

This information is provided to attendees at the Annual Workers' Compensation Educational Conference. These statutes and rules are provided for the convenience of the user and no representation or warranty is made that the information is current or accurate. With the printing of these statutory and, where applicable, regulatory provisions, we attempt to be correct and accurate. We will correct any errors or omissions and we encourage readers to inform us of any errors by emailing [stephanie@wci360.com](mailto:stephanie@wci360.com). For the "official text" of each state's law, please refer to the promulgated statutory provisions of each such state.

# KENTUCKY WORKERS' COMPENSATION LAW

## 342.0011 Definitions for chapter

Effective: July 15, 2010

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

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury;
- (2) "Occupational disease" means a disease arising out of and in the course of the employment;
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence;
- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made;
- (5) "Death" means death resulting from an injury or occupational disease;
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer;

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- (7) “Self-insurer” is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter;
- (8) “Department” means the Department of Workers’ Claims in the Labor Cabinet;
- (9) “Commissioner” means the commissioner of the Department of Workers’ Claims;
- (10) “Board” means the Workers’ Compensation Board;
- (11) (a) “Temporary total disability” means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
- (b) “Permanent partial disability” means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and
- (c) “Permanent total disability” means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:
1. Total and permanent loss of sight in both eyes;
  2. Loss of both feet at or above the ankle;
  3. Loss of both hands at or above the wrist;
  4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
  5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
  6. Incurable insanity or imbecility; or
  7. Total loss of hearing;
- (12) “Income benefits” means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits;
- (13) “Medical and related benefits” means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits;
- (14) “Compensation” means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits;
- (15) “Medical services” means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- (16) “Person” means any individual, partnership, limited partnership, limited liability company, firm, association, trust, joint venture, corporation, or legal representative thereof;
- (17) “Wages” means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from persons other than the employer as evidenced by the employee’s federal and state tax returns;
- (18) “Agriculture” means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in

- conjunction with the farm operations, including the sale of produce at on-site markets and the processing of produce for sale at on-site markets. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market;
- (19) “Beneficiary” means any person who is entitled to income benefits or medical and related benefits under this chapter;
- (20) “United States,” when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States;
- (21) “Alien” means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien;
- (22) “Insurance carrier” means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers’ compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every self-insured group operating under the provisions of this chapter;
- (23) (a) “Severance or processing of coal” means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.
- (b) “Engaged in severance or processing of coal” shall include all individuals, partnerships, limited partnerships, limited liability companies, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including but not limited to administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time;
- (24) “Premium” for every self-insured group means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, “premium” also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group;

- (25) (a) “Premiums received” for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Department of Insurance by insurance companies, except that “premiums received” includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, “premiums received” includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, “premiums received” means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.
- (b) “Direct written premium” for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
- (c) “Premium,” for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers’ compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall

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not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

- (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors;
- (26) "Insurance policy" for an insurance company or self-insured group means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year;
- (27) "Self-insurance year" for a self-insured group means the annual period of certification of the group created pursuant to KRS 342.350(4) and 304.50-010;
- (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the commissioner using generally-accepted actuarial methods as follows:
- (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The commissioner shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the commissioner. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period;

- (b) The commissioner shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the department and from the records of the Office of Employment and Training, Education and Workforce Development Cabinet. The commissioner shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period;
- (c) The commissioner shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the department and the Office of Employment and Training data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122;
- (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying its own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying its own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews its application for certification to carry its own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the commissioner, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification;
- (e) If an employer having fewer than five (5) years of doing business in this state applies to carry its own risk and is so certified, its premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then its premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the commissioner pursuant to KRS 342.340(1);
- (f) If an employer is certified to carry its own risk after having previously insured the risk, its premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry its own risk and has paid all amounts due for assessments upon premiums paid while insured, the employer shall be assessed only upon the premium calculated under this subsection;
- (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection; and



- (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter;
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget;
- (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System;
- (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits;
- (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth;
- (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods;
- (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy;
- (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment";
- (36) "Permanent disability rating" means the permanent impairment rating selected by an administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b); and
- (37) "Guides to the Evaluation of Permanent Impairment" means, except as provided in KRS 342.262:
- (a) The fifth edition published by the American Medical Association; and
  - (b) For psychological impairments, Chapter 12 of the second edition published by the American Medical Association.

### **342.0012 Workers' Compensation Advisory Council**

Effective: July 15, 2010

- (1) There is hereby created the Kentucky Workers' Compensation Advisory Council which shall consist of sixteen (16) members appointed by the Governor. Each member shall serve for a term of four (4) years and until his or her successor has been appointed and has qualified.
- (2) Vacancies shall be filled by appointment of the Governor for the unexpired term of the member whose office is vacant and shall be made within sixty (60) days of the occurrence of the vacancy.



- (3) Annually, the members of the council shall elect co-chairmen. One co-chairman shall be elected by the members of the council representing labor and the other co-chairman shall be elected by the members representing management. A majority of the members of the council shall constitute a quorum for the transaction of business.
- (4) The council shall meet at least quarterly and on other occasions as may be necessary, on the call of the co-chairmen or a majority of the members.
- (5) The council shall be attached to the Department of Workers' Claims in the Labor Cabinet for administrative purposes, and the commissioner of the Department of Workers' Claims shall supply necessary staff and supplies to the council.
- (6) The principal office of the council shall be located in Frankfort, Kentucky, but meetings of the council may be held at any location in the Commonwealth of Kentucky.
- (7) In making appointments to the council, the Governor shall appoint eight (8) members representing labor and eight (8) members representing management.
- (8) The council shall not infringe upon or assume the duties of the Labor Cabinet, Cabinet for Economic Development or the Department of Insurance. The council shall serve in an advisory capacity and shall make recommendations to the Governor and the legislature on all matters relating to workers' compensation including, but not limited to: efficient administration; coverage of employers and employees; adequacy and delivery of the benefit structure; insurance and self-insurance; medical cost containment and medical services; rehabilitation; liability and financing of the special fund; attorney fees; and lump-sum compensation and settlement procedures. In addition, the council may recommend legislation and administrative regulations as it deems necessary.

### **342.0015 Application of 1996 (1st Extra. Sess.) Ky. Acts ch. 1**

The substantive provisions of 1996 (1st Extra. Sess.) Ky. Acts ch. 1 shall apply to any claim arising from an injury or last exposure to the hazards of an occupational disease occurring on or after December 12, 1996. Procedural provisions of 1996 (1st Extra. Sess.) Ky. Acts ch. 1 shall apply to all claims irrespective of the date of injury or last exposure, including, but not exclusively, the mechanisms by which claims are decided and workers are referred for medical evaluations. The provisions of KRS 342.120(3), 342.125(8), 342.213(2)(e), 342.265, 342.270(3), 342.320, 342.610(3), 342.760(4), and 342.990(11) are remedial.

### **342.012 Business owners; election to be included as employees; qualified partners and members, nonqualified partners and members, and limited liability company defined; provision of partnership agreement or articles of organization upon request**

Effective: July 15, 2014

- (1) For the purposes of this chapter, an owner or owners of a business, including qualified partners of a partnership owning a business, or qualified members of a limited liability company, whether or not employing any other person to perform a service for hire, shall be included within the meaning of the term employee if the owner, owners, qualified partners, or qualified members of a limited liability company elect to come

under the provisions of this chapter and provide the insurance required thereunder. Nothing in this section shall be construed to limit the responsibilities of the owners, partners, or members of a limited liability company to provide coverage for their employees, nonqualified partners, or nonqualified members, if any, required under this chapter.

- (2) When an owner, owners, qualified partners, or qualified members of a limited liability company have elected to be included as employees, this inclusion shall be accomplished by the issuance of an appropriate endorsement to a workers' compensation insurance policy.
- (3) For the purpose of this section, "qualified partner" or "qualified member or members" means, respectively, a partner who has entered into a meaningful partnership agreement or a member who has entered into meaningful articles of organization or a meaningful operating agreement of a limited liability company, which document shows on its face that the partner will substantially participate in the profit or loss of the business engaged in by the partnership or limited liability company and that the partner or member has made some contribution to the partnership or limited liability company which entitles him or her to participate in the profits of the business as well as to participate in the decision-making process of the partnership or limited liability company.
- (4) For the purposes of this section, "nonqualified partner" or "nonqualified member" means, respectively, a person who has entered into a partnership agreement, or articles of organization or operating agreement of a limited liability company, which document shows on its face that this person will receive regular payments in exchange for work for the business engaged in by the partnership or limited liability company; that the person will not participate in the decision-making of the partnership or limited liability company and will not participate in the profits and losses of the business engaged in by the partnership or limited liability company.
- (5) Every partnership and limited liability company shall provide, upon the request of the commissioner or his or her representative, a copy of its partnership agreement or articles of organization for purposes of demonstrating compliance with this section and KRS 342.340. With particular reference to employers engaged in coal mining, the commissioner shall promptly report the failure to comply with the provisions of this subsection to the Energy and Environment Cabinet, Department for Natural Resources, Office of Mine Safety and Licensing, so that appropriate action may be undertaken pursuant to KRS 351.175.
- (6) For purposes of this section, a "limited liability company" means an entity defined in KRS 275.015 and organized under the provisions of KRS Chapter 275.

### **342.019 Coverage of chiropractic services**

A doctor of chiropractic, licensed to practice under the provisions of KRS Chapter 312, shall have his services to employees covered by the workers' compensation law paid for under the workers' compensation provisions of KRS Chapter 342. An employee claiming benefits under the provisions of KRS Chapter 342 shall have the right to choose the services of a licensed doctor of chiropractic.

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**342.020 Medical treatment at expense of employer; selection of physician and hospital; payment; managed health care system; artificial members and braces; waiver of privilege; disclosure of interest in referrals**

Effective: July 15, 2010

- (1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.
- (2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.
- (3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.
- (4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:
  - (a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;
  - (b) The employee shall be allowed choice of provider within the plan;
  - (c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;

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- (d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;
  - (e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;
  - (f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and
  - (g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.
  - (h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.
  - (i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.
- (5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.
- (6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.
- (7) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

- (8) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.
- (9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

### **342.033 Medical evidence; limitation; form**

Effective: July 15, 2010

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The commissioner shall promulgate administrative regulations prescribing the format and content of written medical reports.

### **342.035 Medical fee schedule; review and updating; action for excess fees; effect of failure to submit to or follow surgical or medical treatment or advice; fee schedule for medical testimony; other medical matters; medical fee schedule for registered nurse first assistants**

Effective: July 15, 2010

- (1) Periodically, the commissioner shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 and this section shall be fair, current, and reasonable and shall be limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In determining what fees are reasonable, the commissioner may also consider the increased security of payment afforded by this chapter. On or before November 1, 1994, and on July 1 every two (2) years thereafter, the schedule of fees contained in administrative regulations promulgated pursuant to this section shall be reviewed and updated, if appropriate. Within ten (10) days of April 4, 1994, the commissioner shall execute a contract with

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an appropriately qualified consultant pursuant to which each of the following elements within the workers' compensation system are evaluated; the methods of health care delivery; quality assurance and utilization mechanisms; type, frequency, and intensity of services; risk management programs; and the schedule of fees contained in administrative regulation. The consultant shall present recommendations based on its review to the commissioner not later than sixty (60) days following execution of the contract. The commissioner shall consider these recommendations and, not later than thirty (30) days after their receipt, promulgate a regulation which shall be effective on an emergency basis, to effect a twenty-five percent (25%) reduction in the total medical costs within the program.

- (2) No provider of medical services or treatment required by this chapter, its agent, servant, employee, assignee, employer, or independent contractor acting on behalf of any medical provider, shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment of any charge, for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease, in excess of that provided by a schedule of fees, or cause the credit of any employee to be impaired by reason of the employee's failure or refusal to pay the excess charge. In addition to the penalty imposed in KRS 342.990 for violations of this subsection, any individual who sustains damages by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations and to recover the actual damages sustained by the individual, together with the costs of the lawsuit, including a reasonable attorney's fee.
- (3) Where these requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of an employee if his or her death is caused, or if and insofar as his disability is aggravated, caused, or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.
- (4) The commissioner shall, by December 1, 1994, promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an injured employee against the employer. The workers' compensation medical fee schedule for physicians, 803 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect until July 1, 1996, or until the effective date of any amendments promulgated by the commissioner, whichever occurs first, it being determined that this administrative regulation is within the statutory grant of authority, meets legislative intent, and is not in conflict with the provisions of this chapter. The medical fee schedule and amendments shall be fair, current, and reasonable and otherwise comply with this section.
- (5)
  - (a) To ensure compliance with subsections (1) and (4) of this section, the commissioner shall promulgate administrative regulations by December 31, 1994, which require each insurance carrier, self-insured group, and self-insured employer to certify to the commissioner the program or plan it has adopted to ensure compliance.
  - (b) In addition, the commissioner shall periodically have an independent audit conducted by a qualified independent person, firm, company, or other entity hired



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by the commissioner, in accordance with the personal service contract provisions contained in KRS 45A.690 to 45A.725, to ensure that the requirements of subsection (1) of this section are being met. The independent person, firm, company, or other entity selected by the commissioner to conduct the audit shall protect the confidentiality of any information it receives during the audit, shall divulge information received during the audit only to the commissioner, and shall use the information for no other purpose than the audit required by this paragraph.

- (c) The commissioner shall promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to this chapter.
  - (d) Periodically, or upon request, the commissioner shall report to the Interim Joint Committee on Labor and Industry of the Legislative Research Commission or to the corresponding standing committees of the General Assembly, as appropriate, the degree of compliance or lack of compliance with the provisions of this section and make recommendations thereon.
  - (e) The cost of implementing and carrying out the requirements of this subsection shall be paid from funds collected pursuant to KRS 342.122.
- (6) The commissioner may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.
- (7) For purposes of this chapter, any medical provider shall charge only its customary fee for photocopying requested documents. However, in no event shall a photocopying fee of a medical provider or photocopying service exceed fifty cents (\$.50) per page. In addition, there shall be no charge for reviewing any records of a medical provider, during regular business hours, by any party who is authorized to review the records and who requests a review pursuant to this chapter.
- (8) (a) The commissioner shall develop or adopt practice parameters or guidelines for clinical practice for use by medical providers under this chapter. The commissioner may adopt any parameters for clinical practice as developed and updated by the federal Agency for Health Care Policy Research, or the commissioner may adopt other parameters for clinical practice which are developed by qualified bodies, as determined by the commissioner, with periodic updating based on data collected during the application of the parameters.
- (b) Any provider of medical services under this chapter who has followed the practice parameters or guidelines developed or adopted pursuant to this subsection shall be presumed to have met the appropriate legal standard of care in medical malpractice cases regardless of any unanticipated complication that may thereafter develop or be discovered.
- (9) (a) Notwithstanding any other provision of law to the contrary, the medical fee schedule adopted under subsection (4) of this section shall require all worker's compensation insurance carriers, worker's compensation self-insured groups, and worker's compensation self-insured employers to provide coverage and payment for surgical first assisting services to registered nurse first assistants as defined in KRS 216B.015.



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

### **342.038 Employer to keep record of injuries; reports required to be filed**

Effective: July 15, 2010

- (1) Every employer subject to this chapter shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one (1) week after the occurrence and knowledge, as provided in KRS 342.185 to 342.200, of an injury to an employee causing his absence from work for more than one (1) day, a report thereof shall be made to the department in the manner directed by the commissioner through administrative regulations. An employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be responsible for making the report to the Department of Workers' Claims within one week of receiving the notification referred to in subsection (3) of this section.
- (2) The report shall contain the name, nature, and location of the business of the employer and name, age, sex, wages, and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and any other information required by the commissioner.
- (3) Every employer subject to this chapter shall report to its workers' compensation insurance carrier or the party responsible for the payment of workers' compensation benefits any work-related injury or disease or alleged work-related injury or disease within three (3) working days of receiving notification of the incident or alleged incident.
- (4) Every employer or insurer subject to this chapter shall file additional reports covering specifically voluntary payments and settlements, and any other reports required by the commissioner by administrative regulation for the determination of the promptness of voluntary payment and validity and fairness of agreements. In addition, the commissioner may require additional information as may be necessary to comply with a federal statute or regulation or any state statute.
- (5) Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of sixty (60) days, then also at the expiration of that period, the employer shall make a supplementary report to the commissioner on blanks procured from the department for the purpose.

### **342.039 Filing of detailed claim information by each insurance company, self-insured group, and employer carrying its own risk**

Effective: July 15, 2010

Beginning on January 1, 1995, and pursuant to administrative regulations promulgated under KRS Chapter 13A by the commissioner, each insurance company writing workers' compensation insurance policies in the Commonwealth, every self-insured group, and each employer carrying its own risk shall file in the manner directed by the commissioner,

detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC).

### **342.040 Time of payment of income benefits and retraining incentive benefits; attorney's fees for recovery of overdue temporary total disability income benefits; interest on overdue benefits**

Effective: July 15, 2010

- (1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid, except that if the administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or fail to make payments when due, that party shall notify the commissioner of the termination or failure to make payments and the commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.
- (2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the administrative law judge determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.
- (3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.
- (4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his or her last known address.

### **342.065 Certain minors considered sui juris**

A minor sixteen (16) years of age or over or a minor under sixteen (16) years of age who has procured his employment upon the written certification of his parent, guardian or

one having legal authority over him that he is over sixteen (16) years of age shall be considered sui juris for the purposes of this chapter, and no other person shall have cause of action or right to compensation for his injury or death for loss of service on account thereof, by reason of the minority of such employee. If a lump sum of compensation is made to such minor employee, payment shall be made to his guardian. Such certificate shall be in form as follows: "To (name of employer); This is to certify that (name of minor employee), of whom the undersigned is the ..... is over the age of sixteen years. Signed this ... day of ....." Identification of such signature of the parent, guardian or person having legal authority over such minor employee shall constitute conclusive proof of such procurement of his employment in any hearing or proceeding in which it is material or in issue.

### **342.075 Determination of dependency**

- (1) The following persons shall be presumed to be wholly dependent upon a deceased employee:
  - (a) A surviving spouse upon a decedent whom the surviving spouse had not voluntarily abandoned at the time of the accident, or who having been abandoned by the decedent has not engaged in such conduct since his abandonment as would at common law constitute grounds justifying the abandonment of such wife by her husband or such husband by his wife;
  - (b) A child or children under the age of sixteen (16) years, or over sixteen (16) years if incapacitated from wage earning, upon the parent with whom such child or children are living, or by whom actually supported, or from whom support is legally required by judgment of a court, at the time of the accident.
- (2) In all other cases the relation of dependency in whole or in part shall be determined in accordance with the facts of each case existing at the time of the accident.
- (3) No person shall be considered a dependent in any degree unless he is living in the household of the employee at the time of the accident, or unless such person bears to the employee the relation of father, mother, husband, or wife, father-in-law or mother-in-law, grandfather or grandmother, child or grandchild, or brother or sister of the whole or half blood and is actually dependent.

### **342.085 Definition of certain dependents**

As used in this chapter:

- (1) "Child" includes stepchildren, legally adopted children, posthumous children and recognized children born out of wedlock, but does not include married children unless actually dependent;
- (2) "Brother" and "sister" includes stepbrothers, stepsisters and brothers and sisters of the half blood or by adoption, but excludes married brothers or sisters unless actually dependent;
- (3) "Grandchild" includes children of adopted children or stepchildren, but excludes stepchildren of children or of adopted children and married children;
- (4) "Parent" includes stepparents and parents by adoption; and
- (5) "Adopted" and "adoption" include cases where the persons are legally adopted.

**342.090 Payment of death benefits in good faith; release of payor from liability**

Payment of death benefits in good faith to a supposed dependent or to a dependent subsequent in right to another or other dependents shall protect and discharge the employer and insurer unless and until the lawful dependent or dependents prior in right have given the employer or insurer written notice of his or their claim. In case the employer or insurer is in doubt as to who are dependents or as to their respective rights, the administrative law judge shall, on application, decide and direct to whom payment shall be made, and payment made under such direction shall release the employer and insurer from all liability. If an appeal is taken from the order of the administrative law judge directing payment, persons receiving payment under such order shall furnish bond for the protection of adverse claimants pending the outcome of the proceedings.

**342.120 Division of Workers' Compensation Funds; fund's liability for claims occurring after December 12, 1996; payment of settlements for income benefits**

Effective: July 15, 2010

- (1) There is created the Division of Workers' Compensation Funds in the Department of Workplace Standards which shall be responsible for the administration of the special fund and the coal workers' pneumoconiosis fund and the maintenance of records regarding the payment of claims by these funds. The Division of Workers' Compensation Funds shall be headed by a director appointed by the secretary of the Labor Cabinet, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the funds and the maintenance of records regarding the payment of claims by the funds.
- (2) The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred, after December 12, 1996.
- (3) Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, with the period of payment beginning on the date settlement was approved by an administrative law judge. This provision is remedial and shall apply to all pending and future claims.

**342.122 Special fund assessments; annual adjustments; reports; central claim registry**

Effective: April 11, 2012

- (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards, Apprenticeship and Mediation in the Department of Workplace Standards, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding

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commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk.

- (b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of June 30 preceding January 1 of each year, for the period remaining until December 31, 2029. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying its own risk. On or before October 1 of each year, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insured employers, and each employer carrying its own risk, of the rates which shall become effective on January 1 of each year, unless modified by the General Assembly.
  - (c) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.
  - (d) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.
- (2) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.
- (3) The assessments imposed by this section may be collected by the insurance carrier from the insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages

imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

- (4) A self-insured group may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years, except that the board of directors of the funding commission may, at its discretion, waive the ten (10) year ban on a case-by-case basis after formal petition has been made to the funding commission by a self-insured group.
- (5) The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each self-insured group to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or self-insured group may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or self-insured group from the obligation to furnish same to the funding commission. The Office of Employment and Training, Education and Workforce Development Cabinet, is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.
- (6) Each self-insured employer, self-insured group, or insurance carrier shall provide any information and submit any reports the Department of Revenue or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.
- (7) The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.
- (8) The fund heretofore designated as the subsequent claim fund is abolished, and there is substituted therefor the special fund as set out by this section, and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.
- (9) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.



- (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provision of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying its own risk.

### **342.1221 Penalty and interest on late payment of assessments; waiver**

Assessments levied pursuant to KRS 342.122 and unpaid on the date on which they are due and payable shall bear interest at the rate specified in KRS 131.183 plus a penalty of one and one-half percent (1.5%) per month or portion thereof without proration from the date on which the assessment was due and payable. The funding commission shall have the authority to waive part or all of the penalty, but not the interest, where it is shown to the satisfaction of the commission that failure to timely pay assessments is due to reasonable cause.

### **342.1222 Refunds or credits on canceled or returned premiums**

- (1) Every insurance carrier shall be entitled to a refund or credited with assessments paid on all canceled or returned premiums, including dividends paid or credited to policyholders, if the assessments are returned by the insurance carrier to the policyholder in addition to the canceled or returned premium.
- (2) The assessments paid pursuant to the provisions of this chapter shall be refunded or credited in the manner provided in KRS 134.580, provided that the claim for refund or credit, with respect to all claims filed on or after July 13, 1990, is made by the insurance carrier within four (4) years of the date the insurance carrier returns the assessments to the employer.
- (3) A claim for refund or credit shall be made on a form prescribed by the funding commission and shall contain any information that the funding commission may require.
- (4) No insurance carrier shall be entitled to a refund or credit of the assessments paid pursuant to the provisions of this chapter where the assessments have been collected from an employer as provided by KRS 342.122, unless the amount of assessments collected from the employer are refunded to him by the insurance carrier who paid the assessments to the funding commission.

### **342.1223 Kentucky Workers' Compensation Funding Commission**

Effective: July 15, 2010

- (1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.
- (2) The commission shall:
  - (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;



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- (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities;
  - (c) Report to the General Assembly at each even-numbered-year regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;
  - (d) Recommend to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, changes deemed necessary in the level of the assessments imposed in this chapter;
  - (e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, a proposed budget for the biennium beginning July 1 following the even-numbered-year regular session of the General Assembly;
  - (f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;
  - (g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Department of Revenue, of all entities subject to the assessments imposed in this chapter; and
  - (h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.
- (3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:
- (a) To sue and be sued, complain, or defend, in its name;
  - (b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;
  - (c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;
  - (d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;
  - (e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and
  - (f) To make and promulgate administrative regulations.
- (4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice

of the Office of Financial Management in the Office of the Controller within the Finance and Administration Cabinet rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.

- (5) The commission shall be attached to the Labor Cabinet for administrative purposes only.

### **342.1224 Board of directors of funding commission**

Effective: July 15, 2010

- (1) The commission shall be governed by a board of directors consisting of seven (7) members. The seven (7) members shall include the secretary of the Labor Cabinet or a designee, the secretary of the Cabinet for Economic Development or a designee, the secretary of the Finance and Administration Cabinet or a designee, and four (4) members who shall be appointed by the Governor.
- (2) The four (4) appointed members shall include:
  - (a) One (1) member, selected from a list of three (3) submitted by the secretary of the Labor Cabinet, who shall represent labor;
  - (b) One (1) member, selected from a list of three (3) submitted by the secretary for economic development, who shall represent employers; provided, however, that these three (3) members shall represent employers who purchase workers' compensation coverage for their employees from insurance companies writing workers' compensation insurance in the Commonwealth;
  - (c) One (1) member, selected from a list of three (3) submitted by the insurance advisory organization having jurisdiction over Kentucky, who shall represent insurance companies writing workers' compensation insurance in the Commonwealth; and
  - (d) One (1) member, selected from a list of three (3) submitted by the associations representing self-insured employers in the Commonwealth.
- (3) The members of the board of directors shall serve a term of four (4) years, except that the initial terms of the members shall be staggered as follows:
  - (a) The initial member appointed by the Governor to represent labor shall serve a term of one (1) year. Thereafter, such member shall serve a term of four (4) years;
  - (b) The initial member appointed by the Governor to represent employers shall serve a term of two (2) years. Thereafter, such member shall serve a term of four (4) years;
  - (c) The initial member appointed by the Governor to represent insurance companies shall serve a term of four (4) years. Thereafter, such member shall serve a term of four (4) years; and
  - (d) The initial member appointed by the Governor to represent self-insured employers shall serve a term of three (3) years. Thereafter, such member shall serve a term of four (4) years.
- (4) The board of directors shall annually elect from among its members a chairman, a vice chairman, and a secretary-treasurer. The board of directors may also elect or

appoint, and prescribe the duties of, other officers as the board of directors deems necessary or advisable.

- (5) The board of directors shall appoint an executive director to administer, manage, and direct the affairs and business of the commission, and other staff persons to carry out the affairs and business of the commission, subject in each instance to the policies, control, and directions of the board of directors. The board of directors shall fix the compensation of all such persons and shall pay such compensation out of the funds of the commission.
- (6) Notwithstanding any other law, the Governor, pursuant to an executive order, may cause the employees of the commission to be eligible to participate in the Kentucky Retirement System and the Kentucky Public Employees Deferred Compensation System.
- (7) A majority of the board of directors of the commission shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. The majority shall be determined by excluding any existing vacancies from the total number of directors.
- (8) The board of directors of the Kentucky Workers' Compensation Funding Commission are hereby determined to be officers and agents of the Commonwealth of Kentucky and, as such, shall enjoy the same immunities from suit for the performance of their official acts as do other officers of the Commonwealth of Kentucky.

### **342.1225 Annual audit of commission's financial statements**

The board of directors shall require the commission to engage a certified public accountant or a firm of certified public accountants to conduct an annual examination of the commission's financial statements, conditions, transactions, and affairs in accordance with generally accepted auditing standards for the purpose of submitting an independent opinion, and preparing a report of findings and recommendations concerning the commission's internal accounting controls and procedures. The opinions and reports of the accountants shall be forwarded annually to the Governor and Auditor of Public Accounts. Notwithstanding any other provision of this chapter, the Auditor of Public Accounts shall have access to and may examine all books, accounts, reports, vouchers, correspondence files, records, money, and property of the commission and may otherwise exercise all powers of his office under KRS Chapter 43 with respect to the association.

### **342.1226 Special fund and funding commission to share books, records, documents and information**

The special fund and the funding commission shall at all times furnish each other access to any and all books, records, documents, and information necessary or desirable in order to allow the other to perform its duties under this chapter.

### **342.1227 Loan or transfer of funds of funding commission prohibited**

Except as provided in KRS 342.829, funds which are under the jurisdiction of the commission shall not:

- (1) Be loaned to the Commonwealth or any instrumentality or agency thereof;

- (2) Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for purposes specifically authorized by this chapter;
- (3) Be expended for any other purpose than one authorized by this chapter.

### **342.1228 Funding commission exempt from reorganization powers of Governor**

Effective: July 15, 2010

The Kentucky Workers' Compensation Funding Commission shall not be subject to the Governor's power of reorganization under KRS Chapter 12, including attachment or transfer to another organizational unit or administrative body other than the Labor Cabinet. The Governor may, however, recommend changes in the organization of the commission to the General Assembly at any regular or special session of the General Assembly.

### **342.1229 Benefit reserve fund**

The benefit reserve fund is hereby established within the funding commission, and shall be administered by the funding commission. All funds in excess of current liabilities of the special fund and budgeted expenditures shall be deposited in the benefit reserve fund and invested in compliance with the investment policies formulated by the funding commission.

### **342.1231 Procedure for protesting special fund assessments; expenses of audits, how paid**

- (1) The funding commission may mail to the taxpayer a notice of any assessment assessed by it. The assessment shall be final if not protested in writing to the funding commission within thirty (30) days from the date of notice. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the funding commission may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable. The refusal of such extension may be reviewed in the same manner as a protested assessment.
- (2) After a timely protest has been filed, the taxpayer may request a conference with the funding commission. The request shall be granted in writing stating the date and time set for the conference. The taxpayer may appear in person or by representative. Further conferences may be held by mutual agreement.
- (3) After considering the taxpayer's protest, including any matters presented at the final conference, the funding commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the taxpayer. The ruling shall state that it is a final ruling of the funding commission, generally state the issues in controversy, the funding commission's position thereon and set forth the procedure for prosecuting an appeal to the Kentucky Board of Tax Appeals.
- (4) The taxpayer may request in writing a final ruling at any time after filing a timely protest and supporting statement. When a final ruling is requested, the funding commission shall issue such ruling within thirty (30) days from the date the request is received by the funding commission.

- (5) After a final ruling has been issued, the taxpayer may appeal to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.340.
- (6) The expenses incurred by the funding commission in conducting audits required in this chapter shall be paid by the insurance companies in accordance with administrative regulations promulgated by the funding commission.
- (7) "Taxpayer" as used in this section means insurance carrier, self-insured group, and self-insured employer.

### **342.1232 Use of administrative savings from 1996 (1st Extra. Sess.) Ky. Acts ch. 1**

Subsequent administrative savings as a result of the implementation of 1996 (1st Extra. Sess.) Ky. Acts ch. 1 shall be used to defray the special fund assessment on all employers in the Commonwealth.

### **342.1241 Legislative findings and declarations on Kentucky coal workers' pneumoconiosis fund**

- (1) The General Assembly finds and declares that the awards of workers' compensation benefits for coal workers' pneumoconiosis (black lung) have placed a substantial financial burden on all employers of the Commonwealth through the special fund assessments imposed on all employers to cover the liabilities of the special fund.
- (2) The General Assembly finds and declares that the purpose of creating the Kentucky Coal Workers' Pneumoconiosis Fund in KRS 342.1242 is to assure that liabilities incurred as a result of workers' compensation awards for coal workers' pneumoconiosis with dates of last exposure after December 12, 1996, shall be the financial responsibility of employers engaged in severance and processing of coal.
- (3) Therefore, it is the intent of the General Assembly in imposing the assessments required in KRS 342.1242(3)(a) and (b) to assure that liabilities incurred as a result of workers' compensation awards for coal workers' pneumoconiosis with dates of last exposure after December 12, 1996, shall be the financial responsibility of employers engaged in the severance and processing of coal.

### **342.1242 Kentucky coal workers' pneumoconiosis fund; liability for and manner of making payments for awards for coal workers' pneumoconiosis; assessments to finance fund**

Effective: July 15, 2010

- (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after December 12, 1996. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement until the liability of the Kentucky coal workers' pneumoconiosis fund is established under subsection (2) of this section and the coal workers' pneumoconiosis fund shall reimburse the employer for such payments to the extent of its liability.

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- (2) The employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written request upon the director in the manner prescribed by administrative regulation to be promulgated by the commissioner of the Department of Workers' Claims.
- (3) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
- (b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents (\$0.025) per ton is hereby imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.
- (c) As of June 30, 2006, and each year thereafter, the funding commission shall determine the assets of the fund and the claim and administrative expense liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1 of the next year to fully fund and prefund all claim liabilities and administrative expenses through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than October 1 of the year preceding the rate change.
- (4) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to a separate account within the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.



- (5) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.
- (6) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers' pneumoconiosis fund shall be liable for payment of a part of the liability only for employees of employers engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a) and (b).

**342.125 Reopening and review of award or order; grounds; procedures; time limitations; credit for previously-awarded retraining incentive benefits or income benefits awarded for coal-related pneumoconiosis**

- (1) Upon motion by any party or upon an administrative law judge's own motion, an administrative law judge may reopen and review any award or order on any of the following grounds:
  - (a) Fraud;
  - (b) Newly-discovered evidence which could not have been discovered with the exercise of due diligence;
  - (c) Mistake; and
  - (d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.
- (2) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.
- (3) Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a permanent total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.
- (4) Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding under this chapter. Upon reopening, the administrative law judge may end, diminish, or increase compensation



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previously awarded, within the maximum and minimum provided in this chapter, or change or revoke a previous order. The administrative law judge shall immediately send all parties a copy of the subsequent order or award. Reopening shall not affect the previous order or award as to any sums already paid thereunder, and any change in the amount of compensation shall be ordered only from the date of filing the motion to reopen. No employer shall suspend benefits during pendency of any reopening procedures except upon order of the administrative law judge.

- (5) (a) Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis and two (2) additional years of employment in the Commonwealth wherein the employee was continuously exposed to the hazards of the disease, the administrative law judge may review an award or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732. An application for review under this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings.
  - (b) Benefits awarded as a result of a review under this subsection shall be reduced by the amount of retraining incentive benefits or income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount which shall be apportioned in accordance with the provisions of KRS 342.316.
- (6) In a reopening or review proceeding where there has been additional permanent partial disability awarded, the increase shall not extend the original period, unless the combined prior disability and increased disability exceeds fifty percent (50%), but less than one hundred percent (100%), in which event the awarded period shall not exceed five hundred twenty (520) weeks, from commencement date of the original disability previously awarded. The law in effect on the date of the original injury controls the rights of the parties.
  - (7) Where an agreement has become an award by approval of the administrative law judge, and a reopening and review of that award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the administrative law judge as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.
  - (8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, claims decided prior to December 12, 1996, may be reopened within four (4) years of the award or order or within four (4) years of December 12, 1996, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this section shall apply to these claims as well.

### **342.130 Compensation of alien dependents**

Compensation under this chapter to alien dependent widows, widowers and children, not residents of the United States, shall be one-half (1/2) of the amount provided in each case for residents. The employer may at any time commute all future installments of compensation to alien dependents the then value thereof. Alien parents, brothers and sisters not residents of the United States, shall not be entitled to any compensation.

### **342.135 Notice, how served; notice to nonresident alien**

Any notice required to be given under this chapter shall be considered properly given and served when deposited in the mail in a registered letter or package properly stamped and addressed to the person to whom notice is to be given at his last known address and in time to reach him in due time to act thereon. Notice may also be given and served like notices in civil actions. Any notice given and served as provided in this section to the consular representative of the nation of which any nonresident dependent of a deceased employee is a citizen or subject, or to the authorized agent or representative of any such official residing in this state, shall be deemed to have been properly given and served upon such dependent.

### **342.140 Computation of employee's average weekly wage**

Effective: July 15, 2010

The average weekly wage of the injured employee at the time of the injury or last injurious exposure shall be determined as follows:

- (1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease:
  - (a) The wages were fixed by the week, the amount so fixed shall be the average weekly wage;
  - (b) The wages were fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52);
  - (c) The wages were fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52);
  - (d) The wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the injury;
  - (e) The employee had been in the employ of the employer less than thirteen (13) calendar weeks immediately preceding the injury, his or her average weekly wage shall be computed under paragraph (d), taking the wages (not including overtime or premium pay) for that purpose to be the amount he or she would have earned had he or she been so employed by the employer the full thirteen (13) calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation; and

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- (f) The hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where the services are rendered by paid employees.
- (2) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the injury.
  - (3) In the case of volunteer firemen, police, and emergency management agency members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.
  - (4) If the employee was a minor, apprentice, or trainee when injured, and it is established that under normal conditions his or her wages should be expected to increase during the period of disability, that fact may be considered in computing his or her average weekly wage.
  - (5) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of the employment prior to the injury, his or her wages from all the employers shall be considered as if earned from the employer liable for compensation.
  - (6) The term “wages” as used in this section and KRS 342.143 means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, and fuel or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer to the extent the gratuities are reported for income tax purposes.
  - (7) The commissioner shall, from time to time, based upon the best available information, determine by administrative regulation industries which ordinarily do not have a full working day for five (5) days in every week. In those industries, compensation shall be computed at the average weekly wage earned by the employee at the time of injury reckoning wages as earned while working full time. “At full time” as used in this subsection means a full working day for five (5) working days in every week regardless of whether the injured employee actually worked all or part of the time.

### **342.143 Method for determining the average weekly wage of the state**

Effective: July 15, 2010

For the purposes of this chapter, the average weekly wage of the state shall be determined by the commissioner as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage shall be certified to the commissioner by the Education and Workforce Development Cabinet in a manner prescribed by the commissioner by administrative regulation. The average weekly wage as so determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disability in the case of disease, or of death, falls

within the calendar year commencing January 1 following the September 1 determination. Whenever a change in the average weekly wage of the state is of such amount that the minimum weekly income benefits for total disability or for death are increased or decreased by one dollar (\$1) or more, or the maximum weekly income benefits for total disability or for death are increased or decreased by two dollars (\$2) or more, computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect this increase or decrease, but no change in such limitations shall otherwise be made. Notwithstanding the provisions of this section, KRS 342.140 and 342.740, or any other provisions of this chapter to the contrary, the average weekly wage for calendar years 1995 and 1996 shall be determined to be no higher than the average weekly wage determined by the commissioner to be in effect in the calendar year of 1994. If the average weekly wage calculated by the commissioner is determined to be lower than the 1994 calendar year wage, the average weekly wage may be lowered as provided by this section. Beginning in calendar year 1997 and annually thereafter, the average weekly wage shall be calculated based upon the state average weekly wage in effect two (2) years prior to that calculation.

### **342.155 Payment of lump-sum compensation to trustee**

Whenever the administrative law judge considers it expedient, any lump sum which is paid as provided in this chapter shall be paid to any suitable person appointed by the District Court of the county of the residence of the injured employee or of his dependents as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of such trustee for the amount so paid to him shall discharge the employer and his insurer. Except as otherwise herein specifically provided, the manner of qualification and the rights, duties, and liabilities of the trustee shall be determined by the general laws of this state.

### **342.160 Payments to certain dependents for others; effect of legal disability of dependent**

- (1) The benefits in case of death shall be paid to one (1) or more dependents of the deceased employee for the benefit of all the dependents entitled thereto, as determined by the administrative law judge. The dependents to whom payments are made shall apply the same to the use of the persons entitled thereto under this chapter, according to their respective claims on the deceased for support. The compensation of a mentally disabled person shall be paid to his guardian or conservator.
- (2) If the dependents are a widow, widower, or other head of a family of minor children and one (1) or more minor children, it shall be sufficient for the widow, widower, or head of the family to make application for compensation on behalf of all. Where the dependents are mentally incapacitated or are minors the head of whose family is not a dependent, the application may be made by the guardian, conservator, or next friend of such dependents.

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### **342.165 Increase or decrease in compensation for failure to comply with safety law; compensation not payable if employee falsely represents physical condition or medical history at time of employment**

Effective: July 15, 2010

- (1) If an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this chapter shall be increased thirty percent (30%) in the amount of each payment. If an accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer or to obey any lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this chapter shall be decreased fifteen percent (15%) in the amount of each payment.
- (2) No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in writing, his or her physical condition or medical history, if all of the following factors are present:
  - (a) The employee has knowingly and willfully made a false representation as to his or her physical condition or medical history;
  - (b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring; and
  - (c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

### **342.175 Lien for compensation**

All rights of compensation granted by this chapter shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

### **342.180 Compensation claim not assignable; exempt from debts; exception**

No claim for compensation under this chapter shall be assignable, except court or administratively-ordered child support pursuant to KRS 403.212. All compensation and claims therefor, except child support obligations, shall be exempt from all claims of creditors.

### **342.185 Notice of accident; claim for compensation; limitation**

Effective: July 15, 2010

- (1) Except as provided in subsection (2) of this section, no proceeding under this chapter for compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the

happening thereof and unless an application for adjustment of claim for compensation with respect to the injury shall have been made with the department within two (2) years after the date of the accident, or in case of death, within two (2) years after the death, whether or not a claim has been made by the employee himself or herself for compensation. The notice and the claim may be given or made by any person claiming to be entitled to compensation or by someone in his or her behalf. If payments of income benefits have been made, the filing of an application for adjustment of claim with the department within the period shall not be required, but shall become requisite within two (2) years following the suspension of payments or within two (2) years of the date of the accident, whichever is later.

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

### **342.190 Notice and claim to be in writing; contents**

The notice and claim shall be in writing. The notice shall contain the name and address of the employee, and shall state in ordinary language the time, place of occurrence, nature and cause of the accident, with names of witnesses, the nature and extent of the injury sustained, and the work or employment in which the employee was at the time engaged, and shall be signed by him or a person on his behalf, or, in case of his death, by any one (1) or more of his dependents or a person on their behalf. The notice may include the claim.

### **342.195 Notice and claim; how served**

The notice and claim shall be given to the employer, or if the employer is a partnership, then to any one (1) of the general partners. If the employer is a corporation or a limited liability company, the notice or claim may be given to any agent of the corporation or limited liability company upon whom process may be served, or to any officer of the corporation or any member or manager, as the case may be, of the limited liability company authorized to manage the limited liability company under its articles of incorporation or to any agent of the corporation or limited liability company in charge of the business at the place where the injury occurred. Notice or claim may be given by delivery to any such person or as provided in KRS 342.135.

### **342.197 Discrimination against employees who have filed claims or who have a diagnosis of coal-related pneumoconiosis; civil remedies**

- (1) No employee shall be harassed, coerced, discharged, or discriminated against in any manner whatsoever for filing and pursuing a lawful claim under this chapter.
- (2) It is unlawful practice for an employer:
  - (a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to his compensation, terms, conditions, or privileges of employment, because such individual has been diagnosed as



- having category 1/0, 1/1, or 1/2 occupational pneumoconiosis with no respiratory impairment resulting from exposure to coal dust; or
- (b) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee, because such individual has been diagnosed as having category 1/0, 1/1, or 1/2 occupational pneumoconiosis with no respiratory impairment resulting from exposure to coal dust.
- (3) Any individual injured by any act in violation of the provisions of subsection (1) or (2) of this section shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained by him, together with the costs of the law suit, including a reasonable fee for his attorney of record.

### **342.200 Certain defects or failure to give notice not to bar compensation**

The notice shall not be invalid or insufficient because of any inaccuracy in complying with KRS 342.190 unless it is shown that the employer was in fact misled to his injury thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this chapter if it is shown that the employer, his agent or representative had knowledge of the injury or that the delay or failure to give notice was occasioned by mistake or other reasonable cause.

### **342.205 Right of employer to require continued physical examination; payment of cost of examination; effect of employee's refusal; statement of earnings to be furnished at request of party**

Effective: July 15, 2010

- (1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the administrative law judge, shall submit himself or herself to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly-qualified physician or surgeon designated and paid by himself or herself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.
- (2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his or her own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.
- (3) If an employee refuses to submit himself or herself to or in any way obstructs the examination, his or her right to take or prosecute any proceedings under this chapter

shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

- (4) Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the administrative law judge may require.
- (5) The cabinet shall supply forms for the report.

### **342.210 Limitation of time not to run against minors or incompetents**

No limitation of time provided in this chapter shall run against any person who is mentally incompetent or who is a minor dependent so long as he has no committee, guardian or next friend, or other person authorized to claim compensation for him under KRS 342.160.

### **342.213 Workers' Compensation Nominating Commission; membership; duties with respect to appointments**

Effective: July 15, 2010

- (1) The Governor shall make all appointments to the board, and appoint the administrative law judges and the commissioner of the Department of Workers' Claims, subject to the consent of the Senate in accordance with KRS 11.160, and in accordance with this section, KRS 342.215, 342.228, and 342.230 by choosing from names presented to him or her by the Workers' Compensation Nominating Commission.
- (2) The Workers' Compensation Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:
  - (a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years;
  - (b)
    1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and
    2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.
    3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years;
  - (c) Appointments to fill the unexpired term of a member shall be for the remainder of the term; and
  - (d) The members shall annually select a chairman of the nominating commission.
- (3) Notwithstanding the provisions of subsection (2) of this section, at least three (3) members of the Workers' Compensation Nominating Commission shall be individuals who directly derive no earned income from the workers' compensation program. In order to satisfy the requirement of this subsection, the Governor may remove any

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existing member of the Workers' Compensation Nominating Commission and replace that member with an individual who does not derive earned income from the workers' compensation program. On or before March 1, 1997, the Governor shall submit to the Senate a list of the members of the commission identifying the positions they fill and the terms they shall serve in accordance with the provisions of this section.

- (4) The commissioner shall monitor the workload of the administrative law judges and, whenever a vacancy occurs, determine whether filling the position is necessary to expeditious resolution of claims brought under this chapter. One hundred twenty (120) days prior to the expiration of the terms of the administrative law judges, and when a vacancy occurs under other circumstances, the commissioner shall certify to the Workers' Compensation Nominating Commission that filling the position is necessary and the Workers' Compensation Nominating Commission shall act to fill only such positions as have been certified as necessary by the commissioner.
- (5)
  - (a) The Workers' Compensation Nominating Commission shall consult with the commissioner, chief administrative law judge, and a member of the Workers' Compensation Board as to the performance in office of the administrative law judges. The Workers' Compensation Nominating Commission may recommend retention of any sitting administrative law judge, or present to the Governor the names of three (3) qualified individuals nominated for the position. The Workers' Compensation Nominating Commission shall report its recommendation for retention to the Governor no later than thirty (30) days after receipt from the commissioner of certification of the necessity to fill the position and shall render to the Governor its list of nominees to fill vacancies within sixty (60) days of receipt of the commissioner's certification. The name of an individual who has been rejected by the Governor when recommended for retention shall not be presented thereafter as a nominee for the same position. No sitting administrative law judge shall be nominated to fill more than one (1) vacancy except for separate vacancies as an administrative law judge.
  - (b) Within thirty (30) days of receipt of the recommendation, the Governor may reject recommendations of retention, in which event the Workers' Compensation Nominating Commission shall, within thirty (30) days, reconvene and present a list of the names of three (3) nominees for each position for which a recommendation for retention has been rejected by the Governor.
- (6) The Governor shall appoint the commissioner of the Department of Workers' Claims from a list of three (3) names submitted by the nominating commission. The list submitted to the Governor shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.228. The commissioner shall be subject to Senate confirmation in accordance with KRS 11.160.
- (7)
  - (a) The Governor shall appoint the members of the Workers' Compensation Board. The nominating commission shall present to the Governor a list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of three (3) names to the Governor no later than sixty (60) days after a vacancy occurs.
  - (b) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous

appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he or she shall vacate the position.

- (8) The nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be reimbursed from funds collected pursuant to KRS 342.122 for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute. In addition, each member of the nominating commission shall be paid at a rate of one hundred dollars (\$100) per day for each meeting attended, and these expenses shall be financed from funds collected pursuant to KRS 342.122.

### **342.215 Workers' Compensation Board; authority; appointment; qualifications; term; vacancies; retirement system coverage**

Effective: July 15, 2010

- (1) The Workers' Compensation Board is hereby created and established. The board shall rule on appeals of decisions rendered by administrative law judges under this chapter. The board shall rule on an appeal of a decision of an administrative law judge no later than sixty (60) days following the date on which the last appeal brief was filed.
- (2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his or her full time to the duties of his or her office.
- (3) Of the members of the board appointed under this section, one (1) shall serve a term that shall expire on January 4, 2002; one (1) shall serve a term that shall expire on January 4, 2003; and one (1) shall serve a term that shall expire on January 4, 2004, as designated by the Governor at the time of appointment. Thereafter, each term of a board member shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who has been removed from his or her position prior to the expiration of his or her term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing the member with a written copy of the charges against him or her and giving the member a public hearing if he or she requests it.
- (4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.
- (5) Members of the Workers' Compensation Board and the administrative law judges shall be members of the Kentucky Employees Retirement System.
- (6) The Workers' Compensation Board shall be attached to the Department of Workers' Claims in the Labor Cabinet.

**342.220 Oath of Board Members**

Each member of the board shall take the oath prescribed by Section 228 of the Constitution.

**342.228 Responsibilities of Department of Workers' Claims; selection and qualifications of commissioner**

Effective: July 15, 2010

- (1) The Department of Workers' Claims shall be responsible for administering claims and ensuring compliance with the insurance, self-insurance, and rehabilitation provisions in this chapter. The department shall be administered by a commissioner appointed by the Governor. The Governor shall select the commissioner from a list of three (3) names submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213. The commissioner appointed by the Governor shall be subject to the consent of the Senate in accordance with KRS 11.160.
- (2) The commissioner shall have demonstrated knowledge and experience in the area of workers' compensation, public administration, and administrative law.

**342.229 Claimant records; limitation on inspection**

Effective: July 15, 2010

- (1) The records of the Department of Workers' Claims, to the extent that they provide information personally identifying an individual alleging a work-related injury or occupational disease, shall not be open to the public but only to parties satisfying the commissioner of their interest in the records and their right to inspect them.
- (2) This section shall not prohibit or limit the exchange of public records or the sharing of information between the Department of Workers' Claims and another public agency when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function, including the investigation of workers' compensation fraud.

**342.230 Employees of Department of Workers' Claims; duties and salary of commissioner; appointment, qualifications, terms, and duties of administrative law judges; removal provisions; vacancies; chief administrative law judge**

Effective: July 15, 2010

- (1) The commissioner, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the department's work. The employees of the Department of Workers' Claims, except the commissioner, administrative law judges, and board members, shall be members of the classified service.
- (2) The commissioner of the Department of Workers' Claims shall have immediate supervision of the employees of the department, perform duties assigned him or her, and have complete authority to carry out all the administrative functions relating to the Department of Workers' Claims. The commissioner with the assistance of the board shall train and instruct the administrative law judges on an ongoing basis;

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assign cases; and monitor the caseloads of the administrative law judges and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board and the administrative law judges; annually report the activities of the board and the administrative law judges to the Governor; and devote his or her full time to the duties of his or her office. The commissioner shall be paid a salary not less than the salary of a member of the board.

- (3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than nineteen (19) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, and extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge. Each administrative law judge may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.
- (4) To ensure that the administrative law judges perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.
- (5) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge. A member of the board or an administrative law judge may be removed for good cause, including violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.
- (6) Any vacancy in the term of an administrative law judge, which occurs prior to the expiration of the term, shall be filled if necessary by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.
- (7) (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end, and the term of the chief administrative law judge who was appointed under subsection (8) of this section shall end. On January 1, 1998, the Governor shall make four (4) year appointments to



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

- (b) Effective at 12 midnight, December 31, 1999, the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.
- (8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those of other administrative law judges. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, and providing educational opportunities for the administrative law judges. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional three thousand dollars (\$3,000) per year. At any time the commissioner may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter. The term of the chief administrative law judge employed in 1994 shall expire on December 31, 1997. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.

### **342.231 Monthly reports**

Effective: July 15, 2010

The Labor Cabinet shall report monthly to the Committee on Appropriations and Revenue its monthly expenditures of restricted agency funds and the nature of such expenditures. Separate reporting shall be done by each office within the Labor Cabinet and for general administration and support.

### **342.232 Quarterly reports on insurance guaranty funds, Kentucky coal workers' pneumoconiosis fund, and the status of KRS Chapter 342**

Effective: July 15, 2010

- (1) The boards of directors of the following funds shall make quarterly reports according to generally accepted accounting principles of all money received and disbursed by the listed funds during each quarter to the Legislative Research Commission. The funds which shall be reported are:
  - (a) Kentucky individual self-insurance guaranty fund;
  - (b) Kentucky group self-insurance fund; and
  - (c) Kentucky coal employers self-insurance fund.
- (2) The director of the Division of Workers' Compensation Funds shall make quarterly reports according to generally accepted accounting principles of all money received

and disbursed by the coal workers' pneumoconiosis fund to the Legislative Research Commission.

- (3) The Department of Workers' Claims shall make quarterly reports to the Legislative Research Commission on the status of the provisions of this chapter.

### **342.235 Traveling expenses**

Effective: July 15, 2010

The commissioner and employees or authorized representatives of the department shall, for traveling necessitated by the discharge of official duties, be reimbursed for transportation actually paid for, not exceeding the regular fare over the most direct route, and meals and lodging actually paid for.

### **342.240 Office; equipment; seal; sessions; venue of certain proceedings**

Effective: July 15, 2010

The department shall maintain its main office in Frankfort, Kentucky, using suitable rooms and offices belonging to this state, and shall be provided necessary office furniture to be paid for by the state. The commissioner shall provide necessary supplies, books, periodicals, and maps and shall provide a seal for the authentication of orders, awards, or proceedings of the administrative law judges, on which shall be inserted the words "Department of Workers' Claims, State of Kentucky, official seal." The board and the administrative law judges may hold sessions at any place within the state where necessary and shall have power to sue or institute legal proceedings in any court of this state, under existing laws as to jurisdiction of actions. Unless consented to by the commissioner, all actions or proceedings against the board or a member in his or her official capacity, or against an administrative law judge or the commissioner in his or her official capacity, shall be brought in the courts of Franklin County.

### **342.245 Record of proceedings**

Effective: July 15, 2010

All proceedings of the board and the administrative law judges shall be recorded in books kept for that purpose by the commissioner, which shall constitute a public record and shall contain an entry of each case, claim, or proceeding considered, heard or passed upon by each administrative law judge and the board, with the award, finding or decisions made thereon.

### **342.260 Permitted and required departmental administrative regulations; adoption of life expectancy tables; processes and procedure; subpoenas; duties of sheriff and Circuit Court**

Effective: July 15, 2014

- (1) The commissioner shall promulgate administrative regulations as he or she considers necessary to carry on the work of the department and the work of the administrative law judges and may promulgate administrative regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out the provisions of this chapter.

- (2) The commissioner shall promulgate administrative regulations on or before December 31, 2015, establishing the information necessary to be received to create an e-mail notification system where a person may enter his or her e-mail address into the Insurance Coverage Look-up database established by the Department of Workers' Claims and be notified of any cancellation of a specific business' workers' compensation coverage.
- (3) The commissioner shall develop or adopt life expectancy tables for use in making computations for the apportionment of benefits under KRS 342.120, computation of attorneys' fees under KRS 342.320, and for use in all other situations arising under this chapter in which the calculation of a life expectancy is necessary or desirable, including the computation of assessments or reserves for self-insurers. The commissioner may adopt life tables published by the United States Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the commissioner. The life tables developed or adopted by the commissioner through the promulgation of administrative regulations in effect as of the date of an opinion, award, or settlement approved by an administrative law judge shall apply to computations concerning that opinion, award, or settlement.
- (4) Processes and procedures under this chapter shall be as summary and simple as reasonably possible. The board or any member thereof or any administrative law judge for the purpose of this chapter, may subpoena witnesses, administer or cause to have administered oaths, and examine or cause to have examined those parts of the books and records of the parties to a proceeding as relate to questions in dispute.
- (5) The sheriff shall serve all subpoenas of the board and administrative law judges and shall receive the same fee as provided by law for like service in civil actions. Each witness who appears in obedience to the subpoena of the board or any administrative law judge shall receive for attendance the fees and mileage for witnesses in civil cases in the Circuit Courts.
- (6) The Circuit Court shall, on application of the board, any member thereof, or any administrative law judge, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

**342.262 Legislative findings; commissioner to give recommendation on new edition of "Guides to the Evaluation of Permanent Impairment"; approval of General Assembly required to effectuate**

Effective: July 15, 2010

- (1) The General Assembly hereby declares it to be the policy of the Commonwealth of Kentucky that the most recent and valid scientific and technological advancements in medicine be considered in evaluating the nature and extent of an injured worker's impairment.
- (2) (a) Therefore, within one hundred eighty (180) days of publication by the American Medical Association of a new edition of the "Guides to the Evaluation of Permanent Impairment," the commissioner shall recommend to the General Assembly whether all or a portion of the new edition should be enacted by the

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General Assembly in order to produce more equitable and accurate ratings of permanent impairment resulting from work-related injuries.

- (b) Prior to making the recommendation required in paragraph (a) of this subsection, the commissioner shall:
1. Consult with medical providers, representatives of injured workers, employers and representatives of employers, insurance carriers, and legal representatives of employers and injured workers; and
  2. Consider studies and analyses conducted by workers' compensation rating organizations, including the National Council on Compensation Insurance (NCCI).
- (3) The recommendation of the commissioner shall not become effective unless the General Assembly approves and adopts the recommendation.

### **342.265 Compensation agreement; approval by administrative law judge; lump-sum payments; reopening as remedy for disagreement; abatement of application for resolution**

Effective: July 15, 2010

- (1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement signed by the parties or their representatives shall be filed with the commissioner, and, if approved by an administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the commissioner and approved by the administrative law judge. Upon claims settled after December 12, 1996, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the Division of Workers' Compensation Funds mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.
- (2) Settlement agreements concluded after July 14, 2000, providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than one hundred dollars (\$100) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.
- (3) Upon lump-sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the commissioner. For settlements approved after December 12, 1996, until December 31, 1997, the true discount rate shall be six percent (6%) compounded annually on each payment. Before January 1 of each year commencing in 2001, the commissioner shall fix the discount rate to be utilized in the succeeding year based

at one-half of one percent (0.5%) below the interest rate paid upon ten (10) year United States Treasury Notes as of August 1 of the preceding year.

- (4) If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.
- (5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay.

### **342.267 Unfair claims settlement practices; penalties**

Effective: July 15, 2010

If an insurance carrier, self-insured group, or self-insured employer providing workers' compensation coverage engages in claims settlement practices in violation of this chapter, or the provisions of KRS 304.12-230, the commissioner of the Department of Workers' Claims shall fine the insurance company, self-insured group, or self-insured employer the sum of one thousand dollars (\$1,000) to five thousand dollars (\$5,000) for each violation and if they have a pattern of violations, the commissioner may revoke the certificate of self-insurance or request the commissioner of insurance to revoke the certificate of authority of the insurance carrier or the self-insured group.

### **342.270 Application for resolution of claim; joinder; assignment to administrative law judge; administrative regulations for procedures for resolution of claims**

Effective: July 15, 2010

- (1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application for resolution of claim. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made. When the application is filed by the employee or during the pendency of that claim, he or she shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him or her. Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee.
- (2) Except with respect to claims for benefits by reason of coal workers' pneumoconiosis, the commissioner shall issue notice of the filing to all parties and shall promptly assign the claim to an administrative law judge. The administrative law judge shall facilitate the exchange of information pertinent to the claim pursuant to administrative regulations promulgated by the commissioner. Within forty-five (45) days of the date of issuance of the notice required by this section, the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim.
- (3) Within one hundred twenty (120) days of July 14, 2000, the commissioner shall promulgate administrative regulations establishing procedures for the resolution of

claims. The administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an emergency basis and be applied to all pending claims.

### **342.275 Benefit review by administrative law judge; determination; procedures; deadline**

Effective: July 15, 2010

- (1) The commissioner shall promptly issue notice of the assignment of the claim to an administrative law judge, time for presentation of proof and of the time and place of a benefit review conference. The administrative law judge may confer informally with the parties for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.
- (2) The administrative law judge may grant continuances or grant or deny any benefits afforded under this chapter, including interlocutory relief, according to criteria established in administrative regulations promulgated by the commissioner. The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless extension is mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

### **342.276 Mediation program**

Effective: July 15, 2010

- (1) The commissioner shall establish a program to provide an opportunity for mediation of disputes as to the entitlement to benefits under this chapter.
- (2) The commissioner shall promulgate administrative regulations necessary to establish and implement the mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation.
- (3) Recommendations by mediators are without administrative or judicial authority and are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations. Administrative law judges may participate in the mediation process but shall not issue findings or orders as a result of the process unless agreed to by the parties.

### **342.277 Alternative dispute resolution**

Effective: July 15, 2010

- (1) In accordance with administrative regulations promulgated by the commissioner, a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative that contains the following provisions may be recognized as valid and binding:



- (a) An alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter that relate to the resolution of disputes, and which may include but is not limited to mediation and arbitration, the results of which may be binding upon the parties;
  - (b) The use of an agreed list of providers of medical treatment, which may be the exclusive source of all medical and related treatment provided under this chapter;
  - (c) The use of a limited list of physicians to conduct independent medical examinations;
  - (d) A light duty, modified job, or return-to-work program;
  - (e) A vocational rehabilitation or retraining program; and
  - (f) A twenty-four (24) hour health care coverage plan for medical benefits.
- (2) A system of arbitration may provide that the decision of the arbiter is subject to review by an administrative law judge.
- (3) Notwithstanding the provisions in subsection (1) of this section, no agreement shall be recognized as valid and binding that diminishes the rights of any of the parties under this chapter. Also, no agreement shall be valid and binding unless it is agreed to by the employer's insurance carrier.

### **342.281 Petition for reconsideration; contents; response; decision**

Within fourteen (14) days from the date of the award, order, or decision any party may file a petition for reconsideration of the award, order, or decision of the administrative law judge. The petition for reconsideration shall clearly set out the errors relied upon with the reasons and argument for reconsideration of the pending award, order, or decision. All other parties shall have ten (10) days thereafter to file a response to the petition. The administrative law judge shall be limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision and shall overrule the petition for reconsideration or make any correction within ten (10) days after submission.

### **342.285 Appeal to Workers' Compensation Board; remanding claim to administrative law judge**

Effective: July 15, 2010

- (1) An award or order of the administrative law judge as provided in KRS 342.275, if petition for reconsideration is not filed as provided for in KRS 342.281, shall be conclusive and binding as to all questions of fact, but either party may in accordance with administrative regulations promulgated by the commissioner appeal to the Workers' Compensation Board for the review of the order or award.
- (2) No new or additional evidence may be introduced before the board except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling, or award, but the board shall otherwise hear the appeal upon the record as certified by the administrative law judge and shall dispose of the appeal in summary manner. The board shall not substitute its judgment for that of the administrative law judge as to the weight of evidence on questions of fact, its review being limited to determining whether or not:
- (a) The administrative law judge acted without or in excess of his powers;

- (b) The order, decision, or award was procured by fraud;
  - (c) The order, decision, or award is not in conformity to the provisions of this chapter;
  - (d) The order, decision, or award is clearly erroneous on the basis of the reliable, probative, and material evidence contained in the whole record; or
  - (e) The order, decision, or award is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (3) Within sixty (60) days following the date on which the last appellate brief was filed, the board shall enter its decision affirming, modifying, or setting aside the order, decision, or award, or in its discretion remanding the claim to the administrative law judge for further proceedings in conformity with the direction of the board. The board may, before decision and upon a sufficient showing of fact, remand the claim to the administrative law judge.

### **342.290 Review by Court of Appeals**

The decision of the board shall be subject to review by the Court of Appeals pursuant to Section 111 of the Kentucky Constitution and rules adopted by the Supreme Court. The scope of review by the Court of Appeals shall include all matters subject to review by the board and also errors of law arising before the board and made reviewable by the rules of the Supreme Court for review of decisions of an administrative agency.

### **342.295 Safekeeping, transporting and return of original record of board**

The Court of Appeals may make such rule or order as it may deem necessary for the safekeeping, transporting and return of such original records of the Workers' Compensation Board to the board when the judgment in the case becomes final, provided that a copy of the final judgment shall be returned with each record. When any appeal has become final the clerk of the Court of Appeals shall return such original record to the Workers' Compensation Board, which shall safely keep the same. At all times thereafter such record shall remain a part of the record of the case in the Court of Appeals, though kept in the possession of the Workers' Compensation Board.

### **342.300 Continuation of award pending appeal; suspension**

Upon motion of either party and a sufficient showing of reason and necessity therefor, the board, if an appeal is taken, may continue in force the award, judgment, or order appealed from, pending its decision of such appeal, but to be suspended upon the execution by the adverse party of a supersedeas bond for appeal to the Court of Appeals.

### **342.305 Enforcement by Circuit Court of agreement, order, decision, or award**

Any party in interest may file in the Circuit Court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the administrative law judge, or of an order or decision of the administrative law judge or board, or of an award of the administrative law judge unappealed from, or of an award of the board rendered upon an appeal whether or not there is a motion to reopen or review pending

under KRS 342.125. The court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though it had been rendered in a suit duly heard and determined by that court. Any such judgment, unappealed from or affirmed on appeal or modified in obedience to the mandate of the Court of Appeals, shall be modified to conform to any decision of the administrative law judge ending, diminishing, or increasing any weekly payment under the provisions of KRS 342.125 upon a presentation to it of a certified copy of such decision.

### **342.310 Assessment of cost of unreasonable proceedings; restitution**

- (1) If any administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, he or it may assess the whole cost of the proceedings which shall include actual expenses but not be limited to the following: court costs, travel expenses, deposition costs, physician expenses for attendance fees at depositions, attorney fees, and all other out-of-pocket expenses upon the party who has so brought, prosecuted, or defended them.
- (2) If any administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that a party has committed acts in violation of KRS 342.335(1) or (2), that party may be ordered to make restitution for any compensation paid as a result of the commission of such acts.

### **342.315 Medical evaluations by university medical schools; procedures; report; payment of costs; performance assessment of medical schools**

Effective: July 15, 2010

- (1) The commissioner shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers who have had injuries or become affected by occupational diseases covered by this chapter. Referral for evaluation may be made to one (1) of the medical schools whenever a medical question is at issue.
- (2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. Except as otherwise provided in KRS 342.316, the clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.
- (3) The commissioner or an administrative law judge may, upon the application of any party or upon his own motion, direct appointment by the commissioner, pursuant to subsection (1) of this section, of a medical evaluator to make any necessary medical examination of the employee. Such medical evaluator shall file with the commissioner within fifteen (15) days after such examination a written report. The medical evaluator

appointed may charge a reasonable fee not exceeding fees established by the commissioner for those services.

- (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the commissioner that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.
- (5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.
- (6) Not less often than annually the designee of the secretary of the Cabinet for Health and Family Services shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized techniques, whether impairment ratings are in conformity with standards prescribed by the "Guides to the Evaluation of Permanent Impairment," and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter.
- (7) The General Assembly finds that good public policy mandates the realization of the potential advantages, both economic and effectual, of the use of telemedicine and telehealth. The commissioner may, to the extent that he or she finds it feasible and appropriate, require the use of telemedicine and telehealth practices, as authorized under KRS 194A.125, in the independent medical evaluation process required by this chapter.

### **342.316 Liability of employer and previous employers for occupational disease; claims procedure; time limitations on claims; determination of liable employer; effect of concluded coal workers' pneumoconiosis claim; applicability of consensus procedure**

Effective: July 15, 2010

- (1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator.
- (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later.

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- (2) The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise the employee that he or she has contracted the disease, or a diagnosis of the disease is first communicated to him or her, whichever shall first occur.
- (3) The procedure for filing occupational disease claims shall be as follows:
- (a) The application for resolution of claim shall set forth the complete work history of the employee with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least one (1) written medical report supporting his or her claim. This medical report shall be made on the basis of clinical or X-ray examination performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The report shall be made by a duly-licensed physician. The commissioner shall promulgate administrative regulations which prescribe the format of the medical report required by this section and the manner in which the report shall be completed.
1. For coal-related occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray interpretation by a National Institute of Occupational Safety and Health (NIOSH) certified "B" reader. The chest X-ray upon which the report is made shall be filed with the application as well as spirometric tests when pulmonary dysfunction is alleged.
  2. For other compensable occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray examination and appropriate pulmonary function tests.
- (b) To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust shall comply with accepted medical standards as follows:
1. Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report. Only interpretations by National Institute of Occupational Safety and Health (NIOSH) certified "B" readers shall be admissible.
  2. Spirometric testing shall be conducted in accordance with the standards recommended in the "Guides to the Evaluation of Permanent Impairment" and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall

represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.

3. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of this section. The commissioner shall periodically review the applicability of the spirometric test values contained in the "Guides to the Evaluation of Permanent Impairment" and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.
4. The procedure for determination of occupational disease claims shall be as follows:
  - a. Immediately upon receipt of an application for resolution of claim, the commissioner shall notify the responsible employer and all other interested parties and shall furnish them with a full and complete copy of the application.
  - b. The commissioner shall assign the claim to an administrative law judge and, except for coal workers' pneumoconiosis claims, shall promptly refer the employee to such physician or medical facility as the commissioner may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the commissioner for examination within two (2) years following any prior referral for examination for the same disease.
  - c. Except for coal workers' pneumoconiosis claims, within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the commissioner and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial. In coal workers' pneumoconiosis claims, the employer's notice of claim denial or acceptance shall be filed within thirty (30) days of the issuance by the commissioner of the notice of the consensus reading unless the consensus is that the miner has not developed coal workers' pneumoconiosis category 1/0 or greater. In the event the consensus procedure is exhausted without consensus being established, the employer's notice of claim denial or acceptance shall be filed within thirty (30) days of the commissioner notification to the administrative law judge that consensus has not been reached.



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- d. Within forty-five (45) days of assignment of a coal workers' pneumoconiosis claim to an administrative law judge, the employer shall cause the employee to be examined by a physician of the employer's choice and shall provide to all other parties and file with the commissioner the X-ray interpretation by a "B" reader. The examination of the employee shall include spirometric testing if pulmonary dysfunction is alleged by the employee in the application for resolution of a claim. The commissioner shall determine whether the X-ray interpretations filed by the parties are in consensus.
  - e. If the readings are not in consensus, the commissioner shall forward both films, masking information identifying the facility where the X-ray was obtained and the referring physician, consecutively to three (3) "B" readers selected randomly from a list maintained by the commissioner for interpretation. Each "B" reader shall select the highest quality film and report only the interpretation of that film. The commissioner shall determine if two (2) of the X-ray interpretations filed by the three (3) "B" readers selected randomly are in consensus. If consensus is reached, the commissioner shall forward copies of the report to all parties as well as notice of the consensus reading which shall be considered as evidence. If consensus is not reached, the administrative law judge shall decide the claim on the evidence submitted.
  - f. "Consensus" is reached between two (2) chest X-ray interpreters when their classifications meet one (1) of the following criteria: each finds either category A, B, or C progressive massive fibrosis; or findings with regard to simple pneumoconiosis are both in the same major category and within one (1) minor category (ILO category twelve (12) point scale) of each other.
  - g. The administrative law judge shall conduct such proceedings as are necessary to resolve the claim and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.
  - h. Unless a voluntary settlement is reached by the parties, or the parties agree otherwise, the administrative law judge shall issue a written determination within sixty (60) days following a hearing. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.
5. The procedure for appeal from a determination of an administrative law judge shall be as set forth in KRS 342.285.
- (4) (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise the employee that he or she has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim

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therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or its insurance carrier, voluntarily makes payment therefor, or if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

- (b) Income benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his or her last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.
- (5) The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but:
  - (a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;
  - (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and
  - (c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his or her death occurring at any time within twenty (20) years from the date of disability, his or her dependents, if any, shall be awarded compensation for his or her death as provided for under the general provisions of the Workers' Compensation Act and in this section, except as provided in KRS 342.750(6).
- (6) If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or its representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.
- (7) No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself or herself, in writing, as not having been previously disabled, laid-off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his or her knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his or her knowledge, the previous state of his or her health.
- (8) No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which under the provisions of this chapter would give right to compensation, arose subsequent to the beginning of the first

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compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.

- (9) Whenever any claimant misconceives his or her remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his or her application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.
- (10) When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he or she was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, except as otherwise provided in this chapter.
- (11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in KRS 342.1242 and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.
- (b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.
- (12) A concluded claim for benefits by reason of contraction of coal workers' pneumoconiosis in the severance or processing of coal shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.
- (13) For coal-related occupational pneumoconiosis claims, the consensus procedure shall apply to all claims which have not been assigned to an administrative law judge prior to July 15, 2002. The consensus classification shall be presumed to be the correct classification of the employee's condition unless overcome by clear and convincing evidence. If an administrative law judge finds that the presumption of correctness of the consensus reading has been overcome, the reasons shall be specially stated in the administrative law judge's order.

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### **342.318 Application of provisions of KRS 342.316(4) to certain asbestos-related disease claims**

The provisions of KRS 342.316(4) shall apply to employees' asbestos-related disease claims filed on or after July 15, 1986.

### **342.320 Approval of attorney's and physician's fees and hospital charges; limits on attorney's fees; payment of attorney fees**

Effective: July 15, 2010

- (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of an administrative law judge pursuant to the statutes and administrative regulations.
- (2) In an original claim, attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:
  - (a) Twenty percent (20%) of the first twenty-five thousand dollars (\$25,000) of the award, fifteen percent (15%) of the next ten thousand dollars (\$10,000), and five percent (5%) of the remainder of the award, not to exceed a maximum fee of twelve thousand dollars (\$12,000). This fee shall be paid by the employee from the proceeds of the award or settlement; and
  - (b) Attorney-client employment contracts entered into and signed after July 14, 2000, shall be subject to the conditions of paragraph (a) of this subsection.
- (3) In approving an allowance of attorney's fees, the administrative law judge shall consider the extent, complexity, and quality of services rendered, and in the case of death, the Remarriage Tables of the Dutch Royal Insurance Institute. An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court.
- (4) No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the claim. Except when the attorney's fee is to be paid by the employer or carrier, the attorney's fee shall be paid in one (1) of the following ways:
  - (a) The employee may pay the attorney's fee out of his or her personal funds or from the proceeds of a lump-sum settlement; or
  - (b) The administrative law judge, upon request of the employee, may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the employee in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.
- (5) At the commencement of the attorney-client relationship, the attorney shall explain to the employee the methods by which this section provides for the payment of the attorney's fee, and the employee shall select the method in which the attorney's fee is to be paid. His or her selection and statement that he or she fully understands the method to be used shall be submitted by his or her attorney, on a notarized form signed by the employee, at the time the motion for approval of the attorney's fee

is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and contain an explanation in nontechnical language of each method.

- (6) The General Assembly declares that by the enactment of KRS 342.316(3), it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.
- (7) In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the administrative law judge subject to the limits set forth in subsection (2) of this section. In awarding the attorney's fee, the administrative law judge shall consider the factors set forth in subsection (3) of this section. If no additional amount is recovered upon reopening, no attorney's fee shall be awarded. No attorney's fee shall be allowed or approved exceeding the amounts provided in subsection (2)(a) of this section applicable to any additional amount recovered.
- (8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the limitation of twelve thousand dollars (\$12,000) maximum fees except that fees for representing employers shall not be dependent upon the result achieved. Employer attorney's fees may be paid on a periodic basis while a claim is adjudicated and the payments need not be approved until the claims resolution process is completed. Fees for legal services in presenting a claim for reimbursement from the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars (\$1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

### **342.325 Questions not settled by agreement of parties determined by administrative law judge**

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the administrative law judge, shall be determined by the administrative law judge except as otherwise provided in this chapter.

### **342.329 Division of Ombudsman and Workers' Compensation Specialist Services; functions; ombudsman program; toll-free telephone access**

Effective: July 15, 2010

- (1) The Division of Ombudsman and Workers' Compensation Specialist Services shall be headed by a director appointed by the commissioner with the approval of the Governor, in accordance with KRS 12.050 and 342.230. The functions of the division shall include:
  - (a) Serving as an information source for employees, employers, medical, vocational, and rehabilitation personnel, carriers, and self-insurers;

- (b) Responding to inquiries and complaints relative to the workers' compensation program;
  - (c) Advising all parties of their rights and obligations under this chapter;
  - (d) Assisting workers in obtaining medical reports, job descriptions, and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application; and
  - (e) Performing other duties as required by the commissioner through administrative regulations promulgated by the commissioner.
- (2) The employee, employer, carrier, self-insured administrator, and medical provider shall promptly comply with reasonable information requests from an ombudsman.
  - (3) The ombudsman program shall be staffed with personnel trained in techniques performed by ombudsmen and who are familiar with medical and vocational rehabilitation principles and knowledgeable about the provisions of this chapter and applicable administrative regulations.
  - (4) A toll-free telephone number shall be provided throughout the Commonwealth to insure easy access by all parties to the division.

**342.335 Fraud and misrepresentation in filing or delaying the filing of claims and in receiving or providing services or benefits; penalties**

Effective: July 15, 2010

- (1) No person shall knowingly file, or permit to be filed, any false or fraudulent claim on his or her behalf to compensation or other benefits under this chapter, or by fraud, deceit, or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid, or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to delay or omit to claim title thereto or to accept the payment of a less sum than that to which he or she may be lawfully entitled thereunder.
- (2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation, including misrepresentations of hazards, classifications, payrolls, or other facts by an employer or its agent that are designed to cause a reduction in the employer's premium, for the purpose of or in the course of receiving or providing any service or benefit available under this chapter, shall be subject to the civil fines imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the commissioner shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his or her profession in the Commonwealth of Kentucky.



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### **342.340 Employer to insure or provide security against liability to workers**

Effective: July 15, 2014

- (1) Every employer under this chapter shall:
  - (a) Insure and keep insured its liability for compensation in some corporation, association, or organization authorized to transact the business of workers' compensation insurance in this state; or
  - (b) Furnish to the commissioner satisfactory proof of its financial ability to pay directly the compensation in the amount and manner and when due as provided in this chapter. In this case, the commissioner shall require the deposit of an acceptable security, indemnity, or bond to secure, to the extent the commissioner directs, the payment of compensation liabilities as they are incurred. A public sector self-insured employer shall not be required to deposit funds as security, indemnity, or bond to secure the payment of liabilities under this chapter, if the public employer has authority to raise taxes, notwithstanding provisions of KRS 68.245, 132.023, 132.027, and 160.470 relating to recall and reconsideration of local taxes; raise tuition; issue bonds; raise fees or fares for services provided; or has other authority to generate funds for its operation.
- (2) Every employer subject to this chapter shall file, or have filed on its behalf, with the department, as often as may be necessary, evidence of its compliance with the provisions of this section and all others relating hereto. Any insurance carrier or self-insured group providing workers' compensation insurance coverage for a Kentucky location shall file on behalf of the employer, with the commissioner, evidence of the employer's compliance with this chapter. Evidence of compliance filed with the department may include a named additional insured who has been provided proof of workers' compensation insurance coverage by the employer. The filing shall be made within ten (10) days after the issuance of a policy, endorsement to a policy, or similar documentation of coverage. Every employer who has complied with the foregoing provision and has subsequently canceled its insurance or its membership in an approved self-insured group, as the case may be, shall immediately notify, or have notice given on its behalf to the department of the cancellation, the date, and the reasons; and every insurance carrier or self-insured group shall in like manner notify the commissioner upon the cancellation, lapse, termination, expiration by reason of termination of policy period, or nonrenewal of any policy issued by it or termination of any membership agreement, whichever is applicable under the provisions of this chapter, except that the carrier or self-insured group need not set forth its reasons unless requested by the commissioner. The above filings are to be made on the forms prescribed by the commissioner. Termination of any policy of insurance issued under the provisions of this chapter shall take effect no greater than ten (10) days prior to the receipt of the notification by the commissioner unless the employer has obtained other insurance and the commissioner is notified of that fact by the insurer assuming the risk. Upon determination that any employer under this chapter has failed to comply with these provisions, the commissioner shall promptly notify interested government agencies of this failure and, with particular reference to employers engaged in coal mining, the commissioner shall promptly report any failures to the Department for Natural Resources so that appropriate action may be undertaken pursuant to KRS 351.175.

### **342.342 Annual review of individual self-insurance administrative regulations; annual report on financial soundness of self-insurers and self-insurance groups; Division of Security and Compliance expansion**

Effective: July 15, 2010

- (1) Notwithstanding the provisions of KRS 342.340, KRS 342.350, or any administrative regulations promulgated pursuant to those provisions, the commissioner shall annually review the adequacy of the financial or other security requirements contained in administrative regulations, promulgated pursuant to the individual self-insurance provisions in this chapter. The commissioner shall report the results of the review to the Labor and Industry Committee of the General Assembly and any recommendations for proposed changes to insure the financial soundness of the individual self-insurers authorized pursuant to this chapter. In addition, the commissioner shall report not less often than annually a summary report on the financial soundness of the individual self-insurers.
- (2) The Labor and Industry Committee of the General Assembly shall annually review the administrative regulations promulgated pursuant to the individual provisions under this chapter.
- (3) On July 1, 1994, the Division of Security and Compliance of the Department of Workers' Claims in the Labor Cabinet shall be expanded by five (5) employees. These additional employees shall be employed for the purpose of conducting financial audits, examinations, and reviews and other activities necessary to ensure and monitor the financial soundness of the individual self-insured employers authorized pursuant to KRS 342.340.

### **342.345 Certificate of individual self-insurance; revocation; new certificate; effect of revocation**

Effective: July 15, 2010

- (1) Whenever an employer has complied with the provisions of KRS 342.340 relating to individual self-insurance, the commissioner shall issue to the employer a certificate which shall remain in force for a period fixed by the commissioner. But the commissioner may, upon at least ten (10) days' notice and a hearing to the employer, revoke or suspend the certificate upon satisfactory evidence that revocation or suspension is appropriate. If the commissioner revokes a certificate, the commissioner may thereafter, upon petition of the employer and a hearing, grant a new certificate, but the employer shall not, as a matter of right, be entitled to a hearing for this purpose sooner than six (6) months following an order of the commissioner revoking the employer's certificate.
- (2) A self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations for compensation to its employees for work-related injuries or occupational diseases that occur during the period of self-insurance. The required security shall be maintained with the commissioner or under the commissioner's control until each claim for workers' compensation benefits has been paid, been settled, or lapsed under this chapter.

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### **342.347 Examination of finances of individual self-insureds; annual statement of financial condition; role of Department of Insurance**

Effective: July 15, 2010

- (1) The commissioner or the commissioner's designee shall have power to examine the financial condition and affairs related to workers' compensation of any individual self-insureds and shall have free access to books and documents relating to the self-insurance activities of the entity. The commissioner shall so examine each individual self-insured not less frequently than once every four (4) years. Information obtained through the examination shall be exempt from disclosure, under KRS 61.878(1)(j).
- (2) All individual self-insured employers shall file with the commissioner a statement of financial condition audited by an independent certified public accountant on or before one hundred twenty (120) days from the end of the self-insured's fiscal year for the immediately preceding fiscal year.
- (3) The expense of examination shall be borne by the entity examined and shall include reasonable lodging and travel expenses of the commissioner's designees, and expert assistance as necessarily incurred in the examination.
- (4) The Department of Insurance shall approve the form and contents of excess insurance policies and upon request of the commissioner shall review the application for approval of any individual self-insured and render an opinion as to the sufficiency of the excess insurance policies or other security posted by the applicant.
- (5) Not less often than biennially, the commissioner of the Department of Insurance shall review the activities, procedures, administrative regulations, and policies of the Department of Workers' Claims and make such recommendations to the Governor and legislative committees as may be appropriate to strengthen the oversight of individual self-insureds so that payment of liabilities to workers under this chapter is assured.

### **342.350 Mutual insurance associations and reciprocal or interinsurance exchanges for compensation claims; reinsurance; self-insured groups; power to contract, sue, and sued**

Effective: June 25, 2013

- (1) In order to comply with KRS 342.340, groups of employers may form, either among themselves or with employers in other states, mutual insurance associations, or reciprocal or interinsurance exchanges subject to the insurance laws of this state and any reasonable conditions and restrictions not inconsistent therewith fixed by the commissioner. Membership in these mutual insurance associations or reciprocal or interinsurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with KRS 342.340.
- (2) The commissioner may, except as provided in subsection (3), require any mutual insurance association or reciprocal or interinsurance exchange to purchase an annuity or to effect reinsurance with a company authorized to transact insurance in this state or to make a deposit with a bank or trust company of this state that shall in either case be approved by the commissioner for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.

- (3) Any mutual insurance association or reciprocal or interinsurance exchange possessing a surplus of at least one hundred thousand dollars (\$100,000) and not less in amount than the capital required of a domestic stock insurance company transacting the same kind of insurance shall not be required to purchase an annuity or effect reinsurance with a company authorized to transact insurance in this state or to make a deposit with a bank or trust company of this state for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.
- (4) In addition, under the provisions of KRS 304.50-010 and administrative regulations promulgated by the commissioner of the Department of Insurance, twenty (20) or more employers with common interests or membership in a bona fide trade association or two (2) or more city, county, charter county, urban-county, or consolidated local government employers or their agencies may enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insured groups. Any heterogeneous self-insured group so authorized may contract and may sue and be sued in the name adopted by the group.

### **342.352 Voluntary programs for integrated management of employer's worker compensation and group health insurance claims; twenty-four hour coverage**

Effective: July 15, 2010

- (1) The commissioner may establish one (1) or more programs for interested employers of integrated management of an employer's workers' compensation and group health insurance claims by an insurer authorized to do business in the Commonwealth and may promulgate any administrative regulations necessary to implement the provisions of this subsection. The integrated management of such claims shall in no event affect any benefits, rights, or coverage established pursuant to a workers' compensation insurance policy. Treatment for work-related conditions shall not be subject to either copayments or deductibles. The commissioner shall make a report comparing the results of each program to the expected results under traditional workers' compensation insurance and traditional workers' compensation with a managed care program. The program shall serve as a tentative model for future experiments.
- (2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the commissioner, in consultation with the commissioner of the Department of Insurance.
- (3) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the commissioner of the Department of Insurance.
- (4) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under this chapter, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the

twenty-four (24) hour insurance policy and the policy providing indemnity benefits shall provide the total compensation required by this chapter.

- (5) The participants in a project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the commission.
- (6) Each agency of state government shall cooperate with the commissioner if requested to provide information for the purposes of this section.

### **342.360 Agreements in policy as to notice; jurisdiction and liability of insurer**

All policies insuring the payment of compensation under this chapter shall contain a clause to the effect that as between the employer and the insurer the notice to or knowledge of the occurrence of the injury on the part of the insured shall be considered notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this chapter shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against the insured.

### **342.365 Policy to waive improper notice and be direct promise to employee**

No policy of insurance against liability for compensation arising under this chapter shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to it all benefits conferred by this chapter and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default in the giving of any notice required by such policy, or otherwise. This agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation, enforceable in his name.

### **342.375 Policy to cover entire liability of employer; separate policy for specified plant or location may be authorized**

Effective: July 15, 2010

Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to each employee subject to this chapter, except as otherwise provided in KRS 216.2960, 342.020, 342.345, or 342.352. However, if specifically authorized by the commissioner, a separate insurance policy may be issued for a specified plant or work location if the liability of the employer under this chapter to each employee subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage concept.

### **342.380 Commissioner of Department of Insurance to approve policy; review; appeal**

Effective: July 15, 2010

No policy of insurance or rider to be used therewith shall be issued or delivered until a copy of its form has been filed with the commissioner of the Department of Insurance at

least thirty (30) days before such issue or delivery, unless before the expiration of thirty (30) days the commissioner of the Department of Insurance has approved the form thereof in writing; nor if the commissioner of the Department of Insurance notifies the company in writing that in his opinion the form of the policy or rider does not comply with the laws of this state, specifying fully the reasons for his opinion. Upon petition of the company, the decision of the commissioner of the Department of Insurance shall be subject to review by the Franklin Circuit Court and to appeal therefrom to the Court of Appeals.

### **342.382 Report of workers' compensation experience**

Effective: July 15, 2010

- (1) Any insurer authorized to write a policy of workers' compensation insurance shall transmit the following information on its workers' compensation experience only to the Department of Workers' Claims and the Workers' Compensation Advisory Council each year, and that information shall be certified and reported on a net basis with respect to reinsurance for nationwide experience and direct basis with respect to Kentucky experience:
  - (a) Direct premiums written;
  - (b) Direct premiums earned;
  - (c) Dividends paid or credited to policyholders;
  - (d) Losses paid;
  - (e) Allocated loss adjustment expenses;
  - (f) The ratio of allocated loss adjustment expenses to losses paid;
  - (g) Unallocated loss adjustment expenses;
  - (h) The ratio of unallocated loss adjustment expenses to losses paid;
  - (i) The total of losses paid and unallocated and allocated loss adjustment expenses;
  - (j) The ratio of losses paid and unallocated and allocated loss adjustment expenses to premiums earned;
  - (k) The number of claims outstanding as of December 31 of each year;
  - (l) The total amount of losses unpaid as of December 31 of each year;
  - (m) The total amount of allocated and unallocated loss adjustment expenses unpaid as of December 31 of each year;
  - (n) The total of losses paid and allocated loss adjustment expenses and unallocated loss adjustment expenses, plus the total of losses unpaid as of December 31 of each year and loss adjustment expenses unpaid as of December 31 of each year; and
  - (o) Net investment gain or loss.
- (2) The first report of the information required in subsection (1) of this section shall include the information for the year ending December 31, 1987. Such report shall be filed no later than August 1, 1988. Beginning with the report for the period ending December 31, 1989, all future reports shall have all information required by subsection (1) of this section broken down by year for the current and two (2) preceding years.



**342.390 Employer's election to operate under chapter**

Election to operate under this chapter if an employer is not mandatorily subject to the chapter shall be effected by the employer purchasing workers' compensation insurance or qualifying as a self insured. The proof of election shall be the proof of insurance coverage provided for in KRS 342.340(2).

**342.395 Employee deemed to have accepted provisions of chapter; employee's written notice of rejection; withdrawal of election**

Effective: July 15, 2010

- (1) Where an employer is subject to this chapter, then every employee of that employer, as a part of his or her contract of hiring or who may be employed at the time of the acceptance of the provisions of this chapter by the employer, shall be deemed to have accepted all the provisions of this chapter and shall be bound thereby unless he or she shall have filed, prior to the injury or incurrence of occupational disease, written notice to the contrary with the employer; and the acceptance shall include all of the provisions of this chapter with respect to traumatic personal injury, silicosis, and any other occupational disease. However, before an employee's written notice of rejection shall be considered effective, the employer shall file the employee's notice of rejection with the Department of Workers' Claims. The commissioner of that department shall not give effect to any rejection of this chapter not voluntarily made by the employee. If an employee withdraws his or her rejection, the employer shall notify the commissioner.
- (2) An employer shall not require an employee to execute a rejection of this chapter as either a condition to obtain employment or a condition to maintain employment. An employer shall not terminate an employee for refusal to execute a rejection of this chapter.
- (3) Until notice to the contrary as specified in subsection (1) of this section is given to the employer, the measure of liability of the employer shall be determined according to the compensation provisions of this chapter. Any employee, may, without prejudice to any existing right or claim, withdraw his election to reject this chapter by filing with the employer a written notice of withdrawal, stating the date when the withdrawal is to become effective. Following the filing of that notice, the status of the party withdrawing shall become the same as if the former election to reject this chapter had not been made, except that withdrawal shall not be effective as to any injury sustained or disease incurred less than one (1) week after the notice is filed.

**342.400 Notice of employee's rejection to be preserved**

- (1) All notices of rejection of the provisions of this chapter by employees shall, when executed, be preserved by the employer during the continuation of the employment of those employees whose names are subscribed thereto.
- (2) No person shall with fraudulent intent, willfully destroy, convert or secrete any such notice, or willfully deprive the owner or his agent thereof, or erase or obliterate any part thereof.

**342.402 Restraining or enjoining of operations of employer**

Effective: July 15, 2010

The commissioner, upon showing a certification of noncompliance, may temporarily restrain or temporarily or permanently enjoin the further operation of any employer covered by this chapter. The action shall be brought in Franklin Circuit Court.

**342.420 Employee not to pay premium for compensation**

No agreement by any employee to pay any portion of the insurance premium paid by his employer shall be valid. No employer shall deduct any portion of such premium from the wages or salary of any employee entitled to the benefits of this chapter.

**342.425 Attorneys required to represent department, its employees, the board, or administrative law judges**

Effective: July 15, 2010

Upon the request of the commissioner, the Attorney General, or, under his or her direction, the Commonwealth's attorney or county attorney of any county, shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this chapter arising within his or her jurisdiction, and shall defend in like manner all actions or proceedings brought against the department, the employees thereof, board members, or administrative law judges in their official capacity.

**342.430 Blank forms to be furnished by commissioner**

Effective: July 15, 2010

The commissioner shall prepare and furnish, free of charge, blank forms of all notices, claims, reports, proofs, and other blank forms and literature which he or she considers proper and requisite to the efficient administration of this chapter. He or she may authorize the publication and distribution of these blanks by employers and their insurers in manner and form provided by him or her, and shall promulgate administrative regulations for their distribution so that they may be readily available.

**342.435 Commissioner's annual report**

Effective: July 15, 2010

Annually on or before the fifteenth day of December, the commissioner shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by the board and each administrative law judge, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, together with any other information which the commissioner deems proper to call to the attention of the Governor, including any recommendations he may have to make, and it shall be the duty of the commissioner to publish and distribute among employers and employees any general information as to the business transacted by the department as may be useful and necessary. The annual report shall not exceed ten thousand (10,000) copies. All printing of the department shall be done by the contractor or contractors for public printing, subject to the provisions of the general laws governing public printing applicable thereto.

### **342.447 Insurance companies' payments of amounts collected for taxes and assessments of Kentucky Reinsurance Association or Department of Revenue mandatory; audits to ensure compliance**

Effective: July 15, 2010

- (1) All funds collected by insurance companies from their insureds, prior to October 26, 1987, for assessments of the Kentucky Reinsurance Association or special fund taxes and assessments of the Kentucky Department of Revenue not previously paid, shall be paid in full by January 1, 1988, to the Kentucky Workers' Compensation Funding Commission.
- (2) To ensure compliance with the provisions of subsection (1) of this section, the Department of Revenue shall conduct audits of insurance companies. The costs of such audits shall be borne by the Kentucky Workers' Compensation Funding Commission. The Department of Revenue may enter an agreement with the Department of Insurance for assistance in conducting such audits or it may hire additional auditors on a temporary basis. The audits shall commence within sixty (60) days from October 26, 1987, and shall be completed within six (6) months. The aggregate findings of such audits shall be presented to the commissioner of revenue, the commissioner of insurance, the Kentucky Workers' Compensation Funding Commission, and the Governor.
- (3) If the audits reveal noncompliance with subsection (1) of this section, the Department of Revenue shall notify the affected party of such fact. The affected party shall remit the amount in question not later than thirty (30) days following notification and the Department of Revenue shall institute a civil action in Franklin Circuit Court if remittance is not made within such thirty (30) day period.
- (4) The failure of an insurance company to comply with the provisions of this section shall constitute grounds for the revocation by the commissioner of insurance of such entity's authority to write workers' compensation coverage in the Commonwealth.
- (5) The Department of Revenue shall report to the commissioner of insurance the failure of any insurance company to comply with the provisions of this section and the commissioner of insurance shall institute revocation procedures of such entity's authority to write workers' compensation coverage in the Commonwealth.
- (6) "Funds collected" as used in subsection (1) of this section shall mean all funds collected without reduction for credits, refund, or returns of any type made to insureds or group members after September 1, 1987.

### **342.460 Withdrawal from business in Kentucky before special fund assessments and other taxes fall due or failure to pay tax; collection; attorney's fees**

If any such insurance carrier withdraws from business in this state before the special fund assessments and other taxes required in this chapter fall due or fails to pay such tax, the funding commission shall at once proceed to collect it. The funding commission may employ any legal process necessary for that purpose. The suit may be brought by the funding commission in any court of this state having jurisdiction. Reasonable attorney's fees may be taxed as costs therein, and process may issue to any county of the state and may be served as in civil actions, or, in cases of unincorporated associations, part-

nerships, interindemnity contracts or other plan or scheme, upon the principal agent of the parties thereto.

### **342.465 Persons not to act for unauthorized insurance company nor to make false statement or return**

No person shall act or assume to act in this state as agent for any such insurance carrier whose authority to do business in this state has been suspended, while such suspension remains in force. No person shall willfully make a false or fraudulent statement of the business or condition of or false return concerning any such insurance carrier.

### **342.470 How notice may be given to insurance carrier**

Whenever by this chapter any officer is required to give any notice to an insurance carrier, it may be given by delivery, or by mailing a registered letter properly addressed and stamped, to the principal office or chief agent of that insurance carrier within the state, or to its home office, or to the secretary, general agent or chief officer thereof in the United States.

### **342.610 Liability for compensation; builder's proof of coverage required for issuance of building permit; notice required to be posted by employers**

Effective: July 15, 2010

- (1) Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.
- (2) A contractor who subcontracts all or any part of a contract and his or her carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his or her carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another:
  - (a) To have work performed consisting of the removal, excavation, or drilling of soil, rock, or mineral, or the cutting or removal of timber from land; or
  - (b) To have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of such personshall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.
- (3) Liability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by voluntary intoxication as defined in KRS 501.010, or by his or her willful intention to injure or kill himself, herself, or another.
- (4) If injury or death results to an employee through the deliberate intention of his or her employer to produce such injury or death, the employee or the employee's dependent as herein defined shall receive the amount provided in this chapter in a lump sum

to be used, if desired, to prosecute the employer. The dependents may bring suit against the employer for any amount they desire. If injury or death results to an employee through the deliberate intention of his or her employer to produce such injury or death, the employee or the employee's dependents may take under this chapter, or in lieu thereof, have a cause of action at law against the employer as if this chapter had not been passed, for such damage so sustained by the employee, his dependents or personal representatives as is recoverable at law. If a suit is brought under this subsection, all right to compensation under this chapter shall thereby be waived as to all persons. If a claim is made for the payment of compensation or any other benefit provided by this chapter, all rights to sue the employer for damages on account of such injury or death shall be waived as to all persons.

- (5) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local building official shall require proof of workers' compensation coverage from the builder before a permit is issued. A person who is exempt under the exception contained in KRS 342.650(2), and any contractor otherwise exempt from this chapter, shall so certify to the local building official, in writing and on a form prescribed by the commissioner, in lieu of providing proof of workers' compensation coverage.
- (6) Every employer subject to this chapter, at its principal office and such other locations where employees customarily report for payroll and personnel matters, shall post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the commissioner so as to afford every employee the opportunity to become informed about the employer's workers' compensation program. The format and contents of the notice shall be established by the commissioner through administrative regulation, and copies shall be provided to the employer by its insurance carrier.

### **342.615 Registration of employee leasing companies; coverage requirements for lessees; status of temporary help service**

Effective: July 15, 2010

- (1) As used in this section:
  - (a) "Employee leasing company" or "lessor" means an entity that grants a written lease to a lessee pursuant to an employee leasing arrangement;
  - (b) "Lessee" means an employer that obtains all or part of its workforce from another entity through an employee leasing arrangement;
  - (c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement;
  - (d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employment responsibilities among two (2) or more entities. For purposes of this section, "employee leasing arrangement" does not include arrangements to provide temporary workers;

- (e) “Temporary worker” means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions for a finite period of time; and
  - (f) “Temporary help service” means a service whereby an organization hires its own employees and assigns those employees to clients for finite periods of time to support or supplement the client’s workforce in special work situations, including employee absences, temporary skill shortages, and seasonal workloads.
- (2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the commissioner in the manner as prescribed by administrative regulations.
  - (3) Any lessor of employees whose workers’ compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.
  - (4) A lessee shall fulfill its statutory responsibility to secure benefits for leased employees under this chapter by purchasing and maintaining a standard workers’ compensation policy approved by the commissioner of the Department of Insurance. A lessee may fulfill that responsibility by contracting with an employee leasing company to purchase and maintain the required insurance policy. In either event, it shall be the responsibility of the lessee to maintain in its files at all times the certificate of insurance, or a copy thereof, evidencing the existence of the required insurance. The exposure and experience of the lessee shall be used in determining the premium for the policy and shall include coverage for all leased employees.
  - (5) A temporary help service shall be deemed the employer of a temporary worker and shall be subject to the provisions of this chapter.

### **342.630 Coverage of employers**

The following shall constitute employers mandatorily subject to, and required to comply with, the provisions of this chapter:

- (1) Any person, other than one engaged solely in agriculture, that has in this state one (1) or more employees subject to this chapter.
- (2) The state, any agency thereof, and each county, city of any class, school district, sewer district, drainage district, tax district, public or quasipublic corporation, or any other political subdivision or political entity of the state that has one (1) or more employees subject to this chapter.

### **342.640 Coverage of employees**

Effective: July 15, 2014

The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

- (1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;



- (2) Every executive officer of a corporation;
- (3) Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation, or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire, or police department shall be deemed, for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly-enrolled volunteer member or trainee of an emergency management agency, as established under KRS Chapters 39A to 39E, shall be deemed, for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed, for the purposes of this chapter, to be in the employment of this state; and
- (4) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury.

### **342.650 Exemptions of particular classes of employees from coverage**

Effective: July 15, 2010

The following employees are exempt from the coverage of this chapter:

- (1) Any person employed as a domestic servant in a private home by an employer who has less than two (2) employees each regularly employed forty (40) or more hours a week in domestic servant employment;
- (2) Any person employed, for not exceeding twenty (20) consecutive work days, to do maintenance, repair, remodeling, or similar work in or about the private home of the employer, or if the employer has no other employees subject to this chapter, in or about the premises where that employer carries on his or her trade, business, or profession;
- (3) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization;
- (4) Any person for whom a rule of liability for injury or death is provided by the laws of the United States, except those persons covered under Title IV, Public Law 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the Federal Coal Mine Health and Safety Act of 1969,1 or as amended;
- (5) Any person employed in agriculture;
- (6) Any person who would otherwise be covered but who elects not to be covered in accordance with the administrative regulations promulgated by the commissioner;
- (7) Any person participating as a driver or passenger in a voluntary vanpool or carpool program while that person is on the way to or from his or her place of employment. For the purposes of this subsection, carpool or vanpool means any method by which two (2) or more employees are transported from their residences to their places of employment; and

- (8) Members of a religious sect or division that is an adherent of established tenets or teachings by reason of which members are conscientiously opposed to acceptance of the benefits of any public or private insurance which makes payments in the event of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established by the Federal Social Security Act, 42 U.S.C. secs. 301 et seq., and it is the practice, and has been for ten (10) or more years, for members of the sect or division to make reasonable provision for their dependent members.

### **342.660 Voluntary coverage**

Effective: July 15, 2010

- (1) An employer that has in its employment any employee exempted under KRS 342.650 may elect to be subject to this chapter. This election on the part of the employer shall be made by the employer securing the payment of compensation to these exempted employees in accordance with KRS 342.340. Any employee, otherwise exempted under KRS 342.650, of the employer shall be deemed to have elected to come under this chapter, if at the time of the injury for which liability is claimed, his or her employer has in force an election to be subject to this chapter with respect to the employment in which the employee was injured and the employee has not, either upon entering into employment or within five (5) days after the filing of an election by the employer, given to his or her employer and to the commissioner notice in writing that he or she elects not to be subject to this chapter.
- (2) An employer within the scope of subsection (1) of this section, within five (5) days after securing the payment of compensation in accordance with KRS 342.340, shall give the commissioner written notice of its election to be subject to this chapter. The employer shall post and keep posted on the premises where any employee or employees, otherwise exempted under KRS 342.650, works, printed notices furnished by the commissioner stating its acceptance of this chapter. Failure to give the notices required by this paragraph shall not void or impair the employer's election to be subject to or relieve it of any liability under this chapter.
- (3) Any employer who has complied with subsection (2) of this section may withdraw its acceptance of this chapter, by filing written notice with the commissioner of the withdrawal of its acceptance. A withdrawal shall become effective 60 days after the filing of notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The withdrawal shall not be effective until the employer shall theretofore post notice of the withdrawal where the affected employee or employees work or shall otherwise notify the employees of withdrawal.

### **342.670 Extraterritorial coverage**

Effective: July 15, 2010

- (1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of the employee's death, his or her dependents, would have been entitled to the benefits provided by this chapter had that injury occurred within this state, that employee, or in the event of the employee's death resulting from that injury, his or her dependents, shall be entitled to the benefits provided by this chapter, if at the time of the injury:

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- (a) His or her employment is principally localized in this state; or
  - (b) He or she is working under a contract of hire made in this state in employment not principally localized in any state; or
  - (c) He or she is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or
  - (d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.
- (2) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or his or her dependents otherwise entitled on account of such injury or death to the benefits of this chapter shall not be a bar to a claim for benefits under this chapter, if a claim under this chapter is filed within two (2) years after that injury or death. If compensation is paid or awarded under this chapter:
- (a) The medical and related benefits furnished or paid for by the employer under another jurisdiction's workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;
  - (b) The total amount of all income benefits paid or awarded the employee under another jurisdiction's workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter, had claim been made solely under this chapter; and
  - (c) The total amount of death benefits paid or awarded under another jurisdiction's workers' compensation law shall be credited against the total amount of death benefits due under this chapter.
- (3) If any employee is entitled to the benefits of this chapter by reason of an injury sustained in this state in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this chapter, the employer or his carrier may file with the commissioner a certificate, issued by the commission or agency of the other state having jurisdiction over workers' compensation claims, certifying that the employer has secured the payment of compensation under the workers' compensation law of the other state and that with respect to the injury the employee is entitled to the benefits provided under that law, and that the benefits to which the employee or his or her dependents is entitled are at least as great as those to which he or she would be entitled if the injury occurred and was processed under Kentucky law, under Kentucky coverage. In this event:
- (a) The filing of the certificate shall constitute an appointment by the employer or his carrier of the commissioner as his or her agent for acceptance of the service of process in any proceeding brought by the employee or his or her dependents to enforce his, her, or their rights under this chapter on account of the injury;
  - (b) The commissioner shall send to the employer or carrier, by certified mail to the address shown on the certificate, a true copy of any notice of claim or other process served on the commissioner by the employee or his or her dependents in any proceeding brought to enforce his, her, or their rights under this chapter;

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- (c) 1. If the employer is a qualified self-insurer under the workers' compensation law of the other state, the employer shall, upon submission of evidence satisfactory to the commissioner, of its ability to meet its liability to the employee under this chapter, be deemed to be a qualified self-insurer under this chapter;
2. If the employer's liability under the workers' compensation law of the other state is insured, the employer's carrier, as to the employee or his or her dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this chapter; however, unless its contract with the employer requires it to pay an amount equivalent to the compensation benefits provided by this chapter, its liability for income benefits or medical and related benefits shall not exceed the amounts of the benefits for which the insurer would have been liable under the workers' compensation law of the other state;
- (d) If the total amount for which the employer's insurance is liable under (c) above is less than the total of the compensation benefits to which the employee is entitled under this chapter, the commissioner may, if he or she deems it necessary, require the employer to file security, satisfactory to the commissioner, to secure the payment of benefits due the employee or his or her dependents under this chapter; and
- (e) Upon compliance with the preceding requirements of this subsection (3), the employer, as to the employee only, shall be deemed to have secured the payment of compensation under this chapter.
- (4) Any professional athlete, coach, or trainer who has been hired outside this Commonwealth by an employer domiciled in a foreign state, including professional baseball, basketball, football, and ice-hockey clubs, is exempted from the provisions of this chapter while that employee is temporarily within this Commonwealth doing work for the employer, if the foreign employer has secured workers' compensation insurance coverage under the workers' compensation law of the foreign state, so as to cover the employee's employment while in this Commonwealth. The benefits under the workers' compensation law of the foreign state shall be the exclusive remedy against that employer and any affiliated club for any injury, whether resulting in death or not, received by any employee while working for that employer in this Commonwealth.
- (5) As used in this section:
- (a) "United States" includes only the states of the United States and the District of Columbia;
- (b) "State" includes any state of the United States, the District of Columbia, or any province of Canada;
- (c) "Carrier" includes any insurance company licensed to write workers' compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workers' compensation law;
- (d) A person's employment is principally localized in this or another state when:
1. His or her employer has a place of business in this or the other state and he or she regularly works at or from that place of business, or

2. If subparagraph 1. foregoing is not applicable, he or she is domiciled and spends a substantial part of his or her working time in the service of his or her employer in this or the other state;
- (e) An employee whose duties require him or her to travel regularly in the service of his or her employer in this and one (1) or more other states may, by written agreement with his or her employer, provide that his or her employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall be given effect under this chapter;
- (f) "Workers' compensation law" includes "occupational disease law."

### **342.680 Presumptions in the case of death or of physical or mental inability to testify**

In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify as confirmed by competent medical evidence and where there is unrebutted prima facie evidence that indicates that the injury was work related, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury was work related, that sufficient notice of the injury has been given, and that the injury or death was not proximately caused by the employee's intoxication or by his willful intention to injure or kill himself or another.

### **342.690 Exclusiveness of liability**

- (1) If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death. For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (2) of KRS 342.610, whether or not the subcontractor has in fact, secured the payment of compensation. The liability of an employer to another person who may be liable for or who has paid damages on account of injury or death of an employee of such employer arising out of and in the course of employment and caused by a breach of any duty or obligation owed by such employer to such other shall be limited to the amount of compensation and other benefits for which such employer is liable under this chapter on account of such injury or death, unless such other and the employer by written contract have agreed to share liability in a different manner. The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier, provided the exemption from liability given an employee, officer or director or an employer or carrier shall not apply in any case where the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, officer or director.
- (2) If an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may claim compensation under this chapter and in addition may maintain an action at law or in admiralty for damages on account of such injury or death, provided that the amount of compensation shall be credited against the amount received in such action, and provided that, if the amount of compensation is larger than the amount

of damages received, the amount of damages less the employee's legal fees and expenses shall be credited against the amount of compensation. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risks of his employment, or that the injury was due to the contributory negligence of the employee.

- (3) An employer shall retain all common law defenses against any action by an employee who elects not to be covered, as provided under subsection (6) of KRS 342.650.

### **342.700 Remedies when third party is legally liable; liability and indemnification rights of principal contractors, intermediates, and subcontractors; requirement of waiver of remedies for award of contract unlawful**

- (1) Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against the other person to recover damages, or proceed both against the employer for compensation and the other person to recover damages, but he shall not collect from both. If the injured employee elects to proceed at law by civil action against the other person to recover damages, he shall give due and timely notice to the employer and the special fund of the filing of the action. If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the indemnity paid and payable to the injured employee, less the employee's legal fees and expense. The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).
- (2) A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one (1) of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who pays the compensation may recover the amount paid from any subordinate contractor through whom he has been rendered liable under this section. Every claim to compensation under this subsection shall in the first instance be presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor nor shall the claim be barred by limitations, if the claim is filed against the principal or intermediate contractor within one (1) year after a final unappealed order has been rendered by an administrative law judge determining that immediate employer has insufficient security to pay the full and maximum benefits that could be determined to be due him under this chapter. The collection of full compensation from one employer shall bar recovery by the employee against any other. But he shall not collect from all a total compensation in excess of the amount for which his immediate employer is liable. This subsection shall apply only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.



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

### **342.710 Rehabilitation rights, duties, and procedures; acceleration of benefits**

Effective: July 15, 2010

- (1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.
- (2) The commissioner shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public.
- (3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, he or she shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to suitable employment. In all such instances, the administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The administrative law judge on his or her own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him or her fit for a remunerative occupation. Upon receipt of such report, the administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or its insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the administrative law judge, after hearing and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.
- (4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his or her board, lodging, or travel shall be paid for by the employer or its insurance carrier.
- (5) Refusal to accept rehabilitation pursuant to an order of an administrative law judge shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.

- (6) The commissioner shall cooperate on a reciprocal basis with the Office of Vocational Rehabilitation and the Office of Employment and Training of the Education and Workforce Development Cabinet. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Office of Vocational Rehabilitation or Office of Employment and Training following the refusal by the employer or its insurance carrier to provide such services, the administrative law judge, after affording the parties an opportunity to be heard, may order reimbursement of the cost of such treatment or services by the employer or its insurance carrier as apportioned in the award. This section shall not be interpreted to require mandatory evaluation of employees based on length of disability. Any administrative regulations promulgated pursuant to this section that require mandatory referral to a qualified rehabilitation counselor shall expire on April 4, 1994.
- (7) An employee who is enrolled and participating in a program of rehabilitation training pursuant to this section may elect to receive an acceleration of benefits as awarded under KRS 342.730. Such acceleration shall be available to the employee during the period of retraining, but in no event shall be paid in a weekly amount greater than sixty-six and two-thirds percent (66-2/3%) of the average weekly wage upon which the award is based, not to exceed one hundred percent (100%) of the state average weekly wage. Upon successful completion of the rehabilitation program, the total of all accelerated benefits paid shall be deducted on a dollar-for-dollar basis, without discount, from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, if any, shall then be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. If a program of rehabilitation training is terminated by the employee prior to completion, all sums paid on an accelerated basis shall be discounted at the rate set forth in KRS 342.265 and then deducted on a dollar-for-dollar basis from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, after the discount, shall be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. In no event shall this subsection be construed as requiring payment of benefits in excess of the total of those benefits which would otherwise be payable under the award.

### **342.715 Calculation of benefits during participation in vocational or physical rehabilitation program**

Notwithstanding the provisions of KRS 342.730, during the period the employee is eligible for permanent total disability benefits and is actively participating in a vocational or physical rehabilitation program, pursuant to an order of the administrative law judge, the employee's benefits shall be calculated by taking eighty percent (80%) of his average weekly wage, but not more than one hundred percent (100%) of the state's average weekly wage, times the permanent disability rating as determined in this chapter.

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### **342.732 Income benefits and retraining incentive benefits for coal workers' pneumoconiosis; referral to Office of Vocational Rehabilitation; administrative regulations**

Effective: July 15, 2010

- (1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust in the severance or processing of coal shall be paid as follows:
  - (a)
    1. If an employee has a radiographic classification of category 1/0, 1/1 or 1/2, coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more, the employee shall be awarded a one (1) time only retraining incentive benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined by KRS 342.740, but not more than seventy-five percent (75%) of the state average weekly wage, payable semimonthly for a period not to exceed one hundred four (104) weeks, except as provided in subparagraph 3. of this paragraph.
    2. Except as provided in subparagraph 3. of this paragraph, these benefits shall be paid only while the employee is enrolled and actively and successfully participating as a full-time student taking the equivalent of twelve (12) or more credit hours per week in a bona fide training or education program that if successfully completed will qualify the person completing the course for a trade, occupation, or profession and which program can be completed within the period benefits are payable under this subsection. The program must be approved under administrative regulations to be promulgated by the commissioner. These benefits shall also be paid to an employee who is a part-time student taking not less than the equivalent of six (6) nor more than eleven (11) credit hours per week, except that benefits shall be an amount equal to thirty-three and one-third percent (33-1/3%) of the employee's average weekly wage as determined by KRS 342.740, but not more than thirty-seven and one-half percent (37-1/2%) of the state average weekly wage, payable biweekly for a period not to exceed two hundred eight (208) weeks.
    3. These benefits shall also be paid biweekly while an employee is actively and successfully pursuing a General Equivalency Diploma (GED) in accordance with administrative regulations promulgated by the commissioner. These benefits shall be paid in the amount of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage not to exceed seventy-five percent (75%) of the state average weekly wage for a maximum period not to exceed seventeen (17) weeks. These income benefits shall be in addition to the maximum amount of retraining incentive benefits payable under this paragraph.
    4. The employer shall also pay, directly to the institution conducting the training or education program, instruction, tuition, and material costs not to exceed five thousand dollars (\$5,000).
    5. The period of weeks during which this benefit is payable shall begin no later than the thirtieth day after the administrative law judge's order awarding

the benefit becomes final, except that an employee may elect to defer the beginning of such benefits up to the three hundred sixty-fifth day following the thirtieth day the order becomes final. Unless the employee has requested deferral of income benefits, those income benefits payable under subparagraphs 1. and 2. of this paragraph shall begin no later than thirty (30) days following conclusion of income benefits paid under subparagraph 3. if such benefits were paid.

6. If an employee who is awarded retraining incentive benefits under this paragraph successfully completes a bona fide training or education program approved by the commissioner, upon completion of the training or education program, the employer shall pay to that employee the sum of five thousand dollars (\$5,000) for successful completion of a program that requires a course of study of not less than twelve (12) months nor more than eighteen (18) months, or the sum of ten thousand dollars (\$10,000) for successful completion of a program that requires a course of study of more than eighteen (18) months. This amount shall be in addition to retraining incentive benefits awarded under this paragraph, and tuition expenses paid by the employer.
  7. An employee who is age fifty-seven (57) years or older on the date of last exposure and who is awarded retraining incentive benefits under subparagraphs 1. to 4. of this paragraph, may elect to receive in lieu of retraining incentive benefits, an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of twenty-five percent (25%) for a period not to exceed four hundred twenty-five (425) weeks, or until the employee reaches sixty-five (65) years of age, whichever occurs first, KRS 342.730(4) notwithstanding.
  8. A claim for retraining incentive benefits provided under this section may be filed, but benefits shall not be payable, while an employee is employed in the severance or processing of coal as defined in KRS 342.0011(23).
  9. If an employer appeals an award of retraining incentive benefits, upon an employee's motion, an administrative law judge may grant retraining incentive benefits pending appeal as interlocutory relief.
  10. If an employee elects to defer payment of retraining incentive benefits for a period of retraining longer than three hundred sixty-five (365) days, benefits otherwise payable shall be reduced week-for-week for each week retraining benefits are further deferred;
- (b) 1. If an employee has a radiographic classification of category 1/0, 1/1, or 1/2 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more of the predicted normal values, there shall be an irrebuttable presumption that the employee has a disability rating of twenty-five percent (25%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to

sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of twenty-five percent (25%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks.

2. An employee who is awarded benefits under this paragraph may, at the time of the award or before benefit payments begin, elect to receive retraining incentive benefits provided under paragraph (a)1. to 6. of this subsection, in lieu of income benefits awarded under this paragraph, provided that such option is available one (1) time only and is not revokable, and provided that in no event shall income benefits payable under this paragraph be stacked or added to retraining incentive income benefits paid or payable under subparagraphs 1. to 6. of paragraph (a)1. to 6. of this subsection to extend the period of disability;
- (c) If it is determined that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 3/2 or 3/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more, there shall be an irrebuttable presumption that the employee has a disability rating of fifty percent (50%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of fifty percent (50%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks;
- (d) If it is determined that an employee has a radiographic classification of category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis, based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, there shall be an irrebuttable presumption that the employee has a seventy-five percent (75%) disability rating resulting from exposure to coal dust and the employee shall be awarded income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of seventy-five percent (75%). The award shall be payable for a period not to exceed five hundred twenty (520) weeks. Income benefits awarded under this paragraph shall be payable to the employee during the disability; and

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- (e) If it is determined that an employee has radiographic classification of 3/2 or 3/3 occupational pneumoconiosis and respiratory impairment evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values, or complicated pneumoconiosis (large opacities category A, B, or C progressive massive fibrosis), there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust, and the employee shall be awarded income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability.
- (2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.
- (3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge shall make his or her decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO<sub>2</sub> arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula  $(103.5 - 0.42X)$ , where X equals the claimant's age at the time of the arterial blood gas study.
- (4) Upon request, the commissioner shall refer an employee who has been awarded retraining incentive benefits under subsection (1)(a) of this section to the Office of Vocational Rehabilitation for evaluation and assessment of the training, education, or other services necessary to prepare the employee for a trade, occupation, or profession that will return the employee to remunerative employment, or services necessary and appropriate to prepare and enable the employee to successfully complete a bona fide training or education program approved by the commissioner. The commissioner shall contract with the Office of Vocational Rehabilitation to provide vocational rehabilitation or education services commensurate with the skill levels and abilities of the employee. Services provided under this subsection shall be funded by the coal workers' pneumoconiosis fund, KRS 342.1242 notwithstanding.
- (5) The commissioner shall promulgate administrative regulations sufficient to effectuate the provisions relating to retraining incentive benefits provided under subsection (1)(a) of this section. The administrative regulations shall:
- (a) Define a "bona fide training or education program" to mean a postsecondary education or training program, including but not limited to the postsecondary programs registered with the Higher Education Assistance Authority, and successful completion of which will qualify the person completing the course



- for a trade, occupation, or profession, and which program can be completed within the period benefits are payable under subsection (1)(a) of this section;
- (b) Establish requirements for approval and certification of a bona fide training or education program;
  - (c) Provide that funds paid to the training or education program by the employer as required under subsection (1)(a)4. of this section shall be applied only to instruction, tuition, material costs, and any fees necessary for the completion of the program;
  - (d) Establish requirements for successful participation in and completion of an approved and certified bona fide training or education program, and eligibility standards that must be satisfied to receive sums to be paid by the employer pursuant to subsection (1)(a)6. of this section; and
  - (e) Establish attendance, performance and progress standards, and reporting requirements in consultation with the Kentucky Adult Education Program within the Council on Postsecondary Education as conditions that must be satisfied to receive retraining incentive income benefits pursuant to subsection (1)(a)3. of this section.
- (6) In no event shall income benefits awarded under this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability and in no event shall income or retraining incentive benefits be paid to the employee while the employee is working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a).

### **342.730 Determination of income benefits for disability; survivors' rights; termination; offsets; notification of return to work**

Effective: July 15, 2010

- (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:
- (a) For temporary or permanent total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related impairment and conditions compensable under KRS 342.732 and hearing loss covered in KRS 342.7305 shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.
  - (b) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by the permanent impairment rating caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," times the factor set 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

Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

- (c) 1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments; or
2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments.
3. Recognizing that limited education and advancing age impact an employee's post-injury earning capacity, an education and age factor, when applicable, shall be added to the income benefit multiplier set forth in paragraph (c)1. of this subsection. If at the time of injury, the employee had less than eight (8) years of formal education, the multiplier shall be increased by four-tenths (0.4); if the employee had less than twelve (12) years of education or a high school General Educational Development diploma, the multiplier shall be increased by two-tenths (0.2); if the employee was age sixty (60) or older, the multiplier shall be increased by six-tenths (0.6); if the employee was age fifty-five (55) or older, the multiplier shall be increased by four-tenths (0.4); or if the employee was age fifty (50) or older, the multiplier shall be increased by two-tenths (0.2).
4. Notwithstanding the provisions of KRS 342.125, a claim may be reopened at any time during the period of permanent partial disability in order to

conform the award payments with the requirements of subparagraph 2. of this paragraph.

- (d) For permanent partial disability, if an employee has a permanent disability rating of fifty percent (50%) or less as a result of a work-related injury, the compensable permanent partial disability period shall be four hundred twenty-five (425) weeks, and if the permanent disability rating is greater than fifty percent (50%), the compensable permanent partial disability period shall be five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and shall not exceed seventy-five percent (75%) of the state average weekly wage, except for benefits payable pursuant to paragraph (c)1. of this subsection, which shall not exceed one hundred percent (100%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in paragraph (b) of this subsection would yield a greater percentage of disability.
  - (e) For permanent partial disability, impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be considered in determining the extent of disability or duration of benefits under this chapter.
- (2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.
  - (3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his or her lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his or her death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:
    - (a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or
    - (b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two

- (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or
- (c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or
  - (d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.
  - (e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.
- (4) All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old-age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old-age Social Security retirement benefits.
  - (5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.
  - (6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.
  - (7) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

### **342.7305 Compensability of occupational hearing loss; authority for administrative regulations; rebuttable presumption as to employer liability**

Effective: July 15, 2010

- (1) In all claims for occupational hearing loss caused by either a single incident of trauma or by repetitive exposure to hazardous noise over an extended period of employment, the extent of binaural hearing impairment shall be determined under the "Guides to the Evaluation of Permanent Impairment."

- (2) Income benefits payable for occupational hearing loss shall be as provided in KRS 342.730, except income benefits shall not be payable where the binaural hearing impairment converted to impairment of the whole person results in impairment of less than eight percent (8%). No impairment percentage for tinnitus shall be considered in determining impairment to the whole person.
- (3) The executive director shall provide by administrative regulation for prompt referral of hearing loss claims for evaluation, for all medical reimbursement, and for prompt authorization of hearing enhancement devices.
- (4) When audiograms and other testing reveal a pattern of hearing loss compatible with that caused by hazardous noise exposure and the employee demonstrates repetitive exposure to hazardous noise in the workplace, there shall be a rebuttable presumption that the hearing impairment is an injury covered by this chapter, and the employer with whom the employee was last injuriously exposed to hazardous noise shall be exclusively liable for benefits.

### **342.732 Income benefits and retraining incentive benefits for coal workers' pneumoconiosis; referral to Office of Vocational Rehabilitation; administrative regulations**

Effective: July 15, 2010

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

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average weekly wage, payable biweekly for a period not to exceed two hundred eight (208) weeks.

3. These benefits shall also be paid biweekly while an employee is actively and successfully pursuing a General Equivalency Diploma (GED) in accordance with administrative regulations promulgated by the commissioner. These benefits shall be paid in the amount of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage not to exceed seventy-five percent (75%) of the state average weekly wage for a maximum period not to exceed seventeen (17) weeks. These income benefits shall be in addition to the maximum amount of retraining incentive benefits payable under this paragraph.
4. The employer shall also pay, directly to the institution conducting the training or education program, instruction, tuition, and material costs not to exceed five thousand dollars (\$5,000).
5. The period of weeks during which this benefit is payable shall begin no later than the thirtieth day after the administrative law judge's order awarding the benefit becomes final, except that an employee may elect to defer the beginning of such benefits up to the three hundred sixty-fifth day following the thirtieth day the order becomes final. Unless the employee has requested deferral of income benefits, those income benefits payable under subparagraphs 1. and 2. of this paragraph shall begin no later than thirty (30) days following conclusion of income benefits paid under subparagraph 3. if such benefits were paid.
6. If an employee who is awarded retraining incentive benefits under this paragraph successfully completes a bona fide training or education program approved by the commissioner, upon completion of the training or education program, the employer shall pay to that employee the sum of five thousand dollars (\$5,000) for successful completion of a program that requires a course of study of not less than twelve (12) months nor more than eighteen (18) months, or the sum of ten thousand dollars (\$10,000) for successful completion of a program that requires a course of study of more than eighteen (18) months. This amount shall be in addition to retraining incentive benefits awarded under this paragraph, and tuition expenses paid by the employer.
7. An employee who is age fifty-seven (57) years or older on the date of last exposure and who is awarded retraining incentive benefits under subparagraphs 1. to 4. of this paragraph, may elect to receive in lieu of retraining incentive benefits, an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of twenty-five percent (25%) for a period not to exceed four hundred twenty-five (425) weeks, or until the employee reaches sixty-five (65) years of age, whichever occurs first, KRS 342.730(4) notwithstanding.
8. A claim for retraining incentive benefits provided under this section may be filed, but benefits shall not be payable, while an employee is employed in the severance or processing of coal as defined in KRS 342.0011(23).



9. If an employer appeals an award of retraining incentive benefits, upon an employee's motion, an administrative law judge may grant retraining incentive benefits pending appeal as interlocutory relief.
  10. If an employee elects to defer payment of retraining incentive benefits for a period of retraining longer than three hundred sixty-five (365) days, benefits otherwise payable shall be reduced week-for-week for each week retraining benefits are further deferred;
- (b)
1. If an employee has a radiographic classification of category 1/0, 1/1, or 1/2 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more of the predicted normal values, there shall be an irrebuttable presumption that the employee has a disability rating of twenty-five percent (25%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of twenty-five percent (25%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks.
  2. An employee who is awarded benefits under this paragraph may, at the time of the award or before benefit payments begin, elect to receive retraining incentive benefits provided under paragraph (a)1. to 6. of this subsection, in lieu of income benefits awarded under this paragraph, provided that such option is available one (1) time only and is not revokable, and provided that in no event shall income benefits payable under this paragraph be stacked or added to retraining incentive income benefits paid or payable under subparagraphs 1. to 6. of paragraph (a)1. to 6. of this subsection to extend the period of disability;
- (c)
- If it is determined that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 3/2 or 3/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more, there shall be an irrebuttable presumption that the employee has a disability rating of fifty percent (50%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of fifty percent (50%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks;

- (d) If it is determined that an employee has a radiographic classification of category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis, based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, there shall be an irrebuttable presumption that the employee has a seventy-five percent (75%) disability rating resulting from exposure to coal dust and the employee shall be awarded income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of seventy-five percent (75%). The award shall be payable for a period not to exceed five hundred twenty (520) weeks. Income benefits awarded under this paragraph shall be payable to the employee during the disability; and
- (e) If it is determined that an employee has radiographic classification of 3/2 or 3/3 occupational pneumoconiosis and respiratory impairment evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values, or complicated pneumoconiosis (large opacities category A, B, or C progressive massive fibrosis), there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust, and the employee shall be awarded income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability.
- (2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.
- (3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge shall make his or her decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO<sub>2</sub> arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.42X), where X equals the claimant's age at the time of the arterial blood gas study.
- (4) Upon request, the commissioner shall refer an employee who has been awarded retraining incentive benefits under subsection (1)(a) of this section to the Office of Vocational Rehabilitation for evaluation and assessment of the training, education,

or other services necessary to prepare the employee for a trade, occupation, or profession that will return the employee to remunerative employment, or services necessary and appropriate to prepare and enable the employee to successfully complete a bona fide training or education program approved by the commissioner. The commissioner shall contract with the Office of Vocational Rehabilitation to provide vocational rehabilitation or education services commensurate with the skill levels and abilities of the employee. Services provided under this subsection shall be funded by the coal workers' pneumoconiosis fund, KRS 342. 1242 notwithstanding.

- (5) The commissioner shall promulgate administrative regulations sufficient to effectuate the provisions relating to retraining incentive benefits provided under subsection (1)(a) of this section. The administrative regulations shall:
- (a) Define a "bona fide training or education program" to mean a postsecondary education or training program, including but not limited to the postsecondary programs registered with the Higher Education Assistance Authority, and successful completion of which will qualify the person completing the course for a trade, occupation, or profession, and which program can be completed within the period benefits are payable under subsection (1)(a) of this section;
  - (b) Establish requirements for approval and certification of a bona fide training or education program;
  - (c) Provide that funds paid to the training or education program by the employer as required under subsection (1)(a)4. of this section shall be applied only to instruction, tuition, material costs, and any fees necessary for the completion of the program;
  - (d) Establish requirements for successful participation in and completion of an approved and certified bona fide training or education program, and eligibility standards that must be satisfied to receive sums to be paid by the employer pursuant to subsection (1)(a)6. of this section; and
  - (e) Establish attendance, performance and progress standards, and reporting requirements in consultation with the Kentucky Adult Education Program within the Council on Postsecondary Education as conditions that must be satisfied to receive retraining incentive income benefits pursuant to subsection (1)(a)3. of this section.
- (6) In no event shall income benefits awarded under this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability and in no event shall income or retraining incentive benefits be paid to the employee while the employee is working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a).

### **342.734 Mandated administrative regulations on medical services**

Effective: July 15, 2010

- (1) The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A:
- (a) Establishing the form and content of a statement for services;
  - (b) Specifying the manner in which the employee may designate and change the designation of physicians;

- (c) Requiring selection of gatekeeper physicians;
  - (d) Requiring reports from providers on the condition of the employee; and
  - (e) Establishing procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of medical services shall be resolved.
- (2) Pending the effective date of administrative regulations promulgated by the commissioner, all administrative regulations heretofore promulgated by the Workers' Compensation Board pertaining to these matters shall remain in effect, it being determined that those administrative regulations are within the statutory grant of authority, meet legislative intent, and are not in conflict with the provisions of this chapter.

### **342.735 Additional authority for administrative regulations on expediting payment of temporary total disability benefits, use of managed care, and expediting payment for and resolution of disputes concerning medical benefits**

Effective: July 15, 2010

- (1) The commissioner shall promulgate administrative regulations to expedite the payment of temporary total disability and medical expense benefits.
- (2) The commissioner may promulgate administrative regulations incorporating managed care intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.
- (3) The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing an expedited method for resolving medical issues prior to the filing of a claim with the Department of Workers' Claims. The administrative regulations shall permit an employee or other interested party, prior to the filing of a claim, to request a determination by an administrative law judge on medical issues relating to the reasonableness or appropriateness of the proposed medical care or relating to the obligation of the employer or the employer's insurance carrier to make payment of contested medical bills. However, the employee has the burden of proof to show the medical expenses are related to the injury, reasonable and necessary prior to an application of benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer. The respondent to the moving party shall be given ten (10) days to answer a request for an expedited determination of medical issues, and the administrative law judge shall issue a ruling within seven (7) days thereafter. The interested parties shall be provided a form to provide to the medical care provider and the completed form filed with the department and served upon the respondent shall initiate the time for response and determination.

### **342.740 Determination of average weekly wage; adjustment in weekly maximum and minimum income benefits for disability**

Effective: July 15, 2010

- (1) For the purposes of this chapter, the average weekly wage of the state shall be determined by the commissioner as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average

monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. This average weekly wage shall be certified to the commissioner by the Education and Workforce Development Cabinet in a manner prescribed by the commissioner by administrative regulation. The average weekly wage as so determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disablement in the case of disease, or of death, falls within the calendar year commencing January 1 following the September 1 determination.

- (2) Whenever a change in the average weekly wage of the state is of an amount that increases or decreases the minimum weekly income benefits for total disability or death by \$1 or more, or the maximum weekly income benefits for total disability or for death by \$2 or more, computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect the increase or decrease, but no change in these limitations shall otherwise be made.

### **342.750 Income benefits for death; additional lump-sum payment for deaths occurring within four years of injury**

Effective: July 15, 2010

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

- (1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.
- (b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.
- (c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.
- (d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.
- (e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue

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to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.

- (f) To each parent, if actually dependent, 25 percent.
  - (g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.
  - (h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.
  - (i) A person ceases to be actually dependent when his or her income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.
- (2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.
  - (3) For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.
  - (4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for



total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) of this section shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.

- (5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his or her disability from an occupational disease began.
- (6) In addition to other benefits as provided by this chapter, if death occurs within four (4) years of the date of injury as a direct result of a work-related injury, a lump-sum payment of fifty thousand dollars (\$50,000) shall be made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be paid. Annually, the commissioner shall compute, in accordance with KRS 342.740, the increase or decrease in the state average weekly wage, and consistent therewith, shall adjust the amount of the lump-sum payment due under this subsection for injuries occurring in the succeeding year.
- (7) All benefits awarded pursuant to this section, other than those provided in subsection (6) of this section, shall be subject to the limitations contained in KRS 342.730(4).

### **342.760 Uninsured employers' fund**

Effective: July 15, 2010

- (1) There is hereby authorized in the Labor Cabinet an uninsured employers' fund for the purpose of making payments in accordance with the provisions of subsection (4) of this section. The secretary of the Labor Cabinet shall be the custodian of the fund, and all moneys and securities in the fund shall be held in trust by the secretary of the Labor Cabinet and shall not be considered a part of the general funds of the state.
- (2) The secretary of the Labor Cabinet is authorized to disburse moneys from the fund only upon written order of the administrative law judge or the board.
- (3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.
- (4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of all the amounts authorized to be paid therefrom under the authority of this subsection including reimbursement of the special fund of all liability apportioned to it and for the purposes of enforcing this liability the Labor Cabinet, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. This provision shall apply to all pending claims upon which a final order has not been entered.
- (5) In furtherance of this purpose, the Attorney General shall appoint a member or members of his or her staff or special counsel to represent the fund in all proceedings

brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The Labor Cabinet shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund.

- (6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the Labor Cabinet pursuant to this section.

### **342.765 Administration of fund; transfer of reimbursement funds; reports**

Effective: July 15, 2010

- (1) Notwithstanding the provisions of KRS Chapter 342 to the contrary, the office of the Attorney General shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund. Funds to reimburse the Attorney General's office for expenses incurred in litigation and administration in defense of the uninsured employers' fund shall be transferred upon request of the Attorney General's office and approval by the secretary of the Labor Cabinet.
- (2) The office of the Attorney General shall report monthly to the Interim Joint Committee on Appropriations and Revenue, the Interim Joint Committee on Labor and Industry, and the commissioner the amount of the agency fund expenditures in each month for the uninsured employers' fund and the nature of these expenditures. In addition, the Office of the Attorney General shall report quarterly to the commissioner on the amount of funds recouped from uninsured employers.

### **342.770 Determination of employer's compliance; recording certificate constituting a lien in favor of uninsured employer's fund**

Effective: July 15, 2010

- (1) Upon the filing of a claim the commissioner shall ascertain whether the employer, or any other person against whom a claim is filed and who is not exempt by KRS 342.630 or 342.650, has secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Upon determination that any employer under this chapter has failed to comply with the provisions of KRS 342.340, the commissioner shall record, as provided by subsection (2) of this section, a certificate prepared and furnished him or her by the general counsel showing the date on which such claim was filed, the date of the injury alleged, the name and last known address of the employer against whom it was filed, and the fact that the employer has not secured the payment of compensation as required. Upon recordation, such certificate constitutes a valid lien against the assets of the employer in favor of the uninsured employers' fund for the whole amount which may be due as compensation. Such lien shall be superior to the lien of any mortgage or other encumbrance thereafter created and shall continue for ten (10) years from the time of such recording, unless sooner released or otherwise discharged. A copy of such certificate shall be served upon the employer by the commissioner.

- (2) The certificate constituting a lien in favor of the uninsured employers' fund shall be filed in the following offices:
  - (a) The office of the county clerk of the county in which the defendant employer resides.
  - (b) The office of the county clerk of the county in which the defendant employer has its principal place of business.
  - (c) The office of the county clerk in the counties where such employer's property is located.

### **342.780 Joinder of uninsured employers' fund**

A claimant may, in the original application for benefits, or any party may, by motion accompanied by proper allegations while the case is still pending, and the administrative law judge shall, upon his own motion at any time before the rendition of the final award, cause the uninsured employers' fund to be made a party to the proceedings if it should appear that the named defendant has failed to secure the payment of compensation as required by KRS 342.340.

### **342.790 Award against noncomplying employer as a liquidated claim for damages; action by Attorney General for uninsured employers' fund**

Effective: July 15, 2010

When an award is made against an employer who:

- (1) Has not secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer; and
- (2) Has not made a deposit of security, indemnity, or bond acceptable to the commissioner to secure the payment of compensation liability; and
- (3) Has failed to make payment of compensation according to the terms of that award, the award shall constitute a liquidated claim for damages against that employer in an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the commissioner, and the commissioner shall certify the same to the Attorney General who shall forthwith institute a civil action against that employer in the name of the uninsured employers' fund for the collection of that award. In that action, it shall be sufficient for plaintiff to set forth a copy of the award of the administrative law judge relative to the claim as certified by the commissioner and to state that there is due to plaintiff on account of the opinion, order, or award of the administrative law judge a specified sum which plaintiff claims with interest. A certified copy of the award in the claim shall be attached to the complaint and shall constitute prima facie evidence of the truth of the facts therein contained.

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## **342.792 Consideration, reopening, and filing of claims of miners who were last exposed to hazards on certain dates; benefits; administrative regulations**

Effective: July 15, 2010

- (1) The claim of any miner last exposed to the occupational hazards of coal workers' pneumoconiosis between December 12, 1996, and July 15, 2002, shall nonetheless be governed by the provisions of KRS 342.732 and notwithstanding the provisions of KRS 342.125 all claims for benefits which were filed for last injurious occupational exposure to coal dust occurring between December 12, 1996, and July 15, 2002, shall be considered pursuant to the provisions of KRS 342.732 and administrative regulations promulgated by the commissioner, and closed claims, except claims dismissed for reasons other than failure to meet medical eligibility standards, may be reopened by the claimant. Income or retraining incentive benefits shall be awarded thereon as if the entitlement standards established by the amendments to KRS 342.732 were effective at the time of last exposure. Any benefits previously granted by an award or settlement shall be credited against any subsequent award or settlement and no interest shall be payable on additional benefits. A previous grant of retraining incentive benefits shall be credited only to the extent that the benefits were actually paid. All income or retraining incentive benefits greater than those which would have been awarded were not these new provisions applicable shall be paid without interest from the Kentucky coal workers' pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.
- (2) The original claim of any miner last exposed to the occupational hazards of coal workers' pneumoconiosis prior to December 12, 1996, which was subject to a university evaluation pursuant to KRS 342.315 and was dismissed upon a finding that the miner did not prove the presence of coal workers' pneumoconiosis radiographically may be reopened by the claimant notwithstanding the provisions of KRS 342.125, pursuant to administrative regulations adopted by the commissioner. Income benefits may be awarded thereon pursuant to entitlement standards effective as of the date of last exposure, except the income or retraining benefits shall be paid without interest from the Kentucky coal workers' pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.
- (3) Notwithstanding the provisions of KRS 342.316(4)(a), the coal workers' pneumoconiosis claim of any miner last exposed between December 12, 1996, and July 15, 2002, may be filed with the commissioner on or before December 12, 2003, or within the time frame prescribed by KRS 342.316(4)(a), whichever is longer. All income or retraining incentive benefits greater than those which would have been awarded were not these new provisions applicable shall be paid by the Kentucky coal workers' pneumoconiosis fund without interest, the provisions of KRS 342.1242 notwithstanding.
- (4) Administrative regulations promulgated by the commissioner pursuant to subsections (1) and (2) of this section shall provide that chest X-rays previously taken at university medical schools pursuant to KRS 342.315 shall be obtained by the commissioner and forwarded to three (3) randomly selected "B" readers for determination of consensus pursuant to KRS 342.316(3)(b)4.e. The claim shall be assigned to an administrative law judge for determination of whether the claim should be reopened and the award of additional benefits, if any.

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### **342.794 “B” reader list; consensus classifications; report evaluating physicians on list; removal of physicians**

Effective: July 15, 2010

- (1) The commissioner shall maintain a list of duly qualified “B” reader physicians who are licensed in the Commonwealth. The list shall include “B” reader physicians at the university medical schools and other “B” reader physicians certified by the National Institute of Occupational Safety and Health (NIOSH) who have agreed to interpret chest X-rays pursuant to KRS 342.316 for a fee to be fixed by the commissioner and paid by the Kentucky coal workers’ pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.
- (2) Physicians from the “B” reader list shall be utilized as necessary to obtain consensus classifications of chest films in coal workers’ pneumoconiosis claims. The consensus classification shall be presumed to be the correct classification of the employee’s condition unless overcome by clear and convincing evidence. If an administrative law judge finds that the presumption of correctness of the consensus reading has been overcome, the reasons shall be specially stated in the administrative law judge’s order.
- (3) “B’ reader” means a physician who has demonstrated proficiency in evaluating chest roentgenograms for roentgenographic quality and in the use of the ILO classification for interpreting chest roentgenograms for pneumoconiosis and other diseases by taking and passing a specially designed proficiency examination given on behalf of the National Institute of Occupational Safety and Health (NIOSH) or by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or successors.
- (4) The university medical schools in consultation with the commissioner shall jointly develop a procedure to annually report the performance of physicians on the “B” reader list who have participated in the consensus procedure established in KRS 342.316. The physicians shall be evaluated with respect to the timeliness and completeness of their reports, as well as the frequency at which the physician’s classification of X-rays differs from the consensus reading. The commissioner shall remove a physician from the “B” reader list if the physician consistently renders incomplete or untimely reports, or if the physician’s interpretations of X-rays are not in conformity with the consensus reading fifty percent (50%) of the time. The report required under this subsection shall be provided to the Interim Joint Committee on Labor and Industry beginning in July 1, 2003 and by July 1 of each year thereafter.

### **342.796 Notice of education and training opportunities**

Effective: July 15, 2010

- (1) Notwithstanding any provisions of the KRS to the contrary, every employer engaged in the severance or processing of coal, as defined in KRS 342.0011, at its principal office and such other locations where employees customarily report for payroll and personnel matters, shall conspicuously post a notice advising employees of the education and training opportunities available under this chapter. The notice shall include:
  - (a) Toll-free telephone numbers for the:
    1. Department of Workers’ Claims;

2. Kentucky Community and Technical College System; and
  3. Kentucky Higher Education Assistance Authority;
- (b) Telephone numbers for the local board of education and centers for adult education and literacy; and
  - (c) A list of approved education and training programs available to employees engaged in the severance or processing of coal.
- (2) The notice shall be made available to all employers at no cost and upon request of the employer. The notice shall also be posted on the Web sites maintained by the Department of Workers' Claims and the Kentucky Community and Technical College System.

### **342.801 Legislative findings and intent**

- (1) The General Assembly finds and declares that:
- (a) An adequate and available workers' compensation insurance market does not exist for employers in the Commonwealth;
  - (b) Approximately fifty percent (50%) of the private workers' compensation insurance market resides in the residual market mechanism for workers' compensation;
  - (c) The voluntary insurance market has declined to the point that employers in the Commonwealth, who lack the financial capability to cover their own risk, have few insurance options except the residual market mechanism through which to maintain their statutorily-required workers' compensation coverage;
  - (d) A lack of an adequate market for workers' compensation insurance threatens the economic welfare of the Commonwealth and its ability to create and maintain jobs for the citizens of Kentucky;
  - (e) Employers in the Commonwealth and other states are required by law to provide workers' compensation coverage to their employees and, therefore, the General Assembly has a responsibility to ensure employers an available and adequate insurance mechanism through which employers may discharge their statutory duty regarding workers' compensation; and
  - (f) State funds have historically and traditionally been a viable participant in the workers' compensation insurance market, that workers' compensation state funds exist in twenty-five (25) states, and that at least seven (7) states have created competitive state funds since 1983.
- (2) Therefore, it is the intent of the General Assembly in creating the Employers' Mutual Insurance Authority to establish a self-supporting competitive state fund for the purpose of providing both a market of last resort for employers in the Commonwealth and another competitive source of insurance in the voluntary market through which employers may secure and maintain their workers' compensation coverage required under this chapter.

### **342.803 Kentucky Employers' Mutual Insurance Authority**

- (1) The Kentucky Employers' Mutual Insurance Authority is created as a nonprofit, independent, self-supporting de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to insure employers in the Commonwealth for workers' compensation, employers' liability



insurance and coverage required by the Federal Coal Mine Health & Safety Act, the Jones Act, and the Longshore and Harbor Workers Act incidental to and written in conjunction with workers' compensation. The General Assembly hereby recognizes that the operation of a competitive state fund is a unique activity for state government and that a corporate structure will best enable the authority to be managed in an entrepreneurial and business-like manner. The authority shall function in a manner similar to a governing board for a domestic mutual insurance company and shall be subject to the provisions of KRS Chapter 304 applicable to domestic mutual insurance companies, unless otherwise provided or exempted in KRS 342.801 to 342.843.

- (2) Except for initial funding for start-up, the authority shall be entirely self-supporting.
- (3) The authority or its liabilities shall not be deemed to constitute a debt or a liability of the Commonwealth or a pledge of the faith and credit of the Commonwealth.
- (4) The authority shall provide coverage and issue policies as an insurer in the voluntary market and as an insurer of last resort.

### **342.805 Definitions for KRS 342.801 to 342.843**

As used in KRS 342.801 to 342.843, unless the context otherwise requires:

- (1) "Authority" means the Kentucky Employers' Mutual Insurance Authority.
- (2) "Board" means the board of directors of the authority.
- (3) "Insurer of last resort" means an entity that provides workers' compensation coverage to any and all employers who comply with the provisions of KRS 342.801 to 342.843 for their business in and incidental to the Commonwealth.
- (4) "Manager" means the manager of the authority.
- (5) "Policyholder" means an employer in the Commonwealth or an employer with an employee or employees in the Commonwealth who has secured and maintains workers' compensation coverage under this authority.

### **342.807 Board of directors**

Effective: July 15, 2010

- (1) The authority shall be governed by a board of directors. The board shall exercise complete jurisdiction over the authority.
- (2) The board shall consist of the:
  - (a) Secretary of the Finance and Administration Cabinet;
  - (b) Secretary of the Personnel Cabinet;
  - (c) Secretary of the Labor Cabinet; and
  - (d) Seven (7) at-large members appointed by the Governor, subject to confirmation by the Senate.
- (3) Any vacancy which occurs prior to the expiration of a term shall be filled by the Governor in the same manner as the initial appointment was made, and the new appointee shall serve only the remainder of the unexpired term.
- (4) No person shall serve on the board who:
  - (a) Fails to meet or comply with the conflict of interest policies established by the board and KRS 304.24-270;

- (b) Is not bondable;
  - (c) Is an employee, attorney, or contractor of a competing insurer providing workers' compensation insurance in the Commonwealth; or
  - (d) Is not a resident of this Commonwealth.
- (5) In making the appointments to the board, subject to Senate confirmation, the Governor shall ensure adequate representation from the major sectors of the economy and workforce in the Commonwealth.

### **342.809 Election of officers; quorum; compensation; ex officio members of board**

- (1) The board shall elect a chair and other officers it deems necessary from its members. The Governor shall make the initial appointments to the board as follows: three (3) members shall be appointed to terms that expire December 31, 1995, and four (4) members shall be appointed to terms that expire December 31, 1997. Subsequent members shall serve terms of four (4) years and shall serve until their successors are appointed and qualified.
- (2) Senate confirmation of the Governor's appointees is required in accordance with the provisions of KRS 11.160. If a member is not confirmed by the Senate, the Governor, within thirty (30) days of the rejection, shall make another appointment. That member shall serve the remainder of the term in question and shall also be subject to confirmation should the term extend until the next regular session, or a special session which includes this subject on the call, whichever occurs earlier.
- (3) Six (6) members shall constitute a quorum. The board shall meet at least quarterly and at such other times as the chair may determine. The board shall also meet upon the call of four (4) or more of the members of the board.
- (4) On July 15, 1998, each member, except the secretaries of the cabinets, shall be compensated eight thousand five hundred dollars (\$8,500) annually, and beginning on July 15, 1999, twelve thousand dollars (\$12,000) annually. In addition, the members of the board, except the secretaries of the cabinets, shall be reimbursed for necessary travel and lodging expenses in accordance with administrative regulations promulgated by the Cabinet for Finance and Administration for state employees.
- (5) A board member, except the secretaries of the cabinets, may be removed for cause by the board. Cause shall include, but not be limited to, incompetence or misconduct defined in policies or bylaws adopted by the board.

### **342.811 Powers and duties of board**

The board of directors of the authority shall function in a manner similar to the governing body of a mutual insurance company established pursuant to KRS Chapter 304, with all of the general corporate powers incidental thereto. The powers and duties of the board shall include, but not be limited to, the power to:

- (1) Sue;
- (2) Hire a manager to administer the authority in accordance with the policies and procedures of the board;
- (3) Hire an internal auditor who shall serve at the pleasure of and report directly to the board on the internal operations of the authority;

- (4) Adopt a corporate seal;
- (5) Develop and file with the Legislative Research Commission bylaws for the operation of the authority;
- (6) Develop bylaws to establish the contingent liability of the policyholders for assessment purposes required in KRS 342.823;
- (7) Examine and adopt an annual operating budget for the authority;
- (8) Serve as investment trustees and fiduciaries of the authority in accordance with the provisions of KRS Chapter 386;
- (9) Incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds;
- (10) Develop policy for the operation of the authority consistent with its mission and fiduciary responsibility;
- (11) Adopt a procurement policy consistent with the provisions of KRS Chapter 45A, including competitive bidding procedures;
- (12) Develop and publish an annual report to policyholders, the Governor, the General Assembly, and interested parties that describes the financial condition of the authority, including a statement of expenses, income, and actuarial soundness;
- (13) Pursuant to KRS Chapter 304, determine and establish an actuarially-sound price for insurance offered by the authority, including any dividends or deviations;
- (14) Pursuant to KRS 342.823, assess policyholders;
- (15) Employ a qualified firm to conduct an internal review and management or performance audit of the internal operations of the authority as needed or determined by the board, Attorney General, or Auditor of Public Accounts;
- (16) Approve a personnel policy subject to the provisions of KRS 342.813;
- (17) Approve all contracts entered into by the authority, in accordance with the bylaws and procurement policy of the board;
- (18) Conduct annually an independent audit of the financial condition of the authority; and
- (19) Perform all other acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the authority, either in the administration or in connection with the business of the authority to fulfill the purpose of KRS 342.801 to 342.843.

### **342.813 Manager; qualifications; powers and duties; bond**

- (1) Following a nationwide search, the board shall hire a manager, subject to Senate confirmation in accordance with KRS 11.160 who shall serve at the pleasure of the board. The manager shall be compensated at a level determined by the board.
- (2) The manager shall have proven successful experience for a period of at least five (5) years as an executive at the general management level in insurance operations or in the management of a state fund for workers' compensation.
- (3) The manager shall conduct the day-to-day operations of the authority for the purpose of carrying out the policies and procedures of the board. The duties of the manager include, but are not limited to:

- (a) Administering all operations of the authority in accordance with the direction of the board;
  - (b) Recommending to the board an annual administrative budget covering the operations of the authority and, upon approval, submitting the administrative budget, financial status, and actuarial condition of the authority to the Governor and the General Assembly for their examination;
  - (c) Directing and controlling all expenditures of the approved budget;
  - (d) From time to time, upon the recommendation of an actuary, recommending to the board actuarially-sound rating plans, and the amount of dividends, if any, to be returned to policyholders;
  - (e) Investing the assets of the authority under the guidance of the board and in accordance with the provisions of Subtitle 7 of KRS Chapter 304;
  - (f) Recommending to the board and administering a system of personnel administration;
  - (g) Preparing and administering fiscal, payroll, accounting, data processing, and procurement procedures for the operation of the authority;
  - (h) Recommending to the board bylaws and uniform procedures for the management of the authority;
  - (i) Within the limitations of the budget, employing necessary staff personnel in accordance with the personnel policies of the board;
  - (j) Maintaining appropriate levels of property, casualty, and liability insurance as approved by the board to protect directors, officers, employees, and assets of the authority; and
  - (k) Contracting in accordance with KRS 342.811 for claims administration, safety services, legal defense, actuaries, medical providers, financial services, and other services which the manager elects to obtain outside employed staff.
- (4) The manager may:
- (a) Reinsure any risk or part of any risk;
  - (b) Cause to be inspected and audited the payrolls of policyholders or employers applying to the authority for insurance;
  - (c) Establish procedures for adjusting claims in accordance with this chapter; and
  - (d) Require policyholders to maintain an adequate deposit to provide security for periods of coverage for which premiums have not been paid.
- (5) The manager shall give an official bond in an amount and with sureties approved by the board. The premium for the bond shall be paid by the authority.
- (6) The provisions of KRS Chapters 18A and 64 shall not apply to the board, the manager, or the staff of the authority; however, the board shall adopt a system of personnel administration that includes benefits, grievance procedures, training and compensation.

### **342.815 Insurance coverage provisions**

- (1) The authority may provide coverage for insurance, authorized in KRS 342.803, to any employer in the Commonwealth, and who tenders the required premium for coverage

and comply with other conditions and qualifications for obtaining and maintaining coverage adopted by the authority to protect and ensure its actuarial soundness and solvency.

- (2) The authority shall provide coverage to any employer who is unable to secure coverage in the voluntary market unless the employer owes undisputed premiums to a previous workers' compensation carrier or to a workers' compensation residual market mechanism.

### **342.817 Rating plans, rates, and underwriting standards for different classes of risks; competitive nature and filing requirement for rates; annual report on status of surplus**

Effective: July 15, 2010

- (1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks for the authority.
- (2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the market of last resort and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority. The rates for the voluntary market and the market of last resort shall be filed individually with the commissioner of the Department of Insurance on forms prescribed by the commissioner by the promulgation of administrative regulations.
- (3) Multitiered premium or rating plans may be developed to provide workers' compensation coverage to insureds in the Commonwealth.
- (4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a market of last resort.
- (5) The rates established by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.
- (6) Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the commissioner of insurance in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.
- (7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for eighty-four (84) months, unless modified by the General Assembly. In addition to other reporting requirements in KRS 342.809 and 342.821, the authority shall report to the Labor and Industry Committee of the General Assembly, no later than October 31 of each year, on the

status of its efforts to build and maintain a surplus as required by KRS Chapter 304.

### **342.819 Dividends**

On an annual basis, the board may declare a dividend in accordance with Subtitle 24 of KRS Chapter 304, and distribute the same in the form of premium discounts, dividends, or a combination of dividends and discounts, at its discretion, if:

- (1) The funding obtained pursuant to KRS 342.829 has been repaid in full;
- (2) An independent actuarial report of the prior year's operations has been completed and reviewed by the board;
- (3) The authority has met all expenses for administration and claims for the prior year; and
- (4) Adequate reserves exist to pay all claims.

### **342.821 Quarterly reports of assets and liabilities**

On a quarterly basis, the manager shall prepare a report of assets and liabilities, which shall also include a statement of condition regarding the solvency of the authority when awarded claims to date, and estimated initial claims not reported, are taken into account. This report shall be a public record and shall be provided to the board, the Governor, and the Legislative Research Commission.

### **342.823 Discounting not to be used in determining solvency; authority's reports; annual statement of solvency; circumstances permitting contract audit with certified public accountant; discretionary levy and enforcement of assessments**

Effective: July 15, 2010

- (1) In determining the solvency of the authority in regard to maintaining adequate reserves, the commissioner of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not utilize the practice of "discounting" the funds to reduce future liabilities, except in conformity with standards or rules promulgated by the National Association of Insurance Commissioners.
- (2) The authority shall file reports required by KRS 304.3-240.
- (3) The authority shall file a report not later than March 31 of each year indicating the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. The report shall be a public record and shall be delivered to the Governor, commissioner of insurance, Auditor of Public Accounts, Attorney General, and the co-chairs of the Legislative Research Commission. Additionally, a statement of solvency shall be prepared which shall include, at a minimum:
  - (a) A summary of the prior quarterly reports required in KRS 342.821;
  - (b) A management projection of the future solvency status for the authority; and
  - (c) Any recommendations pertaining to the same.



- (4) The authority shall not enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within thirty (30) days of receipt of a written request for an audit. Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts declining to perform the audit shall specify the following:
  - (a) That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts, Attorney General, and Legislative Research Commission; and
  - (b) That the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers.
- (5) If at any time the assets of the authority are less than its liabilities, the board may levy an assessment on its policyholders in the manner provided in Subtitle 24 of KRS Chapter 304.

### **342.825 Investments**

The board shall formulate and adopt an investment policy that safeguards the value of all assets and maximizes investment potential commensurate with risk and liquidity restrictions, and supervise the investment activities of the authority subject to the limitations on domestic insurance companies under KRS Chapter 304. Notwithstanding any provisions of the Kentucky Revised Statutes to the contrary, the authority may utilize the investment expertise and advice of the Office of Financial Management in the Finance and Administration Cabinet. The authority shall also retain an independent investment counsel or managers who shall be subject to standards applicable to fiduciaries responsible for safeguarding assets of a corporation.

### **342.827 Statistical and actuarial data to be maintained**

The manager shall compile and maintain statistical and actuarial data related to the determination of proper premium rate levels, the incidence of work-related injuries, costs related to those injuries, including medical and indemnity, and other data necessary for the development of fair and equitable rates and rating plans.

### **342.829 Funding of authority; restrictions on use of funds**

- (1) The authority shall not receive any direct state general fund appropriation.
- (2) Initial funding for the authority shall be determined by the Governor and the secretary of the Finance and Administration Cabinet. Funding methods may include, but not be limited to, a loan from an existing state agency or agencies to the authority. The maximum amount borrowed from all state agencies shall not exceed seven million dollars (\$7,000,000), to be repaid over a period not to exceed ten (10) years from the original loan date. The Governor shall have the authority to provide or secure additional funding necessary to maintain, for the first thirty-six (36) months of its operation, the surplus the Governor deems proper. The additional funding may come from any funds which may be expended directly by the Governor or from nonstate-agency sources and, regardless of source, shall be a loan to the authority. The rate of interest to be applied to the loan shall be one percent (1%) higher than the average for the long-term investment folder of the lending agency on the anniversary date of

the original loan. The interest rate shall be adjusted annually on the anniversary date of the original loan. To minimize cash requirements and interest obligations, the loan shall be executed as a line of credit against the lending agency, so that only those funds actually required for initial start-up operations, including the establishment of a surplus and reinsurance expenses, are drawn down on an "as needed" basis.

- (3) Any executive branch agency of the Commonwealth and any public corporation created by the Commonwealth, any statute to the contrary notwithstanding, may lend money to the authority subject to the terms and conditions of this section, and any loan made pursuant to this section shall not be construed as a breach or violation of fiduciary duties contained in KRS Chapter 386.
- (4) Funds collected by the authority shall not:
  - (a) Be loaned to the Commonwealth or any instrumentality or agency thereof;
  - (b) Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for repayment of the loan authorized in subsections (2) and (3) of this section; or
  - (c) Be expended for any other purposes than as authorized by KRS 342.801 to 342.843 and KRS 304.13-340.

### **342.831 Marketing and sales agents; commissions**

- (1) For marketing and sales purposes, the authority shall utilize only agents duly and legally licensed and in good standing in accordance with the provisions of KRS Chapter 304 to sell coverage provided by the authority. The authority shall not be required to appoint agents.
- (2) Commissions paid for marketing or sales by an insurance agent shall be determined by the manager, subject to the approval of the board.

### **342.833 Workplace safety program for policyholders; on-site examinations**

- (1) The manager shall formulate, implement, and monitor a workplace safety program for all policyholders.
- (2) The manager shall develop a written workplace accident and injury reduction plan that promotes safe working conditions and which is based upon clearly stated goals and objectives. The manager or employees of the authority shall have reasonable access to the premises of any policyholder or applicant during regular working hours.
- (3) The manager or board shall refuse to insure or shall terminate the insurance of any policyholder who refuses to permit on-site examinations or who disregards or fails to comply with workplace safety goals and objectives required by the authority as conditions for obtaining and maintaining coverage.

### **342.835 Board member, manager, or employee exempt from personal liability for official acts**

No member of the board, the manager, or any employee of the authority shall be held personally liable for any act performed or for any contract or other obligation entered into or undertaken in an official capacity, in connection with the administration, management, or conduct of the authority, its funds and other assets, its business, or other related affairs.

**342.837 Compliance with Executive Branch Code of Ethics; conflicts of interest**

- (1) The board, manager, and employees shall comply with the code of ethics applicable to the Executive Branch pursuant to KRS Chapter 11A.
- (2) In addition to compliance with the code of ethics required in subsection (1) of this section, no member of the board shall have any direct or indirect interest in any undertaking that puts the member's personal interest in conflict with that of the authority. A personal interest shall include, but not be limited to, an interest in a major procurement.

**342.839 Applicability of specified provisions of law**

- (1) Notwithstanding any provision of KRS Chapter 304 to the contrary, the authority shall be exempt from participation, and shall not join, contribute financially to, nor be entitled to the protection of, any plan, pool, association, guarantee, or insolvency fund authorized or required by KRS Chapter 304.
- (2) Except as provided in subsection (1) of this section, the authority shall be subject to the same assessments applicable to workers' compensation premiums as domestic mutual insurance companies licensed to do business in the Commonwealth and governed by the provisions of Subtitle 24 of KRS Chapter 304.
- (3) Notwithstanding the provisions of Subtitle 24 of KRS Chapter 304 or any other provisions of the Kentucky Revised Statutes to the contrary, the minimum number of directors and procedures required for incorporating a mutual insurance company, requirements relating to the name of a mutual insurance company, and any licensing requirements applicable to mutual insurance companies shall not apply to the authority.
- (4) The authority shall be considered an insurer for purposes of KRS 342.122 and other provisions of this chapter.
- (5) Notwithstanding any provision of KRS Chapter 304 to the contrary the authority shall not be subject to the provisions of Subtitle 33 or other provisions of KRS Chapter 304 that relate to the liquidation, rehabilitation, dissolution, or sale of any insurance company.

**342.841 Applicability of open meetings and open records provisions**

- (1) The board shall comply with KRS Chapter 61 in regard to open meetings and open records in the conduct of ordinary business. In addition to the exemptions listed in KRS Chapter 61, proceedings to discuss rates, proposed rates, or anything that relates to rates if that discussion would jeopardize the competitiveness of the authority may be closed, as well as, proceedings which would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth.
- (2) All records of the authority shall be deemed open records and subject to public inspection, unless:
  - (a) The record is excluded from inspection under KRS Chapter 61;

- (b) The record includes information that would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth;
- (c) In addition to the exemption provided by KRS 61.878(1)(c)1., the record is generated by the authority, generally recognized as confidential or proprietary, and which if openly disclosed would permit an unfair commercial advantage to competitors of the authority or other entity to which the record relates; and
- (d) The record relates to a fraud investigation conducted by the authority and that does not become evidence in a criminal or civil action.

### **342.843 Monitoring of operations of authority by Attorney General and Auditor of Public Accounts; report to General Assembly**

- (1) The Attorney General and the Auditor of Public Accounts shall monitor the operations of the authority.
- (2) Either the Attorney General or the Auditor of Public Accounts, or both, may make at any time any examinations or investigations, jointly or severally, of the operations, practices, management, or other matters relating to the authority as they deem necessary. Either of them shall have the power to subpoena witnesses and records for these purposes, and otherwise to compel the giving of evidence for any matter under study. The Attorney General, the Auditor of Public Accounts, or any employee authorized by either of them may require the giving of this evidence under oath and may administer the oath. Any person voluntarily providing information or evidence may be required to do so under oath administered by the Attorney General, the Auditor of Public Accounts, or any employee authorized by either of them. If any person fails or refuses to testify or furnish documentary evidence concerning any matter requested, the Franklin Circuit Court, on application of either the Attorney General or the Auditor of Public Accounts or both, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or of a refusal to testify in the Circuit Court.
- (3) The Attorney General and the Auditor of Public Accounts shall have without restriction:
  - (a) Full access to all records of the authority, except that confidential medical records of employees of insureds are available only by subpoena;
  - (b) Full access to all financial transactions and investigations of the authority; and
  - (c) The right to attend all meetings of the board and its committees.
- (4) If fraud, mismanagement, illegal activity, imprudent practices, or other deficiencies are found in the operations or other practices of the authority, the Attorney General or Auditor of Public Accounts, or both shall:
  - (a) Recommend internal corrective action;
  - (b) Institute a civil action or action for injunctive relief to compel corrective action;
  - (c) Institute criminal proceedings against any officer or employee of the authority or any other person, as defined in KRS 446.010, as may be necessary; or

- (d) Any combination of the above listed actions or any other form of action reasonably calculated to assure efficient and honest operations of the authority and those involved with it.
- (5) The Attorney General and the Auditor of Public Accounts shall report jointly to the General Assembly in January of each year in which the General Assembly convenes in an even-numbered-year regular session the results of the monitoring activities required by this section.

### **342.900 Legislative findings and declarations**

- (1) The General Assembly hereby finds and declares that the establishment of self-insurance guaranty funds is a necessary component of a complete system of workers' compensation, to make provisions for the general welfare of workers and their dependents, to relieve the consequences of any industrial injury or death, and to secure the payment of workers' compensation benefits provided by this chapter.
- (2) The General Assembly further finds and declares that provision must be made for the continuation of workers' compensation benefits otherwise delayed or terminated due to the failure of a self-insured employer to meet obligations because of insolvency. It is for that purpose that the General Assembly establishes mechanisms requiring the establishment of three (3) distinct nonprofit, unincorporated guaranty associations, one (1) of whose members shall be composed of individually self-insured employers excluding individually self-insured coal employers and public-sector employers; one (1) shall be composed of self-insured groups created pursuant to KRS 342.350(4) and 304.50-010; and one (1) shall be composed of individually self-insured coal operators.

### **342.902 Definitions for KRS 342.900 to 342.912**

Effective: July 15, 2010

As used in KRS 342.900 to 342.912, unless the context requires otherwise:

- (1) "Insolvent self-insurer" means either an individual self-insured employer or a self-insured group who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, and whose security deposit has been called by the commissioner, or who has failed to provide compensation and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the commissioner;
- (2) "Member" means a self-insured employer or self-insured group that participates in a guaranty fund created pursuant to KRS 342.900 to 342.912;
- (3) "Guaranty fund" means one (1) of the three (3) guaranty funds established pursuant to KRS 342.900 to 342.912;
- (4) "Directors" means the board of directors of a guaranty fund; and
- (5) "Certificate of default" means a notice issued by the commissioner based upon a finding that a self-insured employer or self-insured group has failed to pay compensation required by this chapter.

### **342.904 Exemption of public-sector self-insured employers and self-insurance groups**

Notwithstanding any other provision of law, public-sector self-insured employers or self-insurance groups are specifically exempted from the provisions of KRS 342.900 to 342.912.

### **342.906 Guaranty funds; required participation; purpose; operating procedures; use of moneys; liability for actions**

Effective: July 15, 2010

- (1) There is created a nonprofit, unincorporated legal entity to be known as the Kentucky individual self-insurance guaranty fund to function as the guaranty fund for individually insured employers, excluding individually self-insured coal employers, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each noncoal, individually self-insured employer who has qualified and been certified by the commissioner as a self-insured employer on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to this subsection as a condition of maintaining its certificate required to be self-insured under this chapter. The commissioner shall revoke any self-insurer's certificate and authority to be self-insured if the self-insured employer fails to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to this subsection.
- (2) There is created a nonprofit, unincorporated legal entity known as the Kentucky group self-insurance fund to function as a guaranty fund for self-insured groups or associations established under KRS 342.350(4) and 304.50-010, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner of the Department of Insurance. Each self-insured group or association that is authorized to self-insure and certified by the commissioner of the Department of Insurance to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection, as a condition of maintaining its authorization and certificate to self-insure. The commissioner of the Department of Insurance shall revoke any authorization and certificate to self-insure of any self-insured group or association for failure to maintain membership in the guaranty fund or failure to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.
- (3) There is created a nonprofit, unincorporated legal entity known as the Kentucky coal employers self-insurance fund to function as a guaranty fund for individually self-insured coal employers to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each coal employer that is individually self-insured and that has been authorized and certified to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection as a condition of maintaining authorization and certification to self-insure. The commissioner shall revoke a coal employer's authority and certification to self-insure for failure to maintain membership in the guaranty fund or to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.



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- (4) The guaranty funds created pursuant to this section are created for the purposes of meeting the obligations of insolvent individually self-insured employers or members of a self-insured group or association incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance, or reinsurance, required by this chapter or KRS 304.50-045 and 304.50-050. The method of operation of each guaranty fund created pursuant to the provisions of this section shall be established by a plan of operation pursuant to administrative regulations promulgated by the commissioner.
  - (5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance guaranty fund shall each be governed by a nine (9) member board of directors who shall serve staggered terms not to exceed four (4) years, be representative of individual self-insurers, and be elected by the members of the guaranty fund. Each member of the board shall have one (1) vote. In addition to the nine (9) directors elected by the members, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A member of the board of directors may designate another member to act in the member's place as though the member were acting, and the designee's actions shall be deemed those of the member.
  - (6) The Kentucky group self-insurance guaranty fund shall be governed by a board of directors composed of one (1) representative of each self-insured group or association. In addition, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A director may designate another member to act in the member's place, and the designee's actions shall be deemed those of the director.
  - (7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan of operation subject to prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of each guaranty fund. Each guaranty fund may carry out its responsibilities directly or by contract and may purchase services and insurance and borrow funds as it deems necessary for the protection of the members and their employees.
  - (8) Security called by the commissioner and disbursed to the guaranty funds, and assessments made upon members, shall vest in the guaranty funds, shall not thereafter be deemed state property, and shall not be subject to appropriation by the General Assembly or any other state agency.
  - (9) All moneys in the individual guaranty funds, exclusive of costs reasonably necessary to conduct business, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Kentucky member who has defaulted in performance of its workers' compensation benefit payment obligations under this chapter.
  - (10) No liability shall lie, whether at law or in equity, against any director, agent, or employee of a guaranty fund created pursuant to this section, on account of any action or inaction taken by any of them in the administration of a guaranty fund.

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## **342.908 Default or insolvency of fund member; assumption of obligations by fund; assessments to finance funds; limitation on income distributions; effect of payment on liability to fund for reimbursement**

Effective: July 15, 2010

- (1) The commissioner shall notify a guaranty fund if the commissioner has knowledge that any member of the guaranty fund has failed to timely pay workers' compensation benefits required by this chapter or if a court of competent jurisdiction has declared the member to be bankrupt or insolvent.
- (2) In the event of issuance of a certificate of default, the commissioner shall call all security and transfer it to the appropriate guaranty fund created pursuant to this section. The commissioner shall also immediately notify, by certified mail, the guaranty fund and order the guaranty fund to assume the workers' compensation obligations of the member required in this chapter. The guaranty fund shall commence payment of these obligations within fourteen (14) days of receipt of notification and order of the commissioner. Payment shall be made to claimants whose entitlement to benefits can be ascertained by the guaranty fund with or without proceedings before the Department of Workers' Claims or a court of competent jurisdiction. Upon assumption of the obligations of a member by a guaranty fund, the guaranty fund shall have the right to immediate possession of any security, and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security, proceeds of the surety bond, or letter of credit to the guaranty fund, together with the interest that has accrued since the date of the member's insolvency. The guaranty fund may administer payment of benefits or it may retain a third party to do so.
- (3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After the security has been exhausted, the payment of workers' compensation claims from member assessments may be made. Where the guaranty fund member-assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the guaranty fund of security which is due but not yet received, the member-assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.
- (4) To the extent necessary to secure funds for the initial establishment of each guaranty fund member-assessment account, the board of directors of each guaranty fund created pursuant to this section shall levy assessments based on the premium of each individual self-insured employer, as defined and calculated pursuant to KRS 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund and for the Kentucky coal employers self-insurance guaranty fund, and KRS 342.0011(24) for the Kentucky group self-insurance guaranty fund, but no such assessments shall ever exceed, in the aggregate, from all members of a single guaranty fund, an amount in excess of one million dollars (\$1,000,000) at any given time. The assessments shall be made at a maximum annual assessment of: one-half of one percent (0.5%) of the premium for each member of the Kentucky individual self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(28); two percent (2%)

of the premium for each member of the Kentucky coal employers guaranty fund as defined and calculated pursuant to KRS 342.0011(28); and three-fourths of one percent (0.75%) of the premium for each member of the Kentucky group self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(24).

- (5) The initial assessment for each guaranty fund created pursuant to this section shall be for an amount equal to five hundred thousand dollars (\$500,000), to be levied and collected within a one (1) year period. There shall be no reassessments against any member unless the current balance of such guaranty fund created pursuant this section is insufficient after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the guaranty fund at which point the board of directors shall raise assessments sufficient to bring the minimum amount of the guaranty fund to five hundred thousand dollars (\$500,000) or such other amount not to exceed, in any event, one million dollars (\$1,000,000) based upon a maximum annual assessment for each guaranty fund.
- (6) A guaranty fund created pursuant to this section shall pay no dividends, rebates, interest, or otherwise distribute income from the guaranty fund to any of its members, unless the guaranty fund has the assets prescribed in subsection (5) of this section and the distributions are approved by the commissioner.
- (7) The commissioner shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the commissioner to carry out the commissioner's obligations under this chapter, and the commissioner shall provide this information to the guaranty fund as necessary to carry out its obligations.
- (8) The payment of benefits by a guaranty fund does not release any person or entity from any liability to the individual guaranty fund for full reimbursement.

### **342.910 Rights and responsibilities of funds as to payments made, due, or recoverable**

- (1) Each guaranty fund, by making payment of compensation under this chapter, has the same preference over the other debts of the principal or the principal's estate as is given by law to the person directly entitled to the compensation.
- (2) Notwithstanding subsection (1) of this section, each guaranty fund shall not be liable for the payment of any penalties or interest assessed for any act or omission on the part of any person, including but not limited to the penalties provided in this chapter.
- (3) Each guaranty fund shall be a party in interest in all proceedings involving compensation claims against an insolvent member whose compensation obligations have been paid or assumed by the guaranty fund. The guaranty fund shall have the same rights and defenses as the insolvent individual self-insurer.
- (4) Each guaranty fund shall have the right and obligation to obtain reimbursement from an insolvent self-insurer up to the amount of the self-insurer's workers' compensation obligations paid and assumed by each guaranty fund, including reasonable administrative and legal costs.

- (5) Each guaranty fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the guaranty fund, including but not limited to any excess insurance carrier of the insolvent member.

### **342.912 Annual audit; annual report; deadline for establishment; events causing fund's liability for payment of benefits**

Effective: July 15, 2010

- (1) The directors of each guaranty fund shall annually contract for an independent certified audit of the financial activities of the guaranty fund. An annual report on the financial status of the guaranty fund as of June 30 of each year shall be submitted to the commissioner and to each member.
- (2) Each guaranty fund shall be established on March 1, 1997.
- (3) The individual guaranty fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the guaranty fund is established, or where the commissioner has issued a certificate of default which has occurred after the date on which the guaranty fund is established.

### **342.920 Self-insurance fund for payments to workers' compensation claimants injured before March 1, 1997**

Effective: July 15, 2010

- (1) The General Assembly finds and declares that there is a need to protect employees of workers' compensation self-insured employers who had claims for injuries that occurred prior to the creation of the workers' compensation self-insurance guaranty funds under this chapter. The General Assembly further finds that there may be instances in which the security of a former self-insured employer is insufficient to pay the entire workers' compensation claim of an injured employee who was injured prior to March 1, 1997.
- (2) There is hereby established the self-insurance fund for the purpose of making payments to workers' compensation claimants injured prior to March 1, 1997, when the security of a former self-insured employer has been depleted.
- (3) (a) The commissioner shall be:
  1. Authorized to disburse moneys from the fund in accordance with written orders of an administrative law judge or the board; and
  2. Responsible for administration of the fund and conservation of the assets of the fund.(b) The commissioner may hire an administrator to oversee the payment of claims as provided in this section.
- (4) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, all amounts collected after July 12, 2006, as fines and penalties under KRS 342.267 and 342.990 shall be paid into the self-insurance fund.
- (5) The self-insurance fund shall be responsible for the payment of compensation when there has been a default in the payment of compensation by a self-insured employer

and the security held by the Department of Workers' Claims has been completely depleted.

- (6) The Department of Workers' Claims shall appoint an attorney on its staff or special counsel to represent the self-insurance fund in all proceedings brought to enforce claims against or on behalf of the self-insurance fund. Necessary expenses for this purpose including salaries or special counsel shall be borne by the self-insurance fund.
- (7) Any party seeking reopening under KRS 342.125 or action on a claim involving the self-insurance fund shall name the self-insurance fund in its action.
- (8)
  - (a) The Workers' Compensation Funding Commission shall hold, invest, and reinvest the funds collected for the self-insurance fund;
  - (b) The funding commission shall have the same authority and duties with regard to the self-insurance fund as described in KRS 342.1223; and
  - (c) The funding commission shall disburse moneys of the fund as requested by the commissioner of the Department of Workers' Claims pursuant to subsection (3) of this section.
- (9) Amounts in the self-insurance fund not expended at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year. Any interest earnings of the self-insurance fund shall become part of the fund and shall not lapse.

### **342.990 Penalties; restitution**

Effective: July 15, 2010

- (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.
- (2) When the commissioner receives information that he or she deems sufficient to determine that a violation of this chapter has occurred, he or she shall seek civil penalties pursuant to subsections (3) to (7) of this section, criminal penalties pursuant to subsections (8) and (9) of this section, or both.
- (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.
- (4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he or she intends to contest the citation, then the citation shall be deemed final.
- (5) If a cited party notifies the commissioner that he or she intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.
- (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.
- (7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

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- (a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense;
  - (b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense;
  - (c) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice;
  - (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense;
  - (e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation;
  - (f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars (\$300) shall be fined per occurrence not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater;
  - (g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per occurrence not more than five thousand dollars (\$5,000) per individual nor ten thousand dollars



- (\\$10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater;
- (h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each violation;
  - (i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per occurrence, or both; and
  - (j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court and the Franklin Circuit Court.
- (8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.
- (9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:
- (a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both;
  - (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both;
  - (c) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in KRS 342.615 for the purpose of depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense; and
  - (d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be

personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

- (10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall be paid into the self-insurance fund established in KRS 342.920.
- (11) In addition to the penalties provided in this section, the commissioner and any administrative law judge or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.