weight by administrative law judges and the burden to overcome such findings and
3 opinions shall fall on the opponent of that evidence. When administrative law
4 judges reject the clinical findings and opinions of the designated evaluator, they
5 shall specifically state in the order the reasons for rejecting that evidence.

6 (3) The commissioner or an administrative law judge may, upon the application of any
7 party or upon his own motion, direct appointment by the commissioner, pursuant to
8 subsection (1) of this section, of a medical evaluator to make any necessary medical
9 examination of the employee. Such medical evaluator shall file with the
10 commissioner within fifteen (15) days after such examination a written report. The
11 medical evaluator appointed may charge a reasonable fee not exceeding fees
12 established by the commissioner for those services.

13 (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer
14 or carrier shall pay the cost of the examination. Upon notice from the commissioner
15 that an evaluation has been scheduled, the insurance carrier shall forward within
16 seven (7) days to the employee the expenses of travel necessary to attend the
17 evaluation at a rate equal to that paid to state employees for travel by private
18 automobile while conducting state business.

19 (5) Upon claims in which it is finally determined that the injured worker was not the
20 employee at the time of injury of an employer covered by this chapter, the special
21 fund shall reimburse the carrier for any evaluation performed pursuant to this
22 section for which the carrier has been erroneously compelled to make payment.

23 (6) Not less often than annually the designee of the secretary of the Cabinet for Health
24 and Family Services shall assess the performance of the medical schools and render
25 findings as to whether evaluations conducted under this section are being rendered
26 in a timely manner, whether examinations are conducted in accordance with
27 medically recognized techniques, whether impairment ratings are in conformity

1 with standards prescribed by the "Guides to the Evaluation of Permanent
2 Impairment," and whether coal workers' pneumoconiosis examinations are
3 conducted in accordance with the standards prescribed in this chapter.

4 (7) The General Assembly finds that good public policy mandates the realization of the
5 potential advantages, both economic and effectual, of the use of telehealth. The
6 commissioner may, to the extent that he or she finds it feasible and appropriate,
7 require the use of telehealth, as defined in KRS 211.332, in the independent medical
8 evaluation process required by this chapter.