

1 AN ACT relating to workers' compensation.

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

3 ➔Section 1. KRS 342.020 is amended to read as follows:

4 (1) In addition to all other compensation provided in this chapter, the employer shall  
5 pay for the cure and relief from the effects of an injury or occupational disease the  
6 medical, surgical, and hospital treatment, including nursing, medical, and surgical  
7 supplies and appliances, as may reasonably be required at the time of the injury and  
8 thereafter ~~during disability,~~ ***for the length of time set forth in this section,*** or as  
9 may be required for the cure and treatment of an occupational disease.

10 ***(2) In claims resulting in an award of permanent total disability or resulting from an***  
11 ***injury described in subsection (9) of this section,*** the employer's obligation to pay  
12 the benefits specified in this section shall continue for so long as the employee is  
13 disabled regardless of the duration of the employee's income benefits.

14 ***(3) (a) In all permanent partial disability claims not involving an injury described***  
15 ***in subsection (9) of this section, the employer's obligation to pay the***  
16 ***benefits specified in this section shall continue for seven hundred eighty***  
17 ***(780) weeks from the date of injury or date of last exposure.***

18 ***(b) In all permanent partial disability claims not involving an injury described***  
19 ***in subsection (9) of this section, the commissioner shall, in writing, advise***  
20 ***the employee of the right to file an application for the continuation of***  
21 ***benefits as described in this section. This notice shall be made to the***  
22 ***employee seven hundred fifty-four (754) weeks from the date of injury or***  
23 ***last exposure.***

24 ***(c) An employee shall receive a continuation of benefits as described in this***  
25 ***section for additional time beyond the period provided in paragraph (a) of***  
26 ***this subsection as long as continued medical treatment is reasonably***  
27 ***necessary and related to the work injury or occupational disease if:***

- 1           1. An application is filed within seventy-five (75) days prior to the  
 2           termination of the seven hundred eighty (780) week period;  
 3           2. The employee demonstrates that continued medical treatment is  
 4           reasonably necessary and related to the work injury or occupational  
 5           disease; and  
 6           3. An administrative law judge determines and orders that continued  
 7           benefits are reasonably necessary and related to the work injury or  
 8           occupational disease for additional time beyond the original seven  
 9           hundred eighty (780) week period provided in paragraph (a) of this  
 10           subsection.
- 11           (d) If the administrative law judge determines that medical benefits are not  
 12           reasonably necessary or not related to the work injury or occupational  
 13           disease, or if an employee fails to make proper application for continued  
 14           benefits within the time period provided in paragraph (c) of this subsection,  
 15           any future medical treatment shall be deemed to be unrelated to the work  
 16           injury and the employer's obligation to pay medical benefits shall cease  
 17           permanently.

18           (4) In the absence of designation of a managed health care system by the employer, the  
 19           employee may select medical providers to treat his injury or occupational disease.  
 20           Even if the employer has designated a managed health care system, the injured  
 21           employee may elect to continue treating with a physician who provided emergency  
 22           medical care or treatment to the employee. The employer, insurer, or payment  
 23           obligor acting on behalf of the employer, shall make all payments for services  
 24           rendered to an employee directly to the provider of the services within thirty (30)  
 25           days of receipt of a statement for services. The commissioner shall promulgate  
 26           administrative regulations establishing conditions under which the thirty (30) day  
 27           period for payment may be tolled. The provider of medical services shall submit the

1 statement for services within forty-five (45) days of the day treatment is initiated  
2 and every forty-five (45) days thereafter, if appropriate, as long as medical services  
3 are rendered. Except as provided in subsection ~~(7)~~~~(4)~~ of this section, in no event  
4 shall a medical fee exceed the limitations of an adopted medical fee schedule or  
5 other limitations contained in KRS 342.035, whichever is lower. The commissioner  
6 may promulgate administrative regulations establishing the form and content of a  
7 statement for services and procedures by which disputes relative to the necessity,  
8 effectiveness, frequency, and cost of services may be resolved.

9 ~~(5)~~~~(2)~~ Notwithstanding any provision of the Kentucky Revised Statutes to the  
10 contrary, medical services and treatment provided under this chapter shall not be  
11 subject to copayments or deductibles.

12 ~~(6)~~~~(3)~~ Employers may provide medical services through a managed health care  
13 system. The managed health care system shall file with the Department of Workers'  
14 Claims a plan for the rendition of health care services for work-related injuries and  
15 occupational diseases to be approved by the commissioner pursuant to  
16 administrative regulations promulgated by the commissioner.

17 ~~(7)~~~~(4)~~ All managed health care systems rendering medical services under this chapter  
18 shall include the following features in plans for workers' compensation medical  
19 care:

- 20 (a) Copayments or deductibles shall not be required for medical services rendered  
21 in connection with a work-related injury or occupational disease;
- 22 (b) The employee shall be allowed choice of provider within the plan;
- 23 (c) The managed health care system shall provide an informal procedure for the  
24 expeditious resolution of disputes concerning rendition of medical services;
- 25 (d) The employee shall be allowed to obtain a second opinion, at the employer's  
26 expense, from an outside physician if a managed health care system physician  
27 recommends surgery;

- 1 (e) The employee may obtain medical services from providers outside the  
2 managed health care system, at the employer's expense, when treatment is  
3 unavailable through the managed health care system;
- 4 (f) The managed health care system shall establish procedures for utilization  
5 review of medical services to assure that a course of treatment is reasonably  
6 necessary; diagnostic procedures are not unnecessarily duplicated; the  
7 frequency, scope, and duration of treatment is appropriate; pharmaceuticals  
8 are not unnecessarily prescribed; and that ongoing and proposed treatment is  
9 not experimental, cost ineffective, or harmful to the employee; and
- 10 (g) Statements for services shall be audited regularly to assure that charges are not  
11 duplicated and do not exceed those authorized in the applicable fee schedules.
- 12 (h) A schedule of fees for all medical services to be provided under this chapter  
13 which shall not be subject to the limitations on medical fees contained in this  
14 chapter.
- 15 (i) Restrictions on provider selection imposed by a managed health care system  
16 authorized by this chapter shall not apply to emergency medical care.
- 17 ~~(8)~~~~(5)~~ Except for emergency medical care, medical services rendered pursuant to this  
18 chapter shall be under the supervision of a single treating physician or physicians'  
19 group having the authority to make referrals, as reasonably necessary, to appropriate  
20 facilities and specialists. The employee may change his designated physician one (1)  
21 time and thereafter shall show reasonable cause in order to change physicians.
- 22 ~~(9)~~~~(6)~~ When a compensable injury or occupational disease results in the amputation  
23 **or partial amputation** of an arm, **hand**, leg, or foot, or the loss of hearing, or the  
24 enucleation of an eye or loss of teeth, **or permanent total or permanent partial**  
25 **paralysis**, the employer shall pay for, in addition to the other medical, surgical, and  
26 hospital treatment enumerated in subsection (1) and this subsection, a modern  
27 artificial member and, where required, proper braces as may reasonably be required

1 at the time of the injury and thereafter during disability.

2 ~~(10)~~~~(7)~~ Upon motion of the employer, with sufficient notice to the employee for a  
3 response to be filed, if it is shown to the satisfaction of the administrative law judge  
4 by affidavits or testimony that, because of the physician selected by the employee to  
5 treat the injury or disease, or because of the hospital selected by the employee in  
6 which treatment is being rendered, that the employee is not receiving proper  
7 medical treatment and the recovery is being substantially affected or delayed; or that  
8 the funds for medical expenses are being spent without reasonable benefit to the  
9 employee; or that because of the physician selected by the employee or because of  
10 the type of medical treatment being received by the employee that the employer will  
11 substantially be prejudiced in any compensation proceedings resulting from the  
12 employee's injury or disease; then the administrative law judge may allow the  
13 employer to select a physician to treat the employee and the hospital or hospitals in  
14 which the employee is treated for the injury or disease. No action shall be brought  
15 against any employer subject to this chapter by any person to recover damages for  
16 malpractice or improper treatment received by any employee from any physician,  
17 hospital, or attendant thereof.

18 ~~(11)~~~~(8)~~ An employee who reports an injury alleged to be work-related or files an  
19 application for adjustment of a claim shall execute a waiver and consent of any  
20 physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect  
21 to any condition or complaint reasonably related to the condition for which the  
22 employee claims compensation. Notwithstanding any other provision in the  
23 Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist,  
24 hospital, or health care provider shall, within a reasonable time after written request  
25 by the employee, employer, workers' compensation insurer, special fund, uninsured  
26 employers' fund, or the administrative law judge, provide the requesting party with  
27 any information or written material reasonably related to any injury or disease for

1 which the employee claims compensation.

2 ~~(12)~~<sup>(9)</sup> When a provider of medical services or treatment, required by this chapter,  
3 makes referrals for medical services or treatment by this chapter, to a provider or  
4 entity in which the provider making the referral has an investment interest, the  
5 referring provider shall disclose that investment interest to the employee, the  
6 commissioner, and the employer's insurer or the party responsible for paying for the  
7 medical services or treatment, within thirty (30) days from the date the referral was  
8 made.

9 (13) (a) Except as provided in paragraphs (b) and (c) of this subsection, the  
10 employer, insurer, or payment obligor shall not be liable for urine drug  
11 screenings of patients in excess of:

12 1. One (1) per year for a patient considered to be low risk;

13 2. Two (2) per year for a patient considered to be moderate risk; and

14 3. Four (4) per year for patients considered to be high risk;

15 based upon the screening performed by the treating medical provider and  
16 other pertinent factors.

17 (b) The employer, insurer, or payment obligor may be liable for urine drug  
18 screening at each office visit for patients that have exhibited aberrant  
19 behavior documented by multiple lost prescriptions, multiple requests for  
20 early refills of prescriptions, multiple providers prescribing or dispensing  
21 opioids or opioid substitutes as evidenced by the electronic monitoring  
22 system established in KRS 218A.202 or a similar system, unauthorized  
23 dosage escalation, or apparent intoxication.

24 (c) The employer, insurer, or payment obligor may request additional urine  
25 drug screenings which shall not count toward the maximum number of  
26 drug screenings enumerated in paragraph (a) of this subsection.

27 (d) The commissioner shall promulgate administrative regulations related to

1                   *urine drug screenings as part of the practice parameters or treatment*  
2                   *guidelines required under Section 2 of this Act.*

3           ➔Section 2. KRS 342.035 is amended to read as follows:

- 4   (1) Periodically, the commissioner shall promulgate administrative regulations to adopt  
5   a schedule of fees for the purpose of ensuring that all fees, charges, and  
6   reimbursements under KRS 342.020 and this section shall be fair, current, and  
7   reasonable and shall be limited to such charges as are fair, current, and reasonable  
8   for similar treatment of injured persons in the same community for like services,  
9   where treatment is paid for by general health insurers. In determining what fees are  
10   reasonable, the commissioner may also consider the increased security of payment  
11   afforded by this chapter. On or before November 1, 1994, and on July 1 every two  
12   (2) years thereafter, the schedule of fees contained in administrative regulations  
13   promulgated pursuant to this section shall be reviewed and updated, if appropriate.  
14   Within ten (10) days of April 4, 1994, the commissioner shall execute a contract  
15   with an appropriately qualified consultant pursuant to which each of the following  
16   elements within the workers' compensation system are evaluated; the methods of  
17   health care delivery; quality assurance and utilization mechanisms; type, frequency,  
18   and intensity of services; risk management programs; and the schedule of fees  
19   contained in administrative regulation. The consultant shall present  
20   recommendations based on its review to the commissioner not later than sixty (60)  
21   days following execution of the contract. The commissioner shall consider these  
22   recommendations and, not later than thirty (30) days after their receipt, promulgate  
23   a regulation which shall be effective on an emergency basis, to effect a twenty-five  
24   percent (25%) reduction in the total medical costs within the program.
- 25   (2) No provider of medical services or treatment required by this chapter, its agent,  
26   servant, employee, assignee, employer, or independent contractor acting on behalf  
27   of any medical provider, shall knowingly collect, attempt to collect, coerce, or

1 attempt to coerce, directly or indirectly, the payment of any charge, for services  
2 covered by a workers' compensation insurance plan for the treatment of a work-  
3 related injury or occupational disease, in excess of that provided by a schedule of  
4 fees, or cause the credit of any employee to be impaired by reason of the employee's  
5 failure or refusal to pay the excess charge. In addition to the penalty imposed in  
6 KRS 342.990 for violations of this subsection, any individual who sustains damages  
7 by any act in violation of the provisions of this subsection shall have a civil cause of  
8 action in Circuit Court to enjoin further violations and to recover the actual  
9 damages sustained by the individual, together with the costs of the lawsuit,  
10 including a reasonable attorney's fee.

11 (3) Where these requirements are furnished by a public hospital or other institution,  
12 payment thereof shall be made to the proper authorities conducting it. No  
13 compensation shall be payable for the death or disability of an employee if his or  
14 her death is caused, or if and insofar as his disability is aggravated, caused, or  
15 continued, by an unreasonable failure to submit to or follow any competent surgical  
16 treatment or medical aid or advice.

17 (4) The commissioner shall, by December 1, 1994, promulgate administrative  
18 regulations to adopt a schedule of fees for the purpose of regulating charges by  
19 medical providers and other health care professionals for testimony presented and  
20 medical reports furnished in the litigation of a claim by an injured employee against  
21 the employer. The workers' compensation medical fee schedule for physicians, 803  
22 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect  
23 until July 1, 1996, or until the effective date of any amendments promulgated by the  
24 commissioner, whichever occurs first, it being determined that this administrative  
25 regulation is within the statutory grant of authority, meets legislative intent, and is  
26 not in conflict with the provisions of this chapter. The medical fee schedule and  
27 amendments shall be fair, current, and reasonable and otherwise comply with this



1 section.

2 (5) (a) To ensure compliance with subsections (1) and (4) of this section, the  
3 commissioner shall promulgate administrative regulations by December 31,  
4 1994, which require each insurance carrier, self-insured group, and self-  
5 insured employer to certify to the commissioner the program or plan it has  
6 adopted to ensure compliance.

7 (b) In addition, the commissioner shall periodically have an independent audit  
8 conducted by a qualified independent person, firm, company, or other entity  
9 hired by the commissioner, in accordance with the personal service contract  
10 provisions contained in KRS 45A.690 to 45A.725, to ensure that the  
11 requirements of subsection (1) of this section are being met. The independent  
12 person, firm, company, or other entity selected by the commissioner to  
13 conduct the audit shall protect the confidentiality of any information it  
14 receives during the audit, shall divulge information received during the audit  
15 only to the commissioner, and shall use the information for no other purpose  
16 than the audit required by this paragraph.

17 (c) The commissioner shall promulgate administrative regulations governing  
18 medical provider utilization review activities conducted by an insurance  
19 carrier, self-insured group, or self-insured employer pursuant to this chapter.  
20 Utilization review required under administrative regulations may be waived  
21 if the insurance carrier, self-insured group, or self-insured employer agrees  
22 that the recommended medical treatment is medically necessary and  
23 appropriate or if the injured employee elects not to proceed with the  
24 recommended medical treatment.

25 (d) Periodically, or upon request, the commissioner shall report to the Interim  
26 Joint Committee on Labor and Industry of the Legislative Research  
27 Commission or to the corresponding standing committees of the General

1 Assembly, as appropriate, the degree of compliance or lack of compliance  
2 with the provisions of this section and make recommendations thereon.

3 (e) The cost of implementing and carrying out the requirements of this subsection  
4 shall be paid from funds collected pursuant to KRS 342.122.

5 (6) The commissioner may promulgate administrative regulations incorporating  
6 managed care or other concepts intended to reduce costs or to speed the delivery or  
7 payment of medical services to employees receiving medical and related benefits  
8 under this chapter.

9 (7) For purposes of this chapter, any medical provider shall charge only its customary  
10 fee for photocopying requested documents. However, in no event shall a  
11 photocopying fee of a medical provider or photocopying service exceed fifty cents  
12 (\$0.50) per page. **However, a medical provider shall not charge a fee when the**  
13 **initial copy of medical records is provided to the injured worker or his or her**  
14 **attorney in response to a written request pursuant to KRS 422.317.** In addition,  
15 there shall be no charge for reviewing any records of a medical provider, during  
16 regular business hours, by any party who is authorized to review the records and  
17 who requests a review pursuant to this chapter.

18 (8) (a) The commissioner shall develop or adopt practice parameters or **evidence-**  
19 **based treatment** guidelines for **medical treatment**~~clinical practice~~ for use by  
20 medical providers under this chapter, **including but not limited to chronic**  
21 **pain management treatment and opioid use, and promulgate administrative**  
22 **regulations in order to implement the developed or adopted practice**  
23 **parameters or evidenced-based treatment guidelines on or before December**  
24 **31, 2019.** The commissioner may adopt any parameters for **medical**  
25 **treatment**~~clinical practice~~ as developed and updated by the federal Agency  
26 for Health Care Policy Research, or the commissioner may adopt other  
27 parameters for **medical treatment**~~clinical practice~~ which are developed by

1 qualified bodies, as determined by the commissioner, with periodic updating  
2 based on data collected during the application of the parameters.

3 (b) **The commissioner shall develop or adopt a pharmaceutical formulary for**  
4 **medications prescribed for the cure of and relief from the effects of a work**  
5 **injury or occupational disease and promulgate administrative regulations to**  
6 **implement the developed or adopted pharmaceutical formulary on or before**  
7 **December 31, 2018.**

8 (c) Any provider of medical services under this chapter who has followed the  
9 practice parameters or **treatment** guidelines **or formularies** developed or  
10 adopted **and implemented** pursuant to this subsection shall be presumed to  
11 have met the appropriate legal standard of care in medical malpractice cases  
12 regardless of any unanticipated complication that may thereafter develop or be  
13 discovered.

14 (9) (a) Notwithstanding any other provision of law to the contrary, the medical fee  
15 schedule adopted under subsection (4) of this section shall require all worker's  
16 compensation insurance carriers, worker's compensation self-insured groups,  
17 and worker's compensation self-insured employers to provide coverage and  
18 payment for surgical first assisting services to registered nurse first assistants  
19 as defined in KRS 216B.015.

20 (b) The provisions of this subsection apply only if reimbursement for an assisting  
21 physician would be covered and a registered nurse first assistant who  
22 performed the services is used as a substitute for the assisting physician. The  
23 reimbursement shall be made directly to the registered nurse first assistant if  
24 the claim is submitted by a registered nurse first assistant who is not an  
25 employee of the hospital or the surgeon performing the services.

26 ➔Section 3. KRS 342.040 is amended to read as follows:

27 (1) Except as provided in KRS 342.020, no income benefits shall be payable for the

1 first seven (7) days of disability unless disability continues for a period of more than  
2 two (2) weeks, in which case income benefits shall be allowed from the first day of  
3 disability. All income benefits shall be payable on the regular payday of the  
4 employer, commencing with the first regular payday after seven (7) days after the  
5 injury or disability resulting from an occupational disease, with interest at the rate of  
6 six percent (6%) per annum on each installment from the time it is due until paid,  
7 except that if the administrative law judge determines that *the delay was caused by*  
8 *the employee, then no interest shall be due, or determines that* a denial, delay, or  
9 termination in the payment of income benefits was without reasonable foundation,  
10 *then* the rate of interest shall be twelve percent (12%) per annum. In no event shall  
11 income benefits be instituted later than the fifteenth day after the employer has  
12 knowledge of the disability or death. Income benefits shall be due and payable not  
13 less often than semimonthly. If the employer's insurance carrier or other party  
14 responsible for the payment of workers' compensation benefits should terminate or  
15 fail to make payments when due, that party shall notify the commissioner of the  
16 termination or failure to make payments and the commissioner shall, in writing,  
17 advise the employee or known dependent of right to prosecute a claim under this  
18 chapter.

19 (2) If overdue temporary total disability income benefits are recovered in a proceeding  
20 brought under this chapter by an attorney for an employee, or paid by the employer  
21 after receipt of notice of the attorney's representation, a reasonable attorney's fee for  
22 these services may be awarded. The award of attorney's fees shall be paid by the  
23 employer if the administrative law judge determines that the denial or delay was  
24 without reasonable foundation. No part of the fee for representing the employee in  
25 connection with the recovery of overdue temporary total disability benefits withheld  
26 without reasonable foundation shall be charged against or deducted from benefits  
27 otherwise due the employee.

1 (3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable  
2 on the regular payday of the employer, commencing with the second regular payday  
3 after the award of the retraining incentive benefit by the administrative law judge  
4 becomes final. Retraining incentive benefits shall be due and payable not less often  
5 than semimonthly.

6 (4) Upon written request of the employee, all payments of compensation shall be  
7 mailed to the employee at his or her last known address.

8 ➔Section 4. KRS 342.125 is amended to read as follows:

9 (1) Upon motion by any party or upon an administrative law judge's own motion, an  
10 administrative law judge may reopen and review any award or order on any of the  
11 following grounds:

12 (a) Fraud;

13 (b) Newly-discovered evidence which could not have been discovered with the  
14 exercise of due diligence;

15 (c) Mistake; and

16 (d) Change of disability as shown by objective medical evidence of worsening or  
17 improvement of impairment due to a condition caused by the injury since the  
18 date of the award or order.

19 (2) No claim which has been previously dismissed or denied on the merits shall be  
20 reopened except upon the grounds set forth in this section.

21 (3) Except for reopening solely for determination of the compensability of medical  
22 expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for  
23 reducing a permanent total disability award when an employee returns to work, or  
24 seeking temporary total disability benefits during the period of an award, no claim  
25 shall be reopened more than four (4) years following the date of the original award  
26 or original order granting or denying benefits, when such an award or order  
27 becomes final and nonappealable, and no party may file a motion to reopen within

1 one (1) year of any previous motion to reopen by the same party. Orders granting  
2 or denying benefits that are entered subsequent to an original final award or  
3 order granting or denying benefits shall not be considered to be an original order  
4 granting or denying benefits under this subsection and shall not extend the time  
5 to reopen a claim beyond four (4) years following the date of the final,  
6 nonappealable original award or original order.

7 (4) Reopening and review under this section shall be had upon notice to the parties and  
8 in the same manner as provided for an initial proceeding under this chapter. Upon  
9 reopening, the administrative law judge may end, diminish, or increase  
10 compensation previously awarded, within the maximum and minimum provided in  
11 this chapter, or change or revoke a previous order. The administrative law judge  
12 shall immediately send all parties a copy of the subsequent order or award.  
13 Reopening shall not affect the previous order or award as to any sums already paid  
14 thereunder, and any change in the amount of compensation shall be ordered only  
15 from the date of filing the motion to reopen. No employer shall suspend benefits  
16 during pendency of any reopening procedures except upon order of the  
17 administrative law judge.

18 (5) (a) Upon the application of the affected employee, and a showing of progression  
19 of his previously-diagnosed occupational pneumoconiosis resulting from  
20 exposure to coal dust and development of respiratory impairment due to that  
21 pneumoconiosis and two (2) additional years of employment in the  
22 Commonwealth wherein the employee was continuously exposed to the  
23 hazards of the disease, the administrative law judge may review an award or  
24 order for benefits attributable to coal-related pneumoconiosis under KRS  
25 342.732. An application for review under this subsection shall be made within  
26 one (1) year of the date the employee knew or reasonably should have known  
27 that a progression of his disease and development or progression of respiratory

1           impairment have occurred. Review under this subsection shall include a  
2           review of all evidence admitted in all prior proceedings.

3           (b) Benefits awarded as a result of a review under this subsection shall be reduced  
4           by the amount of retraining incentive benefits or income benefits previously  
5           awarded under KRS 342.732. The amount to be deducted shall be subtracted  
6           from the total amount awarded, and the remaining amount shall be divided by  
7           the number of weeks, for which the award was made, to arrive at the weekly  
8           benefit amount which shall be apportioned in accordance with the provisions  
9           of KRS 342.316.

10          (6) In a reopening or review proceeding where there has been additional permanent  
11          partial disability awarded, the increase shall not extend the original period, unless  
12          the combined prior disability and increased disability exceeds fifty percent (50%),  
13          but less than one hundred percent (100%), in which event the awarded period shall  
14          not exceed five hundred twenty (520) weeks, from commencement date of the  
15          original disability previously awarded. The law in effect on the date of the original  
16          injury controls the rights of the parties.

17          (7) Where an agreement has become an award by approval of the administrative law  
18          judge, and a reopening and review of that award is initiated, no statement contained  
19          in the agreement, whether as to jurisdiction, liability of the employer, nature and  
20          extent of disability, or as to any other matter, shall be considered by the  
21          administrative law judge as an admission against the interests of any party. The  
22          parties may raise any issue upon reopening and review of this type of award which  
23          could have been considered upon an original application for benefits.

24          (8) The time limitation prescribed in this section shall apply to all claims irrespective of  
25          when they were incurred, or when the award was entered, or the settlement  
26          approved. However, claims decided prior to December 12, 1996, may be reopened  
27          within four (4) years of the award or order or within four (4) years of December 12,

1 1996, whichever is later, provided that the exceptions to reopening established in  
2 subsections (1) and (3) of this section shall apply to these claims as well.

3 ➔Section 5. KRS 342.185 is amended to read as follows:

4 (1) Except as provided in subsections~~[subsection]~~ (2) and (3) of this section, no  
5 proceeding under this chapter for compensation for an injury or death shall be  
6 maintained unless a notice of the accident shall have been given to the employer as  
7 soon as practicable after the happening thereof and unless an application for  
8 adjustment of claim for compensation with respect to the injury shall have been  
9 made with the department within two (2) years after the date of the accident, or in  
10 case of death, within two (2) years after the death, whether or not a claim has been  
11 made by the employee himself or herself for compensation. The notice and the  
12 claim may be given or made by any person claiming to be entitled to compensation  
13 or by someone in his or her behalf. If payments of income benefits have been made,  
14 the filing of an application for adjustment of claim with the department within the  
15 period shall not be required, but shall become requisite within two (2) years  
16 following the suspension of payments or within two (2) years of the date of the  
17 accident, whichever is later.

18 (2) The right to compensation under this chapter resulting from work-related exposure  
19 to the human immunodeficiency virus shall be barred unless notice of the injurious  
20 exposure is given in accordance with subsection (1) of this section and unless an  
21 application for adjustment of claim for compensation shall have been made with the  
22 commissioner within five (5) years after the injurious exposure to the virus.

23 (3) The right to compensation under this chapter resulting from work-related  
24 exposure to cumulative trauma injury shall be barred unless notice of the  
25 cumulative trauma injury is given within two (2) years from the date the  
26 employee is told by a physician that the cumulative trauma injury is work-related.  
27 An application for adjustment of claim for compensation with respect to the



1 *injury shall have been made with the department within two (2) years after the*  
2 *employee is told by a physician that the cumulative trauma injury is work-related.*  
3 *However, the right to compensation for any cumulative trauma injury shall be*  
4 *forever barred, unless an application for adjustment of claim is filed with the*  
5 *commissioner within five (5) years after the last injurious exposure to the*  
6 *cumulative trauma.*

7 ➔Section 6. KRS 342.265 is amended to read as follows:

- 8 (1) If the employee and employer and special fund or any of them reach an agreement  
9 conforming to the provisions of this chapter in regard to compensation, a  
10 memorandum of the agreement signed by the parties or their representatives shall be  
11 filed with the commissioner, and, if approved by an administrative law judge, shall  
12 be enforceable pursuant to KRS 342.305. Where all parties have not joined in the  
13 settlement agreement, it shall not be approved unless it is certified that the party not  
14 participating in the settlement has been served with a copy of the agreement not less  
15 than ten (10) days prior to submission of the agreement for approval. This provision  
16 shall not be construed to prevent the voluntary payment of compensation for the  
17 periods and in the amounts prescribed by this chapter, but nothing shall operate as a  
18 final settlement except a memorandum of agreement filed with the commissioner  
19 and approved by the administrative law judge. Upon claims settled after December  
20 12, 1996, the special fund shall have the option of settling its liability for income  
21 benefits on the same terms as those reached between the employee and employer.  
22 Notice of the special fund exercise of the option granted in this subsection shall be  
23 made by letter of the director of the Division of Workers' Compensation Funds  
24 mailed to the parties within ten (10) days of receipt by the director of a copy of the  
25 agreement.
- 26 (2) Settlement agreements concluded after July 14, 2000, providing for commuted  
27 lump-sum payment of future income benefits which would otherwise be payable in

1 amounts greater than one hundred dollars (\$100) per week shall not be approved  
2 unless there is reasonable assurance that the worker will have an adequate source of  
3 income during disability. This subsection is remedial and applies to all pending and  
4 future claims.

5 (3) Upon lump-sum settlement of future periodic payments, the discount rate used in  
6 the calculation of the settlement amount shall ~~be~~~~[not exceed a reasonable amount]~~  
7 fixed by the commissioner.~~[For settlements approved after December 12, 1996,~~  
8 ~~until December 31, 1997, the true discount rate shall be six percent (6%)~~  
9 ~~compounded annually on each payment.]~~Before January 1 of each year  
10 commencing in 2001, the commissioner shall fix the discount rate to be utilized in  
11 the succeeding year based at one-half of one percent (0.5%) below the interest rate  
12 paid upon ten (10) year United States Treasury Notes as of August 1 of the  
13 preceding year. **However, upon lump-sum settlement of future periodic payments**  
14 **in weekly amounts that are forty dollars (\$40) or less, the commissioner shall fix**  
15 **the discount rate used in the succeeding year based at the interest rate paid upon**  
16 **ten (10) year United States Treasury Notes as of August 1 of the preceding year.**

17 (4) If the parties have previously filed an agreement which has been approved by the  
18 administrative law judge, and compensation has been paid or is due in accordance  
19 therewith and the parties thereafter disagree, either party may invoke the provisions  
20 of KRS 342.125, which remedy shall be exclusive.

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

26 ➔Section 7. KRS 342.270 is amended to read as follows:

27 (1) If the parties fail to reach an agreement in regard to compensation under this

1 chapter, either party may make written application for resolution of claim. The  
 2 application must be filed within two (2) years after the accident, or, in case of death,  
 3 within two (2) years after the death, or within two (2) years after the cessation of  
 4 voluntary payments, if any have been made. When the application is filed by the  
 5 employee or during the pendency of that claim, he or she shall join all causes of  
 6 action against the named employer which have accrued and which are known, or  
 7 should reasonably be known, to him or her. Failure to join all accrued causes of  
 8 action will result in such claims being barred under this chapter as waived by the  
 9 employee.

10 (2) Except with respect to claims for benefits by reason of ~~{coal workers}~~  
 11 pneumoconiosis, the commissioner shall issue notice of the filing to all parties and  
 12 shall promptly assign the claim to an administrative law judge. The administrative  
 13 law judge shall facilitate the exchange of information pertinent to the claim  
 14 pursuant to administrative regulations promulgated by the commissioner. Within  
 15 forty-five (45) days of the date of issuance of the notice required by this section, the  
 16 employer or carrier shall file notice of claim denial or acceptance, setting forth  
 17 specifically those material matters which are admitted, those which are denied, and  
 18 the basis of any denial of the claim.

19 (3) Within one hundred twenty (120) days of the effective date of this Act~~{July 14,~~  
 20 ~~2000}~~, the commissioner shall promulgate or amend existing administrative  
 21 regulations establishing procedures for the resolution of claims. The administrative  
 22 regulations promulgated pursuant to the provisions of this subsection shall be  
 23 effective on an emergency basis and be applied to all pending claims.

24 ➔Section 8. KRS 342.315 is amended to read as follows:

25 (1) For workers who have had injuries or occupational hearing loss, the  
 26 commissioner shall contract with the University of Kentucky and the University of  
 27 Louisville medical schools to evaluate workers. For workers who have~~{had~~

1        ~~injuries or~~ become affected by occupational diseases, *the commissioner shall*  
2        *contract with the University of Kentucky and the University of Louisville medical*  
3        *schools, or other physicians otherwise duly qualified as "B" readers who are*  
4        *licensed in the Commonwealth and are board-certified pulmonary specialists*~~]~~  
5        ~~covered by this chapter~~. Referral for evaluation may be made ~~to one (1) of the~~  
6        ~~medical schools~~ whenever a medical question is at issue.

7        (2) The physicians and institutions performing evaluations pursuant to this section shall  
8        render reports encompassing their findings and opinions in the form prescribed by  
9        the commissioner. Except as otherwise provided in KRS 342.316, the clinical  
10       findings and opinions of the designated evaluator shall be afforded presumptive  
11       weight by administrative law judges and the burden to overcome such findings and  
12       opinions shall fall on the opponent of that evidence. When administrative law  
13       judges reject the clinical findings and opinions of the designated evaluator, they  
14       shall specifically state in the order the reasons for rejecting that evidence.

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

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

- 1 (5) Upon claims in which it is finally determined that the injured worker was not the  
2 employee at the time of injury of an employer covered by this chapter, the special  
3 fund shall reimburse the carrier for any evaluation performed pursuant to this  
4 section for which the carrier has been erroneously compelled to make payment.
- 5 (6) Not less often than annually the designee of the secretary of the Cabinet for Health  
6 and Family Services shall assess the performance of the medical schools and render  
7 findings as to whether evaluations conducted under this section are being rendered  
8 in a timely manner, whether examinations are conducted in accordance with  
9 medically recognized techniques, whether impairment ratings are in conformity  
10 with standards prescribed by the "Guides to the Evaluation of Permanent  
11 Impairment," and whether coal workers' pneumoconiosis examinations are  
12 conducted in accordance with the standards prescribed in this chapter.
- 13 (7) The General Assembly finds that good public policy mandates the realization of the  
14 potential advantages, both economic and effectual, of the use of telemedicine and  
15 telehealth. The commissioner may, to the extent that he or she finds it feasible and  
16 appropriate, require the use of telemedicine and telehealth practices, as authorized  
17 under KRS 194A.125, in the independent medical evaluation process required by  
18 this chapter.
- 19 ➔Section 9. KRS 342.316 is amended to read as follows:
- 20 (1) (a) The employer liable for compensation for occupational disease shall be the  
21 employer in whose employment the employee was last exposed to the hazard  
22 of the occupational disease. During any period in which this section is  
23 applicable to a coal mine, an operator who acquired it or substantially all of its  
24 assets from a person who was its operator on and after January 1, 1973, shall  
25 be liable for, and secure the payment of, the benefits which would have been  
26 payable by the prior operator under this section with respect to miners  
27 previously employed in the mine if it had not been acquired by such later

1 operator. At the same time, however, this subsection does not relieve the prior  
2 operator of any liability under this section. Also, it does not affect whatever  
3 rights the later operator might have against the prior operator.

4 (b) The time of the beginning of compensation payments shall be the date of the  
5 employee's last injurious exposure to the cause of the disease, or the date of  
6 actual disability, whichever is later.

7 (2) The procedure with respect to the giving of notice and determination of claims in  
8 occupational disease cases and the compensation and medical benefits payable for  
9 disability or death due to the disease shall be the same as in cases of accidental  
10 injury or death under the general provisions of this chapter, except that notice of  
11 claim shall be given to the employer as soon as practicable after the employee first  
12 experiences a distinct manifestation of an occupational disease in the form of  
13 symptoms reasonably sufficient to apprise the employee that he or she has  
14 contracted the disease, or a diagnosis of the disease is first communicated to him or  
15 her, whichever shall first occur.

16 (3) The procedure for filing occupational disease claims shall be as follows:

17 (a) The application for resolution of claim shall set forth the complete work  
18 history of the employee with a concise description of injurious exposure to a  
19 specific occupational disease, together with the name and addresses of the  
20 employer or employers with the approximate dates of employment. The  
21 application shall also include at least one (1) written medical report supporting  
22 his or her claim. This medical report shall be made on the basis of clinical or  
23 X-ray examination performed in accordance with accepted medical standards  
24 and shall contain full and complete statements of all examinations performed  
25 and the results thereof. The report shall be made by a duly-licensed physician.  
26 The commissioner shall promulgate administrative regulations which  
27 prescribe the format of the medical report required by this section and the

1 manner in which the report shall be completed.

2 1. For coal-related occupational pneumoconiosis claims, each clinical  
3 examination shall include a chest X-ray interpretation by a National  
4 Institute of Occupational Safety and Health (NIOSH) certified "B"  
5 reader. The chest X-ray upon which the report is made shall be filed  
6 with the application as well as spirometric tests when pulmonary  
7 dysfunction is alleged.

8 2. For other compensable occupational pneumoconiosis claims, each  
9 clinical examination shall include a chest X-ray examination and  
10 appropriate pulmonary function tests.

11 (b) To be admissible, medical evidence offered in any proceeding under this  
12 chapter for determining a claim for occupational pneumoconiosis resulting  
13 from exposure to coal dust shall comply with accepted medical standards as  
14 follows:

15 1. Chest X-rays shall be of acceptable quality with respect to exposure and  
16 development and shall be indelibly labeled with the date of the X-ray  
17 and the name and Social Security number of the claimant. Physicians'  
18 reports of X-ray interpretations shall: identify the claimant by name and  
19 Social Security number; include the date of the X-ray and the date of the  
20 report; classify the X-ray interpretation using the latest ILO  
21 Classification and be accompanied by a completed copy of the latest ILO  
22 Classification report. Only interpretations by National Institute of  
23 Occupational Safety and Health (NIOSH) certified "B" readers shall be  
24 admissible.

25 2. Spirometric testing shall be conducted in accordance with the standards  
26 recommended in the "Guides to the Evaluation of Permanent  
27 Impairment" and the 1978 ATS epidemiology standardization project

1 with the exception that the predicted normal values for lung function  
2 shall not be adjusted based upon the race of the subject. The FVC or the  
3 FEV1 values shall represent the largest of such values obtained from  
4 three (3) acceptable forced expiratory volume maneuvers as corrected to  
5 BTPS (body temperature, ambient pressure and saturated with water  
6 vapor at these conditions) and the variance between the two (2) largest  
7 acceptable FVC values shall be either less than five percent (5%) of the  
8 largest FVC value or less than one hundred (100) milliliters, whichever  
9 is greater. The variance between the two (2) largest acceptable FEV1  
10 values shall be either less than five percent (5%) of the largest FEV1  
11 value or less than one hundred (100) milliliters, whichever is greater.  
12 Reports of spirometric testing shall include a description by the  
13 physician of the procedures utilized in conducting such spirometric  
14 testing and a copy of the spirometric chart and tracings from which  
15 spirometric values submitted as evidence were taken. *If it is shown that*  
16 *the spirometric testing is not valid due to inadequate cooperation or*  
17 *poor effort on the part of the claimant, the claimant's right to take or*  
18 *prosecute any proceedings under this chapter shall be suspended until*  
19 *the refusal or obstruction ceases. No compensation shall be payable*  
20 *for the period during which the refusal or obstruction continues.*

- 21 3. The commissioner shall promulgate administrative regulations pursuant  
22 to KRS Chapter 13A as necessary to effectuate the purposes of this  
23 section. The commissioner shall periodically review the applicability of  
24 the spirometric test values contained in the "Guides to the Evaluation of  
25 Permanent Impairment" and may by administrative regulation substitute  
26 other spirometric test values which are found to be more closely  
27 representative of the normal pulmonary function of the coal mining



1 population.

2 4. The procedure for determination of occupational disease claims shall be  
3 as follows:

4 a. Immediately upon receipt of an application for resolution of claim,  
5 the commissioner shall notify the responsible employer and all  
6 other interested parties and shall furnish them with a full and  
7 complete copy of the application.

8 b. The commissioner shall assign the claim to an administrative law  
9 judge and~~[, except for coal workers' pneumoconiosis claims,]~~ shall  
10 promptly refer the employee to~~[such physician or medical facility~~  
11 ~~as the commissioner may select for examination.]~~ **a duly qualified**  
12 **"B" reader physician who is licensed in the Commonwealth and**  
13 **is a board-certified pulmonary specialist as set forth pursuant to**  
14 **Section 8 of this Act and subsection (1) of Section 17 of this Act.**

15 The report from this examination shall be provided to all parties of  
16 record. The employee shall not be referred by the commissioner  
17 for examination within two (2) years following any prior referral  
18 for examination for the same disease.

19 c. **The commissioner shall develop a procedure to annually audit**  
20 **the performance of physicians and facilities that are selected to**  
21 **perform examinations pursuant to this section. The audit shall**  
22 **include an evaluation of the physician and facility with respect to**  
23 **the timeliness and completeness of the reports and the frequency**  
24 **at which the physician's classification of an X-ray differs from**  
25 **those of the other physicians of that X-ray. The commissioner**  
26 **shall remove a physician or facility from selection consideration**  
27 **if the physician or facility consistently renders incomplete or**

1 untimely reports or if the physician's interpretations of X-rays  
2 are not in conformity with the readings of other physicians of  
3 record at least fifty percent (50%) of the time. The report  
4 required under this subdivision shall be provided to the Interim  
5 Joint Committee on Economic Development and Workforce  
6 Investment on or before July 1, 2019, and on or before July 1 of  
7 each year thereafter.

8 d. In coal workers' pneumoconiosis claims, if the physician  
9 selected by the commissioner interprets an X-ray as positive for  
10 complicated coal workers' pneumoconiosis, the commissioner  
11 shall refer the employee to the facility at which the claimant was  
12 previously evaluated for a computerized tomography scan in  
13 order to verify the findings. The computerized tomography scan  
14 shall be interpreted by the facility and a report shall be filed with  
15 the commissioner. The employer, insurer, or payment obligor  
16 shall pay the cost of the examination pursuant to the medical fee  
17 schedule. The administrative law judge may rely upon the  
18 findings in the report in accepting or rejecting ILO radiographic  
19 evidence of the disease required under Section 15 of this Act for  
20 benefit determination.

21 e. [~~Except for coal workers' pneumoconiosis claims,~~] Within forty-  
22 five (45) days following the notice of filing an application for  
23 resolution of claim, the employer or carrier shall notify the  
24 commissioner and all parties of record of its acceptance or denial  
25 of the claim. A denial shall be in writing and shall state the  
26 specific basis for the denial.[~~In coal workers' pneumoconiosis~~  
27 claims, the employer's notice of claim denial or acceptance shall be

1 filed within thirty (30) days of the issuance by the commissioner of  
2 the notice of the consensus reading unless the consensus is that the  
3 miner has not developed coal workers' pneumoconiosis category  
4 1/0 or greater. In the event the consensus procedure is exhausted  
5 without consensus being established, the employer's notice of  
6 claim denial or acceptance shall be filed within thirty (30) days of  
7 the commissioner notification to the administrative law judge that  
8 consensus has not been reached.

9 d. ~~Within forty five (45) days of assignment of a coal workers'~~  
10 ~~pneumoconiosis claim to an administrative law judge, the~~  
11 ~~employer shall cause the employee to be examined by a physician~~  
12 ~~of the employer's choice and shall provide to all other parties and~~  
13 ~~file with the commissioner the X ray interpretation by a "B"~~  
14 ~~reader. The examination of the employee shall include spirometric~~  
15 ~~testing if pulmonary dysfunction is alleged by the employee in the~~  
16 ~~application for resolution of a claim. The commissioner shall~~  
17 ~~determine whether the X ray interpretations filed by the parties are~~  
18 ~~in consensus.~~

19 e. ~~If the readings are not in consensus, the commissioner shall~~  
20 ~~forward both films, masking information identifying the facility~~  
21 ~~where the X ray was obtained and the referring physician,~~  
22 ~~consecutively to three (3) "B" readers selected randomly from a list~~  
23 ~~maintained by the commissioner for interpretation. Each "B"~~  
24 ~~reader shall select the highest quality film and report only the~~  
25 ~~interpretation of that film. The commissioner shall determine if~~  
26 ~~two (2) of the X ray interpretations filed by the three (3) "B"~~  
27 ~~readers selected randomly are in consensus. If consensus is~~

1 reached, the commissioner shall forward copies of the report to all  
2 parties as well as notice of the consensus reading which shall be  
3 considered as evidence. If consensus is not reached, the  
4 administrative law judge shall decide the claim on the evidence  
5 submitted.

6 ~~f.~~ "Consensus" is reached between two (2) chest X-ray interpreters  
7 when their classifications meet one (1) of the following criteria:  
8 each finds either category A, B, or C progressive massive fibrosis;  
9 or findings with regard to simple pneumoconiosis are both in the  
10 same major category and within one (1) minor category (ILO  
11 category twelve (12) point scale) of each other.]

12 ~~f.g.~~ The administrative law judge shall conduct such proceedings as  
13 are necessary to resolve the claim and shall have authority to grant  
14 or deny any relief, including interlocutory relief, to order additional  
15 proof, to conduct a benefit review conference, or to take such other  
16 action as may be appropriate to resolve the claim.

17 ~~g.h.~~ Unless a voluntary settlement is reached by the parties, or the  
18 parties agree otherwise, the administrative law judge shall issue a  
19 written determination within sixty (60) days following a hearing.  
20 The written determination shall address all contested issues and  
21 shall be enforceable under KRS 342.305.

22 **h. Within thirty (30) days of the receipt of the statement for the**  
23 **evaluation, the employer, insurer, or payment obligor shall pay**  
24 **the cost of the examination. Upon notice from the commissioner**  
25 **that an evaluation has been scheduled, the employer, insurer, or**  
26 **payment obligor shall forward the expenses of travel necessary to**  
27 **attend the evaluation at the state employee reimbursement rates**

1 to the employee within seven (7) days. However, if the employee  
 2 has alleged a pulmonary dysfunction but has not filed  
 3 spirometric evidence as required by paragraph (a) of this  
 4 subsection at the time the evaluation is scheduled by the  
 5 commissioner, the employee will be responsible for fifty percent  
 6 (50%) of the cost of the evaluation.

7 5. The procedure for appeal from a determination of an administrative law  
 8 judge shall be as set forth in KRS 342.285.

9 (4) (a) The right to compensation under this chapter resulting from an occupational  
 10 disease shall be forever barred unless a claim is filed with the commissioner  
 11 within three (3) years after the last injurious exposure to the occupational  
 12 hazard or after the employee first experiences a distinct manifestation of an  
 13 occupational disease in the form of symptoms reasonably sufficient to apprise  
 14 the employee that he or she has contracted the disease, whichever shall last  
 15 occur; and if death results from the occupational disease within that period,  
 16 unless a claim therefor be filed with the commissioner within three (3) years  
 17 after the death; but that notice of claim shall be deemed waived in case of  
 18 disability or death where the employer, or its insurance carrier, voluntarily  
 19 makes payment therefor, or if the incurrence of the disease or the death of the  
 20 employee and its cause was known to the employer. However, the right to  
 21 compensation for any occupational disease shall be forever barred, unless a  
 22 claim is filed with the commissioner within five (5) years from the last  
 23 injurious exposure to the occupational hazard, except that, in cases of  
 24 radiation disease, ~~or~~ asbestos-related disease, or a type of cancer specified  
 25 in KRS 61.315(11)(b), a claim must be filed within twenty (20) years from the  
 26 last injurious exposure to the occupational hazard.

27 (b) Income benefits for the disease of pneumoconiosis resulting from exposure to

1 coal dust or death therefrom shall not be payable unless the employee has  
2 been exposed to the hazards of such pneumoconiosis in the Commonwealth of  
3 Kentucky over a continuous period of not less than two (2) years during the  
4 ten (10) years immediately preceding the date of his or her last exposure to  
5 such hazard, or for any five (5) of the fifteen (15) years immediately preceding  
6 the date of such last exposure.

- 7 (5) The amount of compensation payable for disability due to occupational disease or  
8 for death from the disease, and the time and manner of its payment, shall be as  
9 provided for under the general provisions of the Workers' Compensation Act, but:
- 10 (a) In no event shall the payment exceed the amounts that were in effect at the  
11 time of the last injurious exposure;
- 12 (b) The time of the beginning of compensation payments shall be the date of the  
13 employee's last injurious exposure to the cause of the disease, or the date of  
14 actual disability, whichever is later; and
- 15 (c) In case of death where the employee has been awarded compensation or made  
16 timely claim within the period provided for in this section, and an employee  
17 has suffered continuous disability to the date of his or her death occurring at  
18 any time within twenty (20) years from the date of disability, his or her  
19 dependents, if any, shall be awarded compensation for his or her death as  
20 provided for under the general provisions of the Workers' Compensation Act  
21 and in this section, except as provided in KRS 342.750(6).
- 22 (6) If an autopsy has been performed, no testimony relative thereto shall be admitted  
23 unless the employer or its representative has available findings and reports of the  
24 pathologist or doctor who performed the autopsy examination.
- 25 (7) No compensation shall be payable for occupational disease if the employee at the  
26 time of entering the employment of the employer by whom compensation would  
27 otherwise be payable, falsely represented himself or herself, in writing, as not

1       having been previously disabled, laid-off, or compensated in damages or otherwise,  
2       because of the occupational disease, or failed or omitted truthfully to state to the  
3       best of his or her knowledge, in answer to written inquiry made by the employer, the  
4       place, duration, and nature of previous employment, or, to the best of his or her  
5       knowledge, the previous state of his or her health.

6       (8) No compensation for death from occupational disease shall be payable to any  
7       person whose relationship to the deceased, which under the provisions of this  
8       chapter would give right to compensation, arose subsequent to the beginning of the  
9       first compensable disability, except only for after-born children of a marriage  
10      existing at the beginning of such disability.

11      (9) Whenever any claimant misconceives his or her remedy and files an application for  
12      adjustment of claim under the general provisions of this chapter and it is  
13      subsequently discovered, at any time before the final disposition of the cause, that  
14      the claim for injury, disability, or death which was the basis for his or her  
15      application should properly have been made under the provisions of this section,  
16      then the application so filed may be amended in form or substance, or both, to assert  
17      a claim for injury, disability, or death under the provisions of this section, and it  
18      shall be deemed to have been so filed as amended on the date of the original filing  
19      thereof, and compensation may be awarded that is warranted by the whole evidence  
20      pursuant to the provisions of this chapter. When amendment of this type is  
21      submitted, further or additional evidence may be heard when deemed necessary.  
22      Nothing this section contains shall be construed to be or permit a waiver of any of  
23      the provisions of this chapter with reference to notice of time for filing of a claim,  
24      but notice of filing a claim, if given or done, shall be deemed to be a notice of filing  
25      of a claim under provisions of this chapter, if given or done within the time required  
26      by this subsection.

27      (10) When an employee has an occupational disease that is covered by this chapter, the

1 employer in whose employment he or she was last injuriously exposed to the hazard  
2 of the disease, and the employer's insurance carrier, if any, at the time of the  
3 exposure, shall alone be liable therefor, without right to contribution from any prior  
4 employer or insurance carrier, except as otherwise provided in this chapter.

5 (11) (a) For claims filed on or before June 30, 2017, income benefits for coal-related  
6 occupational pneumoconiosis shall be paid fifty percent (50%) by the  
7 Kentucky coal workers' pneumoconiosis fund as established in KRS 342.1242  
8 and fifty percent (50%) by the employer in whose employment the employee  
9 was last exposed to the hazard of that occupational disease.

10 (b) Income benefits for coal-related occupational pneumoconiosis for claims filed  
11 after June 30, 2017, shall be paid by the employer in whose employment the  
12 employee was last exposed to the hazards of coal workers' pneumoconiosis.

13 (c) Compensation for all other occupational disease shall be paid by the employer  
14 in whose employment the employee was last exposed to the hazards of the  
15 occupational disease.

16 (12) A concluded claim for benefits by reason of contraction of coal workers'  
17 pneumoconiosis in the severance or processing of coal shall bar any subsequent  
18 claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless  
19 there has occurred in the interim between the conclusion of the first claim and the  
20 filing of the second claim at least two (2) years of employment wherein the  
21 employee was continuously exposed to the hazards of the disease in the  
22 Commonwealth.

23 ~~{(13) For coal-related occupational pneumoconiosis claims, the consensus procedure shall~~  
24 ~~apply to all claims which have not been assigned to an administrative law judge~~  
25 ~~prior to July 15, 2002. The consensus classification shall be presumed to be the~~  
26 ~~correct classification of the employee's condition unless overcome by clear and~~  
27 ~~convincing evidence. If an administrative law judge finds that the presumption of~~



1       ~~correctness of the consensus reading has been overcome, the reasons shall be~~  
 2       ~~specially stated in the administrative law judge's order.]~~

3       ➔Section 10. KRS 342.320 is amended to read as follows:

4       (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter,  
 5       shall be subject to the approval of an administrative law judge pursuant to the  
 6       statutes and administrative regulations.

7       (2) In an original claim, attorney's fees for services under this chapter on behalf of an  
 8       employee shall be subject to the following maximum limits:

9       (a) *For attorney-client employment contracts entered into and signed after July*  
 10       *14, 2000, but before the effective date of this Act,* twenty percent (20%) of  
 11       the first twenty-five thousand dollars (\$25,000) of the award, fifteen percent  
 12       (15%) of the next ten thousand dollars (\$10,000), and five percent (5%) of the  
 13       remainder of the award, not to exceed a maximum fee of twelve thousand  
 14       dollars (\$12,000). This fee shall be paid by the employee from the proceeds of  
 15       the award or settlement; and

16       (b) *For attorney-client employment contracts entered into and signed on or*  
 17       *after the effective date of this Act, twenty percent (20%) of the first twenty-*  
 18       *five thousand dollars (\$25,000) of the award, fifteen percent (15%) of the*  
 19       *next twenty-five thousand dollars (\$25,000), and ten percent (10%) of the*  
 20       *remainder of the award, not to exceed a maximum fee of eighteen thousand*  
 21       *dollars (\$18,000). This fee shall be paid by the employee from the proceeds*  
 22       *of the award or settlement*~~Attorney-client employment contracts entered into~~  
 23       ~~and signed after July 14, 2000, shall be subject to the conditions of paragraph~~  
 24       ~~(a) of this subsection].~~

25       (3) In approving an allowance of attorney's fees, the administrative law judge shall  
 26       consider the extent, complexity, and quality of services rendered, and in the case of  
 27       death, the Remarriage Tables of the Dutch Royal Insurance Institute. An attorney's

1 fee may be denied or reduced upon proof of solicitation by the attorney. However,  
2 this provision shall not be construed to preclude advertising in conformity with  
3 standards prescribed by the Kentucky Supreme Court.

4 (4) No attorney's fee in any case involving benefits under this chapter shall be paid until  
5 the fee is approved by the administrative law judge, and any contract for the  
6 payment of attorney's fees otherwise than as provided in this section shall be void.  
7 The motion for approval of an attorney's fee shall be submitted within thirty (30)  
8 days following finality of the claim. Except when the attorney's fee is to be paid by  
9 the employer or carrier, the attorney's fee shall be paid in one (1) of the following  
10 ways:

11 (a) The employee may pay the attorney's fee out of his or her personal funds or  
12 from the proceeds of a lump-sum settlement; or

13 (b) The administrative law judge, upon request of the employee, may order the  
14 payment of the attorney's fee in a lump sum directly to the attorney of record  
15 and deduct the attorney's fee from the weekly benefits payable to the employee  
16 in equal installments over the duration of the award or until the attorney's fee  
17 has been paid, commuting sufficient sums to pay the fee.

18 (5) At the commencement of the attorney-client relationship, the attorney shall explain  
19 to the employee the methods by which this section provides for the payment of the  
20 attorney's fee, and the employee shall select the method in which the attorney's fee  
21 is to be paid. His or her selection and statement that he or she fully understands the  
22 method to be used shall be submitted by his or her attorney, on a notarized form  
23 signed by the employee, at the time the motion for approval of the attorney's fee is  
24 submitted. The commissioner shall develop the format and content of the form to be  
25 used pursuant to this section. The form to be used shall list on its face all options  
26 permitted in this section for the payment of an attorney's fees and contain an  
27 explanation in nontechnical language of each method.

1 (6) ~~{The General Assembly declares that by the enactment of KRS 342.316(3), it is the~~  
2 ~~legislative intent to encourage settlement and prompt administrative handling of~~  
3 ~~those claims and thereby reduce expenses to claimants for compensation under the~~  
4 ~~provisions of KRS 342.316, and the administrative law judge shall give due regard~~  
5 ~~to this legislative intent in the handling of uncontested claims and the allowance of~~  
6 ~~attorney's fees therein.~~

7 ~~(7)~~—In a claim that has been reopened pursuant to the provisions of this chapter, an  
8 attorney's fee may be awarded by the administrative law judge subject to the limits  
9 set forth in subsection (2) of this section. In awarding the attorney's fee, the  
10 administrative law judge shall consider the factors set forth in subsection (3) of this  
11 section. If no additional amount is recovered upon reopening, no attorney's fee shall  
12 be awarded. No attorney's fee shall be allowed or approved exceeding the amounts  
13 provided in subsection (2)(a) of this section applicable to any additional amount  
14 recovered.

15 ~~(7)~~~~(8)~~ Attorney's fees for representing employers in proceedings under this chapter  
16 pursuant to contract with the employer shall be subject to approval of the  
17 administrative law judge in the same manner as prescribed for attorney  
18 representation of employees. Employer attorney's fees are subject to the limitation  
19 of eighteen~~[twelve]~~ thousand dollars (\$18,000)~~(\$12,000)~~ maximum fees except  
20 that fees for representing employers shall not be dependent upon the result  
21 achieved. Employer attorney's fees may be paid on a periodic basis while a claim is  
22 adjudicated and the payments need not be approved until the claims resolution  
23 process is completed. All such approved fees shall be paid by the employer and in  
24 no event shall exceed the amount the employer agreed by contract to pay.

25 ➔Section 11. KRS 342.610 is amended to read as follows:

26 (1) Every employer subject to this chapter shall be liable for compensation for injury,  
27 occupational disease, or death without regard to fault as a cause of the injury,

1 occupational disease, or death.

2 (2) A contractor who subcontracts all or any part of a contract and his or her carrier  
3 shall be liable for the payment of compensation to the employees of the  
4 subcontractor unless the subcontractor primarily liable for the payment of such  
5 compensation has secured the payment of compensation as provided for in this  
6 chapter. Any contractor or his or her carrier who shall become liable for such  
7 compensation may recover the amount of such compensation paid and necessary  
8 expenses from the subcontractor primarily liable therefor. A person who contracts  
9 with another:

10 (a) To have work performed consisting of the removal, excavation, or drilling of  
11 soil, rock, or mineral, or the cutting or removal of timber from land; or

12 (b) To have work performed of a kind which is a regular or recurrent part of the  
13 work of the trade, business, occupation, or profession of such person  
14 shall for the purposes of this section be deemed a contractor, and such other person  
15 a subcontractor. This subsection shall not apply to the owner or lessee of land  
16 principally used for agriculture.

17 (3) Liability for compensation shall not apply ~~to~~~~where~~ injury, occupational disease, or  
18 death to the employee ***if the employee willfully intended to***~~was proximately caused~~  
19 ~~primarily by voluntary intoxication as defined in KRS 501.010, or by his or her~~  
20 ~~willful intention to~~ injure or kill himself, herself, or another.

21 (4) ***If an employee voluntarily introduced an illegal, nonprescribed substance or***  
22 ***substances or a prescribed substance or substances in amounts in excess of***  
23 ***prescribed amounts into his or her body detected in the blood, as measured by a***  
24 ***scientifically reliable test, that could cause a disturbance of mental or physical***  
25 ***capacities, it shall be presumed that the illegal, nonprescribed substance or***  
26 ***substances or the prescribed substance or substances in amounts in excess of***  
27 ***prescribed amounts caused the injury, occupational disease, or death of the***

1       employee and liability for compensation shall not apply to the injury,  
2       occupational disease, or death to the employee.

3       (5) If injury or death results to an employee through the deliberate intention of his or  
4       her employer to produce such injury or death, the employee or the employee's  
5       dependent as herein defined shall receive the amount provided in this chapter in a  
6       lump sum to be used, if desired, to prosecute the employer. The dependents may  
7       bring suit against the employer for any amount they desire. If injury or death results  
8       to an employee through the deliberate intention of his or her employer to produce  
9       such injury or death, the employee or the employee's dependents may take under  
10      this chapter, or in lieu thereof, have a cause of action at law against the employer as  
11      if this chapter had not been passed, for such damage so sustained by the employee,  
12      his dependents or personal representatives as is recoverable at law. If a suit is  
13      brought under this subsection, all right to compensation under this chapter shall  
14      thereby be waived as to all persons. If a claim is made for the payment of  
15      compensation or any other benefit provided by this chapter, all rights to sue the  
16      employer for damages on account of such injury or death shall be waived as to all  
17      persons.

18      ~~(6)~~<sup>(5)</sup> Prior to issuing any building permit pursuant to KRS 198B.060(10), every  
19      local building official shall require proof of workers' compensation coverage from  
20      the builder before a permit is issued. A person who is exempt under the exception  
21      contained in KRS 342.650(2), and any contractor otherwise exempt from this  
22      chapter, shall so certify to the local building official, in writing and on a form  
23      prescribed by the commissioner, in lieu of providing proof of workers'  
24      compensation coverage.

25      ~~(7)~~<sup>(6)</sup> Every employer subject to this chapter, at its principal office and such other  
26      locations where employees customarily report for payroll and personnel matters,  
27      shall post a notice stating the name of its workers' compensation insurance carrier

1 and policy number, setting forth the means to access medical care for injuries, the  
2 employee's obligation to give notice of accidents, and such other matters concerning  
3 the employee's rights under this chapter as may be required by the commissioner so  
4 as to afford every employee the opportunity to become informed about the  
5 employer's workers' compensation program. The format and contents of the notice  
6 shall be established by the commissioner through administrative regulation, and  
7 copies shall be provided to the employer by its insurance carrier.

8 ➔Section 12. KRS 342.700 is amended to read as follows:

9 (1) Whenever an injury for which compensation is payable under this chapter has been  
10 sustained under circumstances creating in some other person than the employer a  
11 legal liability to pay damages, the injured employee may either claim compensation  
12 or proceed at law by civil action against the other person to recover damages, or  
13 proceed both against the employer for compensation and the other person to recover  
14 damages, but he shall not collect from both. If the injured employee elects to  
15 proceed at law by civil action against the other person to recover damages, he shall  
16 give due and timely notice to the employer and the special fund of the filing of the  
17 action. If compensation is awarded or paid under this chapter, the employer, his  
18 insurance carrier, the special fund, the Kentucky coal workers' pneumoconiosis  
19 fund, and the uninsured employer's fund, or any of them, having paid the  
20 compensation or having become liable therefor, may recover in his or its own name  
21 or that of the injured employee from the other person in whom legal liability for  
22 damages exists, not to exceed the indemnity and medical expenses paid and  
23 payable to or on behalf of the injured employee, less a pro rata share of the  
24 employee's legal fees and expense. The notice of civil action shall conform in all  
25 respects to the requirements of KRS 411.188(2).

26 (2) A principal contractor, intermediate, or subcontractor shall be liable for  
27 compensation to any employee injured while in the employ of any one (1) of his

1 intermediate or subcontractors and engaged upon the subject matter of the contract,  
2 to the same extent as the immediate employer. Any principal, intermediate, or  
3 subcontractor who pays the compensation may recover the amount paid from any  
4 subordinate contractor through whom he has been rendered liable under this section.  
5 Every claim to compensation under this subsection shall in the first instance be  
6 presented to and instituted against the immediate employer, but the proceedings  
7 shall not constitute a waiver of the employee's rights to recover compensation under  
8 this chapter from the principal or intermediate contractor nor shall the claim be  
9 barred by limitations, if the claim is filed against the principal or intermediate  
10 contractor within one (1) year after a final unappealed order has been rendered by an  
11 administrative law judge determining that immediate employer has insufficient  
12 security to pay the full and maximum benefits that could be determined to be due  
13 him under this chapter. The collection of full compensation from one employer  
14 shall bar recovery by the employee against any other. But he shall not collect from  
15 all a total compensation in excess of the amount for which his immediate employer  
16 is liable. This subsection shall apply only in cases where the injury occurred on, in,  
17 or about the premises on which the principal contractor has undertaken to execute  
18 work or which are under his control otherwise or management.

19 (3) It shall be considered to be contrary to public policy and unlawful for any owner or  
20 employer to require another employer to waive its remedies granted by this section  
21 as a condition of receiving a contract or purchase order. Furthermore, in selecting  
22 between two (2) or more contractors or suppliers, consideration may not be given by  
23 an owner or employer to whether one (1) contractor or supplier voluntarily waives  
24 its remedies under this section or offers to accept lesser compensation than another  
25 contractor or supplier for that waiver of remedies.

26 ➔Section 13. KRS 342.730 is amended to read as follows:

27 (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to

1 the employee as follows:

2 (a) For temporary or permanent total disability, sixty-six and two-thirds percent  
 3 (66-2/3%) of the employee's average weekly wage but not more than one  
 4 hundred ~~ten~~ percent ~~(110%)~~~~(100%)~~ of the state average weekly wage and  
 5 not less than twenty percent (20%) of the state average weekly wage as  
 6 determined in KRS 342.740 during that disability. Nonwork-related  
 7 impairment and conditions compensable under KRS 342.732 and hearing loss  
 8 covered in KRS 342.7305 shall not be considered in determining whether the  
 9 employee is totally disabled for purposes of this subsection.

10 (b) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of  
 11 the employee's average weekly wage but not more than eighty-two and one-  
 12 half~~seventy-five~~ percent ~~(82.5%)~~~~(75%)~~ of the state average weekly wage  
 13 as determined by KRS 342.740, multiplied by the permanent impairment  
 14 rating caused by the injury or occupational disease as determined by the  
 15 "Guides to the Evaluation of Permanent Impairment," times the factor set  
 16 forth in the table that follows:

AMA Impairment	Factor
0 to 5%	0.65
6 to 10%	0.85
11 to 15%	1.00
16 to 20%	1.00
21 to 25%	1.15
26 to 30%	1.35
31 to 35%	1.50
36% and above	1.70

26 Any temporary total disability period within the maximum period for  
 27 permanent, partial disability benefits shall extend the maximum period but



1 shall not make payable a weekly benefit exceeding that determined in  
2 subsection (1)(a) of this section. Notwithstanding any section of this chapter  
3 to the contrary, there shall be no minimum weekly income benefit for  
4 permanent partial disability and medical benefits shall be paid for the duration  
5 of the disability.

- 6 (c) 1. If, due to an injury, an employee does not retain the physical capacity to  
7 return to the type of work that the employee performed at the time of  
8 injury, the benefit for permanent partial disability shall be multiplied by  
9 three (3) times the amount otherwise determined under paragraph (b) of  
10 this subsection, but this provision shall not be construed so as to extend  
11 the duration of payments; or
- 12 2. If an employee returns to work at a weekly wage equal to or greater than  
13 the average weekly wage at the time of injury, the weekly benefit for  
14 permanent partial disability shall be determined under paragraph (b) of  
15 this subsection for each week during which that employment is  
16 sustained. During any period of cessation of that employment, temporary  
17 or permanent, for any reason, with or without cause, payment of weekly  
18 benefits for permanent partial disability during the period of cessation  
19 shall be two (2) times the amount otherwise payable under paragraph (b)  
20 of this subsection. This provision shall not be construed so as to extend  
21 the duration of payments.
- 22 3. Recognizing that limited education and advancing age impact an  
23 employee's post-injury earning capacity, an education and age factor,  
24 when applicable, shall be added to the income benefit multiplier set  
25 forth in paragraph (c)1. of this subsection. If at the time of injury, the  
26 employee had less than eight (8) years of formal education, the  
27 multiplier shall be increased by four-tenths (0.4); if the employee had

1 less than twelve (12) years of education or a high school Equivalency  
 2 diploma, the multiplier shall be increased by two-tenths (0.2); if the  
 3 employee was age sixty (60) or older, the multiplier shall be increased  
 4 by six-tenths (0.6); if the employee was age fifty-five (55) or older, the  
 5 multiplier shall be increased by four-tenths (0.4); or if the employee was  
 6 age fifty (50) or older, the multiplier shall be increased by two-tenths  
 7 (0.2).

8 4. Notwithstanding the provisions of KRS 342.125, a claim may be  
 9 reopened at any time during the period of permanent partial disability in  
 10 order to conform the award payments with the requirements of  
 11 subparagraph 2. of this paragraph.

12 (d) For permanent partial disability, if an employee has a permanent disability  
 13 rating of fifty percent (50%) or less as a result of a work-related injury, the  
 14 compensable permanent partial disability period shall be four hundred twenty-  
 15 five (425) weeks, and if the permanent disability rating is greater than fifty  
 16 percent (50%), the compensable permanent partial disability period shall be  
 17 five hundred twenty (520) weeks from the date the impairment or disability  
 18 exceeding fifty percent (50%) arises. Benefits payable for permanent partial  
 19 disability shall not exceed ninety-nine percent (99%) of sixty-six and two-  
 20 thirds percent (66-2/3%) of the employee's average weekly wage as  
 21 determined under KRS 342.740 and shall not exceed **eighty-two and one-**  
 22 **half**~~seventy-five~~ percent **(82.5%)**~~(75%)~~ of the state average weekly wage,  
 23 except for benefits payable pursuant to paragraph (c)1. of this subsection,  
 24 which shall not exceed one hundred **ten** percent **(110%)**~~(100%)~~ of the state  
 25 average weekly wage, nor shall benefits for permanent partial disability be  
 26 payable for a period exceeding five hundred twenty (520) weeks,  
 27 notwithstanding that multiplication of impairment times the factor set forth in

1 paragraph (b) of this subsection would yield a greater percentage of disability.

2 (e) For permanent partial disability, impairment for nonwork-related disabilities,  
3 conditions previously compensated under this chapter, conditions covered by  
4 KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be  
5 considered in determining the extent of disability or duration of benefits under  
6 this chapter.

7 (2) The period of any income benefits payable under this section on account of any  
8 injury shall be reduced by the period of income benefits paid or payable under this  
9 chapter on account of a prior injury if income benefits in both cases are for  
10 disability of the same member or function, or different parts of the same member or  
11 function, and the income benefits payable on account of the subsequent disability in  
12 whole or in part would duplicate the income benefits payable on account of the pre-  
13 existing disability.

14 (3) Subject to the limitations contained in subsection (4) of this section, when an  
15 employee, who has sustained disability compensable under this chapter, and who  
16 has filed, or could have timely filed, a valid claim in his or her lifetime, dies from  
17 causes other than the injury before the expiration of the compensable period  
18 specified, portions of the income benefits specified and unpaid at the individual's  
19 death, whether or not accrued or due at his or her death, shall be paid, under an  
20 award made before or after the death, for the period specified in this section, to and  
21 for the benefit of the persons within the classes at the time of death and in the  
22 proportions and upon the conditions specified in this section and in the order  
23 named:

24 (a) To the widow or widower, if there is no child under the age of eighteen (18) or  
25 incapable of self-support, benefits at fifty percent (50%) of the rate specified  
26 in the award; or

27 (b) If there are both a widow or widower and such a child or children, to the

- 1 widow or widower, forty-five percent (45%) of the benefits specified in the  
2 award, or forty percent (40%) of those benefits if such a child or children are  
3 not living with the widow or widower; and, in addition thereto, fifteen percent  
4 (15%) of the benefits specified in the award to each child. Where there are  
5 more than two (2) such children, the indemnity benefits payable on account of  
6 two (2) children shall be divided among all the children, share and share alike;  
7 or
- 8 (c) If there is no widow or widower but such a child or children, then to the child  
9 or children, fifty percent (50%) of the benefits specified in the award to one  
10 (1) child, and fifteen percent (15%) of those benefits to a second child, to be  
11 shared equally. If there are more than two (2) such children, the indemnity  
12 benefits payable on account of two (2) children shall be divided equally  
13 among all the children; or
- 14 (d) If there is no survivor in the above classes, then the parent or parents wholly  
15 or partly actually dependent for support upon the decedent, or to other wholly  
16 or partly actually dependent relatives listed in paragraph (g) of subsection (1)  
17 of KRS 342.750, or to both, in proportions that the commissioner provides by  
18 administrative regulation.
- 19 (e) To the widow or widower upon remarriage, up to two (2) years, benefits as  
20 specified in the award and proportioned under paragraphs (a) or (b) of this  
21 subsection, if the proportioned benefits remain unpaid, to be paid in a lump  
22 sum.
- 23 (4) All income benefits payable pursuant to this chapter shall terminate as of the date  
24 upon which the employee reaches the age of seventy (70)~~qualifies for normal old-~~  
25 ~~age Social Security retirement benefits under the United States Social Security Act,~~  
26 ~~42 U.S.C. secs. 301 to 1397f~~, or four (4)~~two (2)~~ years after the employee's injury  
27 or last exposure, whichever last occurs. In like manner all income benefits payable

1       pursuant to this chapter to spouses and dependents shall terminate as of the date  
2       upon which the employee would have reached age seventy (70) or four (4) years  
3       after the employee's date of injury or date of last exposure, whichever last  
4       occurs~~[when such spouses and dependents qualify for benefits under the United~~  
5       ~~States Social Security Act by reason of the fact that the worker upon whose earnings~~  
6       ~~entitlement is based would have qualified for normal old age Social Security~~  
7       ~~retirement benefits].~~

8       (5) All income benefits pursuant to this chapter otherwise payable for temporary total  
9       and permanent total disability shall be offset by unemployment insurance benefits  
10      paid for unemployment during the period of temporary total or permanent total  
11      disability.

12      (6) All income benefits otherwise payable pursuant to this chapter shall be offset by  
13      payments made under an exclusively employer-funded disability plan, exclusively  
14      employer-funded disability retirement plan, ~~[or ]~~exclusively employer-funded  
15      sickness and accident plan, or salary continuation, which extends income benefits  
16      for the same disability covered by this chapter, except where the employer-funded  
17      plan contains an internal offset provision for workers' compensation benefits which  
18      is inconsistent with this provision.

19      (7) Income benefits otherwise payable pursuant to this chapter for temporary total  
20      disability during the period the employee has returned to a light-duty or other  
21      alternative job position shall be offset by an amount equal to the employee's gross  
22      income minus applicable taxes during the period of light-duty work or work in an  
23      alternative job position.

24      (8) If an employee receiving a permanent total disability award returns to work, that  
25      employee shall notify the employer, payment obligor, insurance carrier, or special  
26      fund as applicable.

27      (9) Income benefits otherwise payable pursuant to this chapter for temporary total

1        *disability to a professional athlete under the direction and control of an employer*  
2        *that is a professional team located in Kentucky, absent any collective bargaining*  
3        *agreement, shall terminate no later than the date on which the contract for hire*  
4        *upon which the employment is based expires, so long as the professional athlete*  
5        *has been released to return to employment for which he or she has prior training*  
6        *or experience.*

7        ➔Section 14. KRS 342.7305 is amended to read as follows:

- 8        (1) In all claims for occupational hearing loss caused by either a single incident of  
9        trauma or by repetitive exposure to hazardous noise over an extended period of  
10       employment, the extent of binaural hearing impairment shall be determined under  
11       the "Guides to the Evaluation of Permanent Impairment."
- 12       (2) Income benefits payable for occupational hearing loss shall be as provided in KRS  
13       342.730, except income benefits shall not be payable where the binaural hearing  
14       impairment converted to impairment of the whole person results in impairment of  
15       less than eight percent (8%). No impairment percentage for tinnitus shall be  
16       considered in determining impairment to the whole person.
- 17       (3) The *commissioner*~~[executive director]~~ shall provide by administrative regulation  
18       for prompt referral of hearing loss claims for evaluation, for all medical  
19       reimbursement, and for prompt authorization of hearing enhancement devices.
- 20       (4) When audiograms and other testing reveal a pattern of hearing loss compatible with  
21       that caused by hazardous noise exposure and the employee demonstrates repetitive  
22       exposure to hazardous noise in the workplace, there shall be a rebuttable  
23       presumption that the hearing impairment is an injury covered by this chapter, and  
24       the employer with whom the employee was last injuriously exposed to hazardous  
25       noise *for a minimum duration of one (1) year of employment* shall be exclusively  
26       liable for benefits.

27       ➔Section 15. KRS 342.732 is amended to read as follows:

- 1 (1) Notwithstanding any other provision of this chapter, income benefits and retraining  
2 incentive benefits for occupational pneumoconiosis resulting from exposure to coal  
3 dust in the severance or processing of coal shall be paid as follows:
- 4 (a) 1. If an employee has a radiographic classification of category 1/0, 1/1 or  
5 1/2, coal workers' pneumoconiosis and spirometric test values of eighty  
6 percent (80%) or more, the employee shall be awarded a one (1) time  
7 only retraining incentive benefit which shall be an amount equal to  
8 sixty-six and two-thirds percent (66-2/3%) of the employee's average  
9 weekly wage as determined by KRS 342.740, but not more than seventy-  
10 five percent (75%) of the state average weekly wage, payable  
11 semimonthly for a period not to exceed one hundred four (104) weeks,  
12 except as provided in subparagraph 3. of this paragraph.
- 13 2. Except as provided in subparagraph 3. of this paragraph, these benefits  
14 shall be paid only while the employee is enrolled and actively and  
15 successfully participating as a full-time student taking the equivalent of  
16 twelve (12) or more credit hours per week in a bona fide training or  
17 education program that if successfully completed will qualify the person  
18 completing the course for a trade, occupation, or profession and which  
19 program can be completed within the period benefits are payable under  
20 this subsection. The program must be approved under administrative  
21 regulations to be promulgated by the commissioner. These benefits shall  
22 also be paid to an employee who is a part-time student taking not less  
23 than the equivalent of six (6) nor more than eleven (11) credit hours per  
24 week, except that benefits shall be an amount equal to thirty-three and  
25 one-third percent (33-1/3%) of the employee's average weekly wage as  
26 determined by KRS 342.740, but not more than thirty-seven and one-  
27 half percent (37-1/2%) of the state average weekly wage, payable

- 1 biweekly for a period not to exceed two hundred eight (208) weeks.
- 2 3. These benefits shall also be paid biweekly while an employee is actively  
3 and successfully pursuing a High School Equivalency Diploma in  
4 accordance with administrative regulations promulgated by the  
5 commissioner. These benefits shall be paid in the amount of sixty-six  
6 and two-thirds percent (66-2/3%) of the employee's average weekly  
7 wage not to exceed seventy-five percent (75%) of the state average  
8 weekly wage for a maximum period not to exceed seventeen (17) weeks.  
9 These income benefits shall be in addition to the maximum amount of  
10 retraining incentive benefits payable under this paragraph.
- 11 4. The employer shall also pay, directly to the institution conducting the  
12 training or education program, instruction, tuition, and material costs not  
13 to exceed five thousand dollars (\$5,000).
- 14 5. The *employee shall notify the parties of his or her intention to retrain*  
15 *within thirty (30) days*~~[period of weeks during which this benefit is~~  
16 ~~payable shall begin no later than the thirtieth day]~~ after the  
17 administrative law judge's order ~~[awarding the benefit]~~ becomes final.~~],~~  
18 ~~except that an]~~ *The employee must initiate retraining within*~~[may elect~~  
19 ~~to defer the beginning of such benefits up to the]~~ three hundred sixty-  
20 *five (365) days of the administrative law judge's final order*~~[fifth day~~  
21 ~~following the thirtieth day the order becomes final]. [Unless the~~  
22 ~~employee has requested deferral of income benefits, those ]~~Income  
23 benefits payable under subparagraphs 1. and 2. of this paragraph shall  
24 begin no later than thirty (30) days following conclusion of income  
25 benefits paid under subparagraph 3. if such benefits were paid.
- 26 6. If an employee who is awarded retraining incentive benefits under this  
27 paragraph successfully completes a bona fide training or education



1 program approved by the commissioner, upon completion of the training  
2 or education program, the employer shall pay to that employee the sum  
3 of five thousand dollars (\$5,000) for successful completion of a program  
4 that requires a course of study of not less than twelve (12) months nor  
5 more than eighteen (18) months, or the sum of ten thousand dollars  
6 (\$10,000) for successful completion of a program that requires a course  
7 of study of more than eighteen (18) months. This amount shall be in  
8 addition to retraining incentive benefits awarded under this paragraph,  
9 and tuition expenses paid by the employer.

- 10 7. An employee who is age fifty-seven (57) years or older on the date of  
11 last exposure and who is awarded retraining incentive benefits under  
12 subparagraphs 1. to 4. of this paragraph, may elect to receive in lieu of  
13 retraining incentive benefits, an amount equal to sixty-six and two-thirds  
14 percent ( $66\frac{2}{3}\%$ ) of the employee's average weekly wage, not to exceed  
15 seventy-five percent (75%) of the state average weekly wage as  
16 determined by KRS 342.740 multiplied by the disability rating of  
17 twenty-five percent (25%) for a period not to exceed four hundred  
18 twenty-five (425) weeks, or until the employee reaches sixty-five (65)  
19 years of age, whichever occurs first, KRS 342.730(4) notwithstanding.
- 20 8. A claim for retraining incentive benefits provided under this section may  
21 be filed, but benefits shall not be payable, while an employee is  
22 employed in the severance or processing of coal as defined in KRS  
23 342.0011(23).
- 24 9. If an employer appeals an award of retraining incentive benefits, upon an  
25 employee's motion, an administrative law judge may grant retraining  
26 incentive benefits pending appeal as interlocutory relief.
- 27 10. If an employee elects to defer payment of retraining incentive benefits

1 for a period of retraining longer than three hundred sixty-five (365) days,  
2 benefits otherwise payable shall be reduced week-for-week for each  
3 week retraining benefits are further deferred;

4 (b) 1. If an employee has a radiographic classification of category 1/0, 1/1, or  
5 1/2 coal workers' pneumoconiosis and respiratory impairment evidenced  
6 by spirometric test values of fifty-five percent (55%) or more but less  
7 than eighty percent (80%) of the predicted normal values, or category  
8 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and spirometric test values  
9 of eighty percent (80%) or more of the predicted normal values, there  
10 shall be an irrebuttable presumption that the employee has a disability  
11 rating of twenty-five percent (25%) resulting from exposure to coal dust,  
12 and the employee shall be awarded an income benefit which shall be an  
13 amount equal to sixty-six and two-thirds percent (66-2/3%) of the  
14 employee's average weekly wage, but not to exceed seventy-five percent  
15 (75%) of the state average weekly wage as determined by KRS 342.740  
16 multiplied by the disability rating of twenty-five percent (25%). The  
17 award shall be payable for a period not to exceed four hundred twenty-  
18 five (425) weeks.

19 2. An employee who is awarded benefits under this paragraph may, at the  
20 time of the award or before benefit payments begin, elect to receive  
21 retraining incentive benefits provided under paragraph (a)1. to 6. of this  
22 subsection, in lieu of income benefits awarded under this paragraph,  
23 provided that such option is available one (1) time only and is not  
24 revocable, and provided that in no event shall income benefits payable  
25 under this paragraph be stacked or added to retraining incentive income  
26 benefits paid or payable under subparagraphs 1. to 6. of paragraph (a)1.  
27 to 6. of this subsection to extend the period of disability;

1 (c) If it is determined that an employee has a radiographic classification of  
2 category 1/0, 1/1, or 1/2, and respiratory impairment resulting from exposure  
3 to coal dust as evidenced by spirometric test values of less than fifty-five  
4 percent (55%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal  
5 workers' pneumoconiosis and respiratory impairment evidenced by  
6 spirometric test values of fifty-five percent (55%) or more but less than eighty  
7 percent (80%) of the predicted normal values, or category 3/2 or 3/3 coal  
8 workers' pneumoconiosis and spirometric test values of eighty percent (80%)  
9 or more, there shall be an irrebuttable presumption that the employee has a  
10 disability rating of fifty percent (50%) resulting from exposure to coal dust,  
11 and the employee shall be awarded an income benefit which shall be an  
12 amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's  
13 average weekly wage but not to exceed seventy-five percent (75%) of the state  
14 average weekly wage as determined by KRS 342.740 multiplied by the  
15 disability rating of fifty percent (50%). The award shall be payable for a  
16 period not to exceed four hundred twenty-five (425) weeks;

17 (d) If it is determined that an employee has a radiographic classification of  
18 category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis, based on the latest  
19 ILO International Classification of Radiographics, and respiratory impairment  
20 as evidenced by spirometric test values of less than fifty-five percent (55%) of  
21 the predicted normal values or category 3/2 or 3/3 pneumoconiosis and  
22 respiratory impairment evidenced by spirometric test values of fifty-five  
23 percent (55%) or more but less than eighty percent (80%) of the predicted  
24 normal values, there shall be an irrebuttable presumption that the employee  
25 has a seventy-five percent (75%) disability rating resulting from exposure to  
26 coal dust and the employee shall be awarded income benefits which shall be  
27 equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average

1 weekly wage but not to exceed seventy-five percent (75%) of the state average  
2 weekly wage as determined by KRS 342.740 multiplied by the disability  
3 rating of seventy-five percent (75%). The award shall be payable for a period  
4 not to exceed five hundred twenty (520) weeks. Income benefits awarded  
5 under this paragraph shall be payable to the employee during the disability;  
6 and

7 (e) If it is determined that an employee has radiographic classification of 3/2 or  
8 3/3 occupational pneumoconiosis and respiratory impairment evidenced by  
9 spirometric test values of less than fifty-five percent (55%) of the predicted  
10 normal values, or complicated pneumoconiosis (large opacities category A, B,  
11 or C progressive massive fibrosis), there shall be an irrebuttable presumption  
12 that the employee is totally disabled resulting from exposure to coal dust, and  
13 the employee shall be awarded income benefits equal to sixty-six and two-  
14 thirds percent (66-2/3%) of the employee's average weekly wage but not more  
15 than one hundred percent (100%) of the state average weekly wage and not  
16 less than twenty percent (20%) of the average weekly wage of the state as  
17 determined by KRS 342.740. Income benefits awarded under this paragraph  
18 shall be payable to the employee during such disability.

19 (2) The presence of respiratory impairment resulting from exposure to coal dust shall  
20 be established by using the largest forced vital capacity (FVC) value or the largest  
21 forced expiratory volume in one second (FEV1) value determined from the totality  
22 of all such spirometric testing performed in compliance with accepted medical  
23 standards.

24 (3) When valid spirometric tests are not provided and a physician certifies to the  
25 administrative law judge that spirometric testing is not medically indicated because  
26 of the permanent physical condition of the employee, the administrative law judge  
27 shall make his or her decision on the basis of evidence admitted which establishes

1 the existence of a diagnosis of occupational pneumoconiosis and respiratory  
 2 impairment due to the occupational pneumoconiosis. The evidence submitted by the  
 3 employee shall include one (1) or more arterial blood gas studies performed in  
 4 accordance with accepted medical standards. Income benefits shall not be awarded  
 5 in the absence of valid spirometric tests if the claimant's PO<sub>2</sub> arterial blood gas  
 6 value is equal to or higher than one (1) standard deviation from the normal value  
 7 obtained by the formula  $(103.5 - 0.42X)$ , where X equals the claimant's age at the  
 8 time of the arterial blood gas study.

9 (4) Upon request, the commissioner shall refer an employee who has been awarded  
 10 retraining incentive benefits under subsection (1)(a) of this section to the Office of  
 11 Vocational Rehabilitation for evaluation and assessment of the training, education,  
 12 or other services necessary to prepare the employee for a trade, occupation, or  
 13 profession that will return the employee to remunerative employment, or services  
 14 necessary and appropriate to prepare and enable the employee to successfully  
 15 complete a bona fide training or education program approved by the commissioner.  
 16 The commissioner shall contract with the Office of Vocational Rehabilitation to  
 17 provide vocational rehabilitation or education services commensurate with the skill  
 18 levels and abilities of the employee. Services provided under this subsection shall  
 19 be funded by the coal workers' pneumoconiosis fund, KRS 342. 1242  
 20 notwithstanding, for claims filed on or before June 30, 2017, and by the employer  
 21 for claims filed after June 30, 2017.

22 (5) The commissioner shall promulgate administrative regulations sufficient to  
 23 effectuate the provisions relating to retraining incentive benefits provided under  
 24 subsection (1)(a) of this section. The administrative regulations shall:

25 (a) **Create an online portal through which employees shall select a facility or**  
 26 **institution to provide their retraining. This portal shall list**~~Define a [ ]~~**bona**  
 27 **fide training or education** ~~program" to mean a postsecondary~~ **programs.**

- 1           ~~education or training program, including but not limited to the~~ **These**  
2           **programs shall include** postsecondary programs registered with the Higher  
3           Education Assistance Authority, and ~~[successful completion of which]~~ will  
4           qualify the **employee**~~[person completing the course]~~ for a trade, occupation, or  
5           profession. **The programs listed shall be capable of completion**~~[, and which~~  
6           ~~program can be completed]~~ within the period benefits are payable under  
7           subsection (1)(a) of this section;
- 8           (b) Establish requirements for approval and certification of a bona fide training or  
9           education program;
- 10          (c) Provide that funds paid to the training or education program by the employer  
11          as required under subsection (1)(a)4. of this section shall be applied only to  
12          instruction, tuition, material costs, and any fees necessary for the completion  
13          of the program;
- 14          (d) Establish requirements for successful participation in and completion of an  
15          approved and certified bona fide training or education program, and eligibility  
16          standards that must be satisfied to receive sums to be paid by the employer  
17          pursuant to subsection (1)(a)6. of this section; and
- 18          (e) Establish attendance, performance and progress standards, and reporting  
19          requirements in consultation with the Kentucky Adult Education Program  
20          within the Council on Postsecondary Education as conditions that must be  
21          satisfied to receive retraining incentive income benefits pursuant to subsection  
22          (1)(a)3. of this section.
- 23          (6) In no event shall income benefits awarded under this section be stacked or added to  
24          income benefits awarded under KRS 342.730 to extend the period of disability and  
25          in no event shall income or retraining incentive benefits be paid to the employee  
26          while the employee is working in the mining industry in the severance or processing  
27          of coal as defined in KRS 342.0011(23)(a).

1       ➔Section 16. KRS 342.792 is amended to read as follows:

- 2       (1) The claim of any miner last exposed to the occupational hazards of coal workers'  
3       pneumoconiosis between December 12, 1996, and July 15, 2002, shall nonetheless  
4       be governed by the provisions of KRS 342.732 and notwithstanding the provisions  
5       of KRS 342.125 all claims for benefits which were filed for last injurious  
6       occupational exposure to coal dust occurring between December 12, 1996, and July  
7       15, 2002, shall be considered pursuant to the provisions of KRS 342.732 and  
8       administrative regulations promulgated by the commissioner, and closed claims,  
9       except claims dismissed for reasons other than failure to meet medical eligibility  
10      standards, may be reopened by the claimant. Income or retraining incentive benefits  
11      shall be awarded thereon as if the entitlement standards established by the  
12      amendments to KRS 342.732 were effective at the time of last exposure. Any  
13      benefits previously granted by an award or settlement shall be credited against any  
14      subsequent award or settlement and no interest shall be payable on additional  
15      benefits. A previous grant of retraining incentive benefits shall be credited only to  
16      the extent that the benefits were actually paid. All income or retraining incentive  
17      benefits greater than those which would have been awarded were not these new  
18      provisions applicable shall be paid without interest from the Kentucky coal workers'  
19      pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding, for claims  
20      filed on or before June 30, 2017, and by the employer for claims filed after June 30,  
21      2017.
- 22      (2) The original claim of any miner last exposed to the occupational hazards of coal  
23      workers' pneumoconiosis prior to December 12, 1996, which was subject to a  
24      university evaluation pursuant to KRS 342.315 and was dismissed upon a finding  
25      that the miner did not prove the presence of coal workers' pneumoconiosis  
26      radiographically may be reopened by the claimant notwithstanding the provisions of  
27      KRS 342.125, pursuant to administrative regulations adopted by the commissioner.

1 Income benefits may be awarded thereon pursuant to entitlement standards effective  
 2 as of the date of last exposure, except the income or retraining benefits shall be paid  
 3 without interest from the Kentucky coal workers' pneumoconiosis fund, the  
 4 provisions of KRS 342.1242 notwithstanding, for claims filed on or before June 30,  
 5 2017, and by the employer for claims filed after June 30, 2017.

6 (3) Notwithstanding the provisions of KRS 342.316(4)(a), the coal workers'  
 7 pneumoconiosis claim of any miner last exposed between December 12, 1996, and  
 8 July 15, 2002, may be filed with the commissioner on or before December 12, 2003,  
 9 or within the time frame prescribed by KRS 342.316(4)(a), whichever is longer. All  
 10 income or retraining incentive benefits greater than those which would have been  
 11 awarded were not these new provisions applicable shall be paid by the Kentucky  
 12 coal workers' pneumoconiosis fund without interest, the provisions of KRS  
 13 342.1242 notwithstanding, for claims filed on or before June 30, 2017, and by the  
 14 employer for claims filed after June 30, 2017.

15 ~~[(4) Administrative regulations promulgated by the commissioner pursuant to~~  
 16 ~~subsections (1) and (2) of this section shall provide that chest X-rays previously~~  
 17 ~~taken at university medical schools pursuant to KRS 342.315 shall be obtained by~~  
 18 ~~the commissioner and forwarded to three (3) randomly selected "B" readers for~~  
 19 ~~determination of consensus pursuant to KRS 342.316(3)(b)4.e. The claim shall be~~  
 20 ~~assigned to an administrative law judge for determination of whether the claim~~  
 21 ~~should be reopened and the award of additional benefits, if any.]~~

22 ➔Section 17. KRS 342.794 is amended to read as follows:

23 (1) The commissioner shall maintain a list of duly qualified "B" reader physicians who  
 24 are licensed in the Commonwealth ***and are board-certified pulmonary specialists,***  
 25 ***currently***~~]. The list shall include "B" reader physicians at the university medical~~  
 26 ~~schools and other "B" reader physicians]~~ certified by the National Institute of  
 27 Occupational Safety and Health (NIOSH) who have agreed to ***perform pulmonary***



1        examinations, interpret chest X-rays, and review other medical evidence pursuant  
2        to KRS 342.316 for a fee to be fixed by the commissioner and paid by the Kentucky  
3        coal workers' pneumoconiosis fund or the carrier, whichever is the appropriate  
4        payment obligor, the provisions of KRS 342.1242 notwithstanding, for claims filed  
5        on or before June 30, 2017, and by the employer for claims filed after June 30,  
6        2017.

7        (2) ~~{Physicians from the "B" reader list shall be utilized as necessary to obtain~~  
8        ~~consensus classifications of chest films in coal workers' pneumoconiosis claims.~~  
9        ~~The consensus classification shall be presumed to be the correct classification of the~~  
10       ~~employee's condition unless overcome by clear and convincing evidence. If an~~  
11       ~~administrative law judge finds that the presumption of correctness of the consensus~~  
12       ~~reading has been overcome, the reasons shall be specially stated in the~~  
13       ~~administrative law judge's order.]~~

14       ~~{(3)}~~ "B" reader" means a physician who has demonstrated proficiency in evaluating  
15       chest roentgenograms for roentgenographic quality and in the use of the ILO  
16       classification for interpreting chest roentgenograms for pneumoconiosis and other  
17       diseases by taking and passing a specially designed proficiency examination given  
18       on behalf of the National Institute of Occupational Safety and Health (NIOSH) or  
19       by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or  
20       successors.

21       (3) "Board-certified pulmonary specialist" means a physician licensed in the  
22       Commonwealth who is board-certified in internal medicine with a certification in  
23       the subspecialty of pulmonary medicine by the American Board of Internal  
24       Medicine

25       ~~{(4)}~~ The university medical schools in consultation with the commissioner shall jointly  
26       develop a procedure to annually report the performance of physicians on the "B"  
27       reader list who have participated in the consensus procedure established in KRS

1       ~~342.316. The physicians shall be evaluated with respect to the timeliness and~~  
2       ~~completeness of their reports, as well as the frequency at which the physician's~~  
3       ~~classification of X rays differs from the consensus reading. The commissioner shall~~  
4       ~~remove a physician from the "B" reader list if the physician consistently renders~~  
5       ~~incomplete or untimely reports, or if the physician's interpretations of X rays are not~~  
6       ~~in conformity with the consensus reading fifty percent (50%) of the time. The report~~  
7       ~~required under this subsection shall be provided to the Interim Joint Committee on~~  
8       ~~Labor and Industry beginning in July 1, 2003 and by July 1 of each year thereafter].~~

9       ➔Section 18. KRS 342.990 is amended to read as follows:

- 10       (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed  
11       in this section.
- 12       (2) When the commissioner receives information that he or she deems sufficient to  
13       determine that a violation of this chapter has occurred, he or she shall seek civil  
14       penalties pursuant to subsections (3) to (7) of this section, criminal penalties  
15       pursuant to subsections (8) and (9) of this section, or both.
- 16       (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously  
17       citing the appropriate party for the offense and stating the civil penalty to be paid.
- 18       (4) If, within fifteen (15) working days from the receipt of the citation, a cited party  
19       fails to notify the commissioner that he or she intends to contest the citation, then  
20       the citation shall be deemed final.
- 21       (5) If a cited party notifies the commissioner that he or she intends to challenge a  
22       citation issued under this section, the commissioner shall cause the matter to be  
23       heard as soon as practicable by an administrative law judge and in accordance with  
24       the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney  
25       representing the commissioner to prove the offense stated in the citation by a  
26       preponderance of the evidence. The parties shall stipulate to uncontested facts and  
27       issues prior to the hearing before the administrative law judge. The administrative

1 law judge shall issue a ruling within sixty (60) days following the hearing.

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

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

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

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

15 (c) Any person who violates KRS 342.020~~(12)~~~~(9)~~, 342.035(2), 342.040,  
16 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one  
17 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each  
18 offense. With respect to employers who fail to maintain workers'  
19 compensation insurance coverage on their employees, each employee of the  
20 employer and each day of violation shall constitute a separate offense. With  
21 respect to KRS 342.040, any employer's insurance carrier or other party  
22 responsible for the payment of workers' compensation benefits shall be fined  
23 for failure to notify the commissioner of a failure to make payments when due  
24 if a report indicating the reason payment of income benefits did not  
25 commence within twenty-one (21) days of the date the employer was notified  
26 of an alleged work-related injury or disease is not filed with the commissioner  
27 within twenty-one (21) days of the date the employer received notice, and if

- 1 the employee has not returned to work within that period of time. The date of  
2 notice indicated in the report filed with the department pursuant to KRS  
3 342.038(1), shall raise a rebuttable presumption of the date on which the  
4 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)(~~9~~), 342.035(2), 342.040,  
21          342.400, 342.420, or 342.630, shall, for each offense, be fined not less than  
22          one 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;

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 any  
14          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 19. If any provision of this Act or its application to any person or  
4 circumstance is held invalid, the invalidity does not affect other provisions or applications  
5 of the Act which can be given effect without the invalid provision or application, and to  
6 this end the provisions of this Act are severable.

7 ➔Section 20. (1) Sections 1, 3, and 12 of this Act shall apply to any claim  
8 arising from an injury or occupational disease or last exposure to the hazards of an  
9 occupational disease or cumulative trauma occurring on or after the effective date of this  
10 Act.

11 (2) Sections 2, 4, and 5 and subsection (7) of Section 13 of this Act are remedial  
12 and shall apply to all claims irrespective of the date of injury or last exposure, provided  
13 that, as applied to any fully and finally adjudicated claim, the amount of indemnity  
14 ordered or awarded shall not be reduced and the duration of medical benefits shall not be  
15 limited in any way.

16 (3) Subsection (4) of Section 13 of this Act shall apply prospectively and  
17 retroactively to all claims:

18 (a) For which the date of injury or date of last exposure occurred on or after  
19 December 12, 1996; and

20 (b) That have not been fully and finally adjudicated, or are in the appellate  
21 process, or for which time to file an appeal has not lapsed, as of the effective date of this  
22 Act.