

1 AN ACT relating to workers' compensation.

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

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

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

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

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

18 **(b) In all permanent partial disability claims not involving an injury described**
19 **in subsection (9) of this section, the commissioner shall, in writing, advise**
20 **the employee of the right to file an application for an additional one**
21 **hundred four (104) weeks of benefits as described in this section. This**
22 **notice shall be made to the employee seven hundred fifty-four (754) weeks**
23 **from the date of injury or last exposure.**

24 **(c) An employee may receive benefits as described in this section for an**
25 **additional one hundred four (104) weeks if:**

26 **1. An application is filed within seventy-five (75) days prior to the**
27 **termination of the seven hundred eighty (780) week period;**

1 2. The employee demonstrates that continued medical treatment is
2 reasonably necessary and related to the work injury or occupational
3 disease; and

4 3. An administrative law judge determines and orders that continued
5 benefits are reasonably necessary and related to the work injury or
6 occupational disease for an additional one hundred four (104) weeks.

7 (d) Within seventy-five (75) days prior to the termination of each subsequent
8 one hundred four (104) week period, the employee may demonstrate that
9 continued medical treatment is reasonably necessary and related to the
10 work injury or occupational disease and file an application for extending
11 the benefits described in this section in accordance with paragraph (c) of
12 this subsection.

13 (e) If at any time, the administrative law judge determines that medical benefits
14 are not reasonably necessary or not related to the work injury or
15 occupational disease, or if an employee fails to make proper application for
16 continued benefits within the time period provided in this subsection, any
17 future medical treatment shall be presumed to be unrelated to the work
18 injury and the employer's obligation to pay medical benefits shall cease
19 permanently.

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

1 administrative regulations establishing conditions under which the thirty (30) day
2 period for payment may be tolled. The provider of medical services shall submit the
3 statement for services within forty-five (45) days of the day treatment is initiated
4 and every forty-five (45) days thereafter, if appropriate, as long as medical services
5 are rendered. Except as provided in subsection ~~(7)~~~~(4)~~ of this section, in no event
6 shall a medical fee exceed the limitations of an adopted medical fee schedule or
7 other limitations contained in KRS 342.035, whichever is lower. The commissioner
8 may promulgate administrative regulations establishing the form and content of a
9 statement for services and procedures by which disputes relative to the necessity,
10 effectiveness, frequency, and cost of services may be resolved.

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

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

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

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

1 expense, from an outside physician if a managed health care system physician
2 recommends surgery;

3 (e) The employee may obtain medical services from providers outside the
4 managed health care system, at the employer's expense, when treatment is
5 unavailable through the managed health care system;

6 (f) The managed health care system shall establish procedures for utilization
7 review of medical services to assure that a course of treatment is reasonably
8 necessary; diagnostic procedures are not unnecessarily duplicated; the
9 frequency, scope, and duration of treatment is appropriate; pharmaceuticals
10 are not unnecessarily prescribed; and that ongoing and proposed treatment is
11 not experimental, cost ineffective, or harmful to the employee; and

12 (g) Statements for services shall be audited regularly to assure that charges are not
13 duplicated and do not exceed those authorized in the applicable fee schedules.

14 (h) A schedule of fees for all medical services to be provided under this chapter
15 which shall not be subject to the limitations on medical fees contained in this
16 chapter.

17 (i) Restrictions on provider selection imposed by a managed health care system
18 authorized by this chapter shall not apply to emergency medical care.

19 ~~(8)(5)~~ Except for emergency medical care, medical services rendered pursuant to this
20 chapter shall be under the supervision of a single treating physician or physicians'
21 group having the authority to make referrals, as reasonably necessary, to appropriate
22 facilities and specialists. The employee may change his designated physician one (1)
23 time and thereafter shall show reasonable cause in order to change physicians.

24 ~~(9)(6)~~ When a compensable injury or occupational disease results in the amputation
25 of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of
26 teeth, **or permanent total or permanent partial paralysis**, the employer shall pay
27 for, in addition to the other medical, surgical, and hospital treatment enumerated in

1 subsection (1) and this subsection, a modern artificial member and, where required,
2 proper braces as may reasonably be required at the time of the injury and thereafter
3 during disability.

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

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

1 employers' fund, or the administrative law judge, provide the requesting party with
2 any information or written material reasonably related to any injury or disease for
3 which the employee claims compensation.

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

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

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

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

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

17 based upon the screening performed by the treating medical provider and
18 other pertinent factors.

19 (b) The employer, insurer, or payment obligor may be liable for urine drug
20 screening at each office visit for patients that have exhibited aberrant
21 behavior documented by multiple lost prescriptions, multiple requests for
22 early refills of prescriptions, multiple providers prescribing or dispensing
23 opioids as evidenced by the electronic monitoring system established in KRS
24 218A.202 or a similar system, unauthorized dosage escalation, or apparent
25 intoxication.

26 (c) The commissioner shall promulgate administrative regulations related to
27 urine drug screenings as part of the practice parameters or treatment

1 **guidelines required under Section 2 of this Act.**

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

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

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

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

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

- 1 (5) (a) To ensure compliance with subsections (1) and (4) of this section, the
2 commissioner shall promulgate administrative regulations by December 31,
3 1994, which require each insurance carrier, self-insured group, and self-
4 insured employer to certify to the commissioner the program or plan it has
5 adopted to ensure compliance.
- 6 (b) In addition, the commissioner shall periodically have an independent audit
7 conducted by a qualified independent person, firm, company, or other entity
8 hired by the commissioner, in accordance with the personal service contract
9 provisions contained in KRS 45A.690 to 45A.725, to ensure that the
10 requirements of subsection (1) of this section are being met. The independent
11 person, firm, company, or other entity selected by the commissioner to
12 conduct the audit shall protect the confidentiality of any information it
13 receives during the audit, shall divulge information received during the audit
14 only to the commissioner, and shall use the information for no other purpose
15 than the audit required by this paragraph.
- 16 (c) The commissioner shall promulgate administrative regulations governing
17 medical provider utilization review activities conducted by an insurance
18 carrier, self-insured group, or self-insured employer pursuant to this chapter.
19 Utilization review required under administrative regulations may be waived
20 if the insurance carrier, self-insured group, or self-insured employer agrees
21 that the recommended medical treatment is medically necessary and
22 appropriate or if the injured employee elects not to proceed with the
23 recommended medical treatment.
- 24 (d) Periodically, or upon request, the commissioner shall report to the Interim
25 Joint Committee on Labor and Industry of the Legislative Research
26 Commission or to the corresponding standing committees of the General
27 Assembly, as appropriate, the degree of compliance or lack of compliance

1 with the provisions of this section and make recommendations thereon.

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

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

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

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

1 parameters.

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

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

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

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

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

26 (1) Except as provided in KRS 342.020, no income benefits shall be payable for the
27 first seven (7) days of disability unless disability continues for a period of more than

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

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

27 (3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable

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

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

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

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

11 (a) Fraud;

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

14 (c) Mistake; and

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

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

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

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

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

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

1 review of all evidence admitted in all prior proceedings.

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

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

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

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

1 subsections (1) and (3) of this section shall apply to these claims as well.

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

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

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

22 (3) The right to compensation under this chapter resulting from work-related
23 exposure to cumulative trauma injury shall be barred unless notice of the
24 cumulative trauma injury is given in accordance with subsection (1) of this
25 section and unless an application for adjustment of claim for compensation shall
26 have been made with the commissioner within five (5) years after the last
27 injurious exposure to the cumulative trauma.

1 ➔ Section 6. KRS 342.270 is amended to read as follows:

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

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

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

26 ➔ Section 7. KRS 342.315 is amended to read as follows:

27 (1) The commissioner shall contract with the University of Kentucky and the

- 1 University of Louisville medical schools, and pulmonary specialists who are "B"
2 readers and licensed to practice in the Commonwealth of Kentucky, to evaluate
3 workers who have had injuries or become affected by occupational diseases covered
4 by this chapter. Referral for evaluation with these examiners may be made ~~to one~~
5 ~~(1) of the medical schools]~~ whenever a medical question is at issue.
- 6 (2) The physicians and institutions performing evaluations pursuant to this section shall
7 render reports encompassing their findings and opinions in the form prescribed by
8 the commissioner. Except as otherwise provided in KRS 342.316, the clinical
9 findings and opinions of the designated evaluator shall be afforded presumptive
10 weight by administrative law judges and the burden to overcome such findings and
11 opinions shall fall on the opponent of that evidence. When administrative law
12 judges reject the clinical findings and opinions of the designated evaluator, they
13 shall specifically state in the order the reasons for rejecting that evidence.
- 14 (3) The commissioner or an administrative law judge may, upon the application of any
15 party or upon his own motion, direct appointment by the commissioner, pursuant to
16 subsection (1) of this section, of a medical evaluator to make any necessary medical
17 examination of the employee. Such medical evaluator shall file with the
18 commissioner within fifteen (15) days after such examination a written report. The
19 medical evaluator appointed may charge a reasonable fee not exceeding fees
20 established by the commissioner for those services.
- 21 (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer
22 or carrier shall pay the cost of the examination. Upon notice from the commissioner
23 that an evaluation has been scheduled, the insurance carrier shall forward within
24 seven (7) days to the employee the expenses of travel necessary to attend the
25 evaluation at a rate equal to that paid to state employees for travel by private
26 automobile while conducting state business.
- 27 (5) Upon claims in which it is finally determined that the injured worker was not the

1 employee at the time of injury of an employer covered by this chapter, the special
2 fund shall reimburse the carrier for any evaluation performed pursuant to this
3 section for which the carrier has been erroneously compelled to make payment.

4 (6) Not less often than annually the designee of the secretary of the Cabinet for Health
5 and Family Services shall assess the performance of the medical schools and render
6 findings as to whether evaluations conducted under this section are being rendered
7 in a timely manner, whether examinations are conducted in accordance with
8 medically recognized techniques, whether impairment ratings are in conformity
9 with standards prescribed by the "Guides to the Evaluation of Permanent
10 Impairment," and whether coal workers' pneumoconiosis examinations are
11 conducted in accordance with the standards prescribed in this chapter.

12 (7) The General Assembly finds that good public policy mandates the realization of the
13 potential advantages, both economic and effectual, of the use of telemedicine and
14 telehealth. The commissioner may, to the extent that he or she finds it feasible and
15 appropriate, require the use of telemedicine and telehealth practices, as authorized
16 under KRS 194A.125, in the independent medical evaluation process required by
17 this chapter.

18 ➔Section 8. KRS 342.316 is amended to read as follows:

19 (1) (a) The employer liable for compensation for occupational disease shall be the
20 employer in whose employment the employee was last exposed to the hazard
21 of the occupational disease for a minimum duration of one (1) year of
22 employment. During any period in which this section is applicable to a coal
23 mine, an operator who acquired it or substantially all of its assets from a
24 person who was its operator on and after January 1, 1973, shall be liable for,
25 and secure the payment of, the benefits which would have been payable by the
26 prior operator under this section with respect to miners previously employed
27 in the mine if it had not been acquired by such later operator. At the same

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

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

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

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

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

1 manner in which the report shall be completed.

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

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

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

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

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

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

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

1 representative of the normal pulmonary function of the coal mining
2 population.

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

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

9 b. The commissioner shall assign the claim to an administrative law
10 judge and~~[-except for coal workers' pneumoconiosis claims,]~~ shall
11 promptly refer the employee to~~[-such physician or medical facility~~
12 ~~as the commissioner may select for examination.]~~ **a physician who**
13 **is a "B" reader and is board-certified in pulmonary medicine in**
14 **the Commonwealth of Kentucky.** The report from this
15 examination shall be provided to all parties of record. The
16 employee shall not be referred by the commissioner for
17 examination within two (2) years following any prior referral for
18 examination for the same disease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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 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

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

6 (5) The amount of compensation payable for disability due to occupational disease or
7 for death from the disease, and the time and manner of its payment, shall be as
8 provided for under the general provisions of the Workers' Compensation Act, but:

9 (a) In no event shall the payment exceed the amounts that were in effect at the
10 time of the last injurious exposure;

11 (b) The time of the beginning of compensation payments shall be the date of the
12 employee's last injurious exposure to the cause of the disease, or the date of
13 actual disability, whichever is later; and

14 (c) In case of death where the employee has been awarded compensation or made
15 timely claim within the period provided for in this section, and an employee
16 has suffered continuous disability to the date of his or her death occurring at
17 any time within twenty (20) years from the date of disability, his or her
18 dependents, if any, shall be awarded compensation for his or her death as
19 provided for under the general provisions of the Workers' Compensation Act
20 and in this section, except as provided in KRS 342.750(6).

21 (6) If an autopsy has been performed, no testimony relative thereto shall be admitted
22 unless the employer or its representative has available findings and reports of the
23 pathologist or doctor who performed the autopsy examination.

24 (7) No compensation shall be payable for occupational disease if the employee at the
25 time of entering the employment of the employer by whom compensation would
26 otherwise be payable, falsely represented himself or herself, in writing, as not
27 having been previously disabled, laid-off, or compensated in damages or otherwise,

1 because of the occupational disease, or failed or omitted truthfully to state to the
2 best of his or her knowledge, in answer to written inquiry made by the employer, the
3 place, duration, and nature of previous employment, or, to the best of his or her
4 knowledge, the previous state of his or her health.

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

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

26 (10) When an employee has an occupational disease that is covered by this chapter, the
27 employer in whose employment he or she was last injuriously exposed to the hazard

1 of the disease for one (1) year, and the employer's insurance carrier, if any, at the
2 time of the exposure, shall alone be liable therefor, without right to contribution
3 from any prior or subsequent employer or insurance carrier, except as otherwise
4 provided in this chapter.

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

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

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

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

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

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

3 ➔ Section 9. KRS 342.320 is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

(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.

~~(7)~~~~(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 eighteen~~[twelve]~~ thousand dollars (\$18,000)~~(\$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. 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.

➔Section 10. KRS 342.610 is amended to read as follows:

(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,

1 occupational disease, or death.

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

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

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

17 (3) Liability for compensation shall not apply ~~to where~~ injury, occupational disease, or
18 death to the employee if:

19 (a) The employee voluntarily introduced a nonprescribed substance or
20 substances or a prescribed substance or substances in amounts in excess of
21 prescribed amounts into his or her body that caused a disturbance of mental
22 or physical capacities, unless the employee shows that the~~was proximately~~
23 ~~caused primarily by~~ voluntary intoxication was not the proximate cause of
24 the injury; or

25 (b) The employee willfully intended~~as defined in KRS 501.010, or by his or her~~
26 ~~willful intention~~ to injure or kill himself, herself, or another.

27 (4) If injury or death results to an employee through the deliberate intention of his or

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

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

22 (6) Every employer subject to this chapter, at its principal office and such other
23 locations where employees customarily report for payroll and personnel matters,
24 shall post a notice stating the name of its workers' compensation insurance carrier
25 and policy number, setting forth the means to access medical care for injuries, the
26 employee's obligation to give notice of accidents, and such other matters concerning
27 the employee's rights under this chapter as may be required by the commissioner so

1 as to afford every employee the opportunity to become informed about the
2 employer's workers' compensation program. The format and contents of the notice
3 shall be established by the commissioner through administrative regulation, and
4 copies shall be provided to the employer by its insurance carrier.

5 ➔Section 11. KRS 342.700 is amended to read as follows:

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

23 (2) A principal contractor, intermediate, or subcontractor shall be liable for
24 compensation to any employee injured while in the employ of any one (1) of his
25 intermediate or subcontractors and engaged upon the subject matter of the contract,
26 to the same extent as the immediate employer. Any principal, intermediate, or
27 subcontractor who pays the compensation may recover the amount paid from any

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

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

23 ➔Section 12. KRS 342.730 is amended to read as follows:

24 (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to
25 the employee as follows:

26 (a) For temporary or permanent total disability, sixty-six and two-thirds percent
27 (66-2/3%) of the employee's average weekly wage but not more than one

hundred ~~ten~~ percent ~~(110%)~~~~((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 ~~eighty-two and one-half~~~~seventy-five~~ percent ~~(82.5%)~~~~((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

1 permanent partial disability and medical benefits shall be paid for the duration
2 of the disability.

- 3 (c) 1. If, due to an injury, an employee does not retain the physical capacity to
4 return to the type of work that the employee performed at the time of
5 injury, the benefit for permanent partial disability shall be multiplied by
6 three (3) times the amount otherwise determined under paragraph (b) of
7 this subsection, but this provision shall not be construed so as to extend
8 the duration of payments; or
- 9 2. If an employee returns to work at a weekly wage equal to or greater than
10 the average weekly wage at the time of injury, the weekly benefit for
11 permanent partial disability shall be determined under paragraph (b) of
12 this subsection for each week during which that employment is
13 sustained. During any period of cessation of that employment, temporary
14 or permanent, for any reason, with or without cause, payment of weekly
15 benefits for permanent partial disability during the period of cessation
16 shall be two (2) times the amount otherwise payable under paragraph (b)
17 of this subsection. This provision shall not be construed so as to extend
18 the duration of payments.
- 19 3. Recognizing that limited education and advancing age impact an
20 employee's post-injury earning capacity, an education and age factor,
21 when applicable, shall be added to the income benefit multiplier set
22 forth in paragraph (c)1. of this subsection. If at the time of injury, the
23 employee had less than eight (8) years of formal education, the
24 multiplier shall be increased by four-tenths (0.4); if the employee had
25 less than twelve (12) years of education or a high school Equivalency
26 diploma, the multiplier shall be increased by two-tenths (0.2); if the
27 employee was age sixty (60) or older, the multiplier shall be increased

1 by six-tenths (0.6); if the employee was age fifty-five (55) or older, the
2 multiplier shall be increased by four-tenths (0.4); or if the employee was
3 age fifty (50) or older, the multiplier shall be increased by two-tenths
4 (0.2).

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

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

1 KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be
2 considered in determining the extent of disability or duration of benefits under
3 this chapter.

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

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

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

24 (b) If there are both a widow or widower and such a child or children, to the
25 widow or widower, forty-five percent (45%) of the benefits specified in the
26 award, or forty percent (40%) of those benefits if such a child or children are
27 not living with the widow or widower; and, in addition thereto, fifteen percent

- 1 (15%) of the benefits specified in the award to each child. Where there are
2 more than two (2) such children, the indemnity benefits payable on account of
3 two (2) children shall be divided among all the children, share and share alike;
4 or
- 5 (c) If there is no widow or widower but such a child or children, then to the child
6 or children, fifty percent (50%) of the benefits specified in the award to one
7 (1) child, and fifteen percent (15%) of those benefits to a second child, to be
8 shared equally. If there are more than two (2) such children, the indemnity
9 benefits payable on account of two (2) children shall be divided equally
10 among all the children; or
- 11 (d) If there is no survivor in the above classes, then the parent or parents wholly
12 or partly actually dependent for support upon the decedent, or to other wholly
13 or partly actually dependent relatives listed in paragraph (g) of subsection (1)
14 of KRS 342.750, or to both, in proportions that the commissioner provides by
15 administrative regulation.
- 16 (e) To the widow or widower upon remarriage, up to two (2) years, benefits as
17 specified in the award and proportioned under paragraphs (a) or (b) of this
18 subsection, if the proportioned benefits remain unpaid, to be paid in a lump
19 sum.
- 20 (4) All income benefits payable pursuant to this chapter shall terminate as of the date
21 upon which the employee reaches the age of sixty-seven (67)~~[qualifies for normal~~
22 ~~old-age Social Security retirement benefits under the United States Social Security~~
23 ~~Act, 42 U.S.C. secs. 301 to 1397f]~~, or two (2) years after the employee's injury or
24 last exposure, whichever last occurs. In like manner all income benefits payable
25 pursuant to this chapter to spouses and dependents shall terminate as of the date
26 upon which the employee would have reached age sixty-seven (67) or two (2)
27 years after the employee's date of injury or date of last exposure, whichever last

1 ~~occurs~~[when such spouses and dependents qualify for benefits under the United
2 States Social Security Act by reason of the fact that the worker upon whose earnings
3 entitlement is based would have qualified for normal old-age Social Security
4 retirement benefits].

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

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

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

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

23 (9) Income benefits otherwise payable pursuant to this chapter for temporary total
24 disability to a professional athlete under the direction and control of an employer
25 that is a professional team located in Kentucky, absent any collective bargaining
26 agreement, shall terminate no later than the date on which the contract for hire
27 upon which the employment is based expires, so long as the professional athlete

1 **has been released to return to employment for which he or she has prior training**
2 **or experience.**

3 ➔Section 13. KRS 342.7305 is amended to read as follows:

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

8 (2) Income benefits payable for occupational hearing loss shall be as provided in KRS
9 342.730, except income benefits shall not be payable where the binaural hearing
10 impairment converted to impairment of the whole person results in impairment of
11 less than eight percent (8%). No impairment percentage for tinnitus shall be
12 considered in determining impairment to the whole person.

13 (3) The **commissioner**~~[executive director]~~ shall provide by administrative regulation
14 for prompt referral of hearing loss claims for evaluation, for all medical
15 reimbursement, and for prompt authorization of hearing enhancement devices.

16 (4) When audiograms and other testing reveal a pattern of hearing loss compatible with
17 that caused by hazardous noise exposure and the employee demonstrates repetitive
18 exposure to hazardous noise in the workplace, there shall be a rebuttable
19 presumption that the hearing impairment is an injury covered by this chapter, and
20 the employer with whom the employee was last injuriously exposed to hazardous
21 noise **for a minimum duration of one (1) year of employment** shall be exclusively
22 liable for benefits.

23 ➔Section 14. KRS 342.732 is amended to read as follows:

24 (1) Notwithstanding any other provision of this chapter, income benefits and retraining
25 incentive benefits for occupational pneumoconiosis resulting from exposure to coal
26 dust in the severance or processing of coal shall be paid as follows:

27 (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 High School Equivalency Diploma in accordance with administrative regulations promulgated by the

1 commissioner. These benefits shall be paid in the amount of sixty-six
2 and two-thirds percent (66-2/3%) of the employee's average weekly
3 wage not to exceed seventy-five percent (75%) of the state average
4 weekly wage for a maximum period not to exceed seventeen (17) weeks.
5 These income benefits shall be in addition to the maximum amount of
6 retraining incentive benefits payable under this paragraph.

7 4. The employer shall also pay, directly to the institution conducting the
8 training or education program, instruction, tuition, and material costs not
9 to exceed five thousand dollars (\$5,000).

10 5. The **employee shall notify the parties of his or her intention to retrain**
11 **within thirty (30) days**~~[period of weeks during which this benefit is~~
12 ~~payable shall begin no later than the thirtieth day]~~ after the
13 administrative law judge's order ~~[awarding the benefit]~~ becomes final.~~;~~
14 ~~except that an]~~ **The employee must initiate retraining within**~~[may elect~~
15 ~~to defer the beginning of such benefits up to the]~~ three hundred sixty-
16 **five days of the administrative law judge's final order**~~[fifth day~~
17 ~~following the thirtieth day the order becomes final]. [Unless the~~
18 ~~employee has requested deferral of income benefits, those]~~ Income
19 benefits payable under subparagraphs 1. and 2. of this paragraph shall
20 begin no later than thirty (30) days following conclusion of income
21 benefits paid under subparagraph 3. if such benefits were paid.

22 6. If an employee who is awarded retraining incentive benefits under this
23 paragraph successfully completes a bona fide training or education
24 program approved by the commissioner, upon completion of the training
25 or education program, the employer shall pay to that employee the sum
26 of five thousand dollars (\$5,000) for successful completion of a program
27 that requires a course of study of not less than twelve (12) months nor

1 more than eighteen (18) months, or the sum of ten thousand dollars
2 (\$10,000) for successful completion of a program that requires a course
3 of study of more than eighteen (18) months. This amount shall be in
4 addition to retraining incentive benefits awarded under this paragraph,
5 and tuition expenses paid by the employer.

6 7. An employee who is age fifty-seven (57) years or older on the date of
7 last exposure and who is awarded retraining incentive benefits under
8 subparagraphs 1. to 4. of this paragraph, may elect to receive in lieu of
9 retraining incentive benefits, an amount equal to sixty-six and two-thirds
10 percent ($66\frac{2}{3}\%$) of the employee's average weekly wage, not to exceed
11 seventy-five percent (75%) of the state average weekly wage as
12 determined by KRS 342.740 multiplied by the disability rating of
13 twenty-five percent (25%) for a period not to exceed four hundred
14 twenty-five (425) weeks, or until the employee reaches sixty-five (65)
15 years of age, whichever occurs first, KRS 342.730(4) notwithstanding.

16 8. A claim for retraining incentive benefits provided under this section may
17 be filed, but benefits shall not be payable, while an employee is
18 employed in the severance or processing of coal as defined in KRS
19 342.0011(23).

20 9. If an employer appeals an award of retraining incentive benefits, upon an
21 employee's motion, an administrative law judge may grant retraining
22 incentive benefits pending appeal as interlocutory relief.

23 10. If an employee elects to defer payment of retraining incentive benefits
24 for a period of retraining longer than three hundred sixty-five (365) days,
25 benefits otherwise payable shall be reduced week-for-week for each
26 week retraining benefits are further deferred;

27 (b) 1. If an employee has a radiographic classification of category 1/0, 1/1, or

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

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

24 (c) If it is determined that an employee has a radiographic classification of
25 category 1/0, 1/1, or 1/2, and respiratory impairment resulting from exposure
26 to coal dust as evidenced by spirometric test values of less than fifty-five
27 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

1 under this paragraph shall be payable to the employee during the disability;
2 and

3 (e) If it is determined that an employee has radiographic classification of 3/2 or
4 3/3 occupational pneumoconiosis and respiratory impairment evidenced by
5 spirometric test values of less than fifty-five percent (55%) of the predicted
6 normal values, or complicated pneumoconiosis (large opacities category A, B,
7 or C progressive massive fibrosis), there shall be an irrebuttable presumption
8 that the employee is totally disabled resulting from exposure to coal dust, and
9 the employee shall be awarded income benefits equal to sixty-six and two-
10 thirds percent (66-2/3%) of the employee's average weekly wage but not more
11 than one hundred percent (100%) of the state average weekly wage and not
12 less than twenty percent (20%) of the average weekly wage of the state as
13 determined by KRS 342.740. Income benefits awarded under this paragraph
14 shall be payable to the employee during such disability.

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

20 (3) When valid spirometric tests are not provided and a physician certifies to the
21 administrative law judge that spirometric testing is not medically indicated because
22 of the permanent physical condition of the employee, the administrative law judge
23 shall make his or her decision on the basis of evidence admitted which establishes
24 the existence of a diagnosis of occupational pneumoconiosis and respiratory
25 impairment due to the occupational pneumoconiosis. The evidence submitted by the
26 employee shall include one (1) or more arterial blood gas studies performed in
27 accordance with accepted medical standards. Income benefits shall not be awarded

1 in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas
2 value is equal to or higher than one (1) standard deviation from the normal value
3 obtained by the formula $(103.5 - 0.42X)$, where X equals the claimant's age at the
4 time of the arterial blood gas study.

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

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

21 (a) **Create an online portal through which employees shall select a facility or**
22 **institution to provide their retraining. This portal shall list**~~Define a~~ ~~["]~~ bona
23 fide training or education **programs.**~~program" to mean a postsecondary~~
24 ~~education or training program, including but not limited to the~~ **These**
25 **programs shall include** postsecondary programs registered with the Higher
26 Education Assistance Authority, and ~~successful completion of which~~ will
27 qualify the **employee**~~person completing the course~~ for a trade, occupation, or

- 1 profession. **The programs listed shall be capable of completion**~~[, and which~~
2 ~~program can be completed]~~ within the period benefits are payable under
3 subsection (1)(a) of this section;
- 4 (b) Establish requirements for approval and certification of a bona fide training or
5 education program;
- 6 (c) Provide that funds paid to the training or education program by the employer
7 as required under subsection (1)(a)4. of this section shall be applied only to
8 instruction, tuition, material costs, and any fees necessary for the completion
9 of the program;
- 10 (d) Establish requirements for successful participation in and completion of an
11 approved and certified bona fide training or education program, and eligibility
12 standards that must be satisfied to receive sums to be paid by the employer
13 pursuant to subsection (1)(a)6. of this section; and
- 14 (e) Establish attendance, performance and progress standards, and reporting
15 requirements in consultation with the Kentucky Adult Education Program
16 within the Council on Postsecondary Education as conditions that must be
17 satisfied to receive retraining incentive income benefits pursuant to subsection
18 (1)(a)3. of this section.
- 19 (6) In no event shall income benefits awarded under this section be stacked or added to
20 income benefits awarded under KRS 342.730 to extend the period of disability and
21 in no event shall income or retraining incentive benefits be paid to the employee
22 while the employee is working in the mining industry in the severance or processing
23 of coal as defined in KRS 342.0011(23)(a).
- 24 ➔Section 15. KRS 342.792 is amended to read as follows:
- 25 (1) The claim of any miner last exposed to the occupational hazards of coal workers'
26 pneumoconiosis between December 12, 1996, and July 15, 2002, shall nonetheless
27 be governed by the provisions of KRS 342.732 and notwithstanding the provisions

1 of KRS 342.125 all claims for benefits which were filed for last injurious
2 occupational exposure to coal dust occurring between December 12, 1996, and July
3 15, 2002, shall be considered pursuant to the provisions of KRS 342.732 and
4 administrative regulations promulgated by the commissioner, and closed claims,
5 except claims dismissed for reasons other than failure to meet medical eligibility
6 standards, may be reopened by the claimant. Income or retraining incentive benefits
7 shall be awarded thereon as if the entitlement standards established by the
8 amendments to KRS 342.732 were effective at the time of last exposure. Any
9 benefits previously granted by an award or settlement shall be credited against any
10 subsequent award or settlement and no interest shall be payable on additional
11 benefits. A previous grant of retraining incentive benefits shall be credited only to
12 the extent that the benefits were actually paid. All income or retraining incentive
13 benefits greater than those which would have been awarded were not these new
14 provisions applicable shall be paid without interest from the Kentucky coal workers'
15 pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding, for claims
16 filed on or before June 30, 2017, and by the employer for claims filed after June 30,
17 2017.

- 18 (2) The original claim of any miner last exposed to the occupational hazards of coal
19 workers' pneumoconiosis prior to December 12, 1996, which was subject to a
20 university evaluation pursuant to KRS 342.315 and was dismissed upon a finding
21 that the miner did not prove the presence of coal workers' pneumoconiosis
22 radiographically may be reopened by the claimant notwithstanding the provisions of
23 KRS 342.125, pursuant to administrative regulations adopted by the commissioner.
24 Income benefits may be awarded thereon pursuant to entitlement standards effective
25 as of the date of last exposure, except the income or retraining benefits shall be paid
26 without interest from the Kentucky coal workers' pneumoconiosis fund, the
27 provisions of KRS 342.1242 notwithstanding, for claims filed on or before June 30,

1 2017, and by the employer for claims filed after June 30, 2017.

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

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

18 ➔Section 16. KRS 342.794 is amended to read as follows:

19 (1) The commissioner shall maintain a list of duly qualified "B" reader physicians who
20 are licensed in the Commonwealth **and are board-certified pulmonary specialists.**
21 The list shall include "B" reader physicians at the university medical schools and
22 other "B" reader physicians certified by the National Institute of Occupational
23 Safety and Health (NIOSH) who have agreed to interpret chest X-rays **and other**
24 **medical evidence** pursuant to KRS 342.316 for a fee to be fixed by the
25 commissioner and paid by the Kentucky coal workers' pneumoconiosis fund **or the**
26 **carrier, whichever is the appropriate payment obligor,** the provisions of KRS
27 342.1242 notwithstanding, for claims filed on or before June 30, 2017, and by the

1 employer for claims filed after June 30, 2017.

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

9 ~~[(3)]~~ "'B' reader" means a physician who has demonstrated proficiency in evaluating
10 chest roentgenograms for roentgenographic quality and in the use of the ILO
11 classification for interpreting chest roentgenograms for pneumoconiosis and other
12 diseases by taking and passing a specially designed proficiency examination given
13 on behalf of the National Institute of Occupational Safety and Health (NIOSH) or
14 by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or
15 successors.

16 **(3) "Board-certified pulmonary specialist" means a physician licensed in the**
17 **Commonwealth who is board-certified in internal medicine with a certification in**
18 **the subspecialty of pulmonary medicine by the American Board of Internal**
19 **Medicine**

20 ~~[(4)]~~ The university medical schools in consultation with the commissioner shall jointly
21 develop a procedure to annually report the performance of physicians on the "B"
22 reader list who have participated in the consensus procedure established in KRS
23 342.316. The physicians shall be evaluated with respect to the timeliness and
24 completeness of their reports, as well as the frequency at which the physician's
25 classification of X-rays differs from the consensus reading. The commissioner shall
26 remove a physician from the "B" reader list if the physician consistently renders
27 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].~~

➔Section 17. KRS 342.990 is amended to read as follows:

- (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:

- 1 (a) Any employer, insurer, or payment obligor subject to this chapter who fails to
2 make a report required by KRS 342.038 within fifteen (15) days from the date
3 it was due, shall be fined not less than one hundred dollars (\$100) nor more
4 than one thousand dollars (\$1,000) for each offense;
- 5 (b) Any employer, insurer, or payment obligor acting on behalf of an employer
6 who fails to make timely payment of a statement for services under KRS
7 342.020~~(4)~~~~(1)~~ without having reasonable grounds to delay payment may be
8 fined not less than one hundred dollars (\$100) nor more than one thousand
9 dollars (\$1,000) for each offense;
- 10 (c) Any person who violates KRS 342.020~~(12)~~~~(9)~~, 342.035(2), 342.040,
11 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one
12 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each
13 offense. With respect to employers who fail to maintain workers'
14 compensation insurance coverage on their employees, each employee of the
15 employer and each day of violation shall constitute a separate offense. With
16 respect to KRS 342.040, any employer's insurance carrier or other party
17 responsible for the payment of workers' compensation benefits shall be fined
18 for failure to notify the commissioner of a failure to make payments when due
19 if a report indicating the reason payment of income benefits did not
20 commence within twenty-one (21) days of the date the employer was notified
21 of an alleged work-related injury or disease is not filed with the commissioner
22 within twenty-one (21) days of the date the employer received notice, and if
23 the employee has not returned to work within that period of time. The date of
24 notice indicated in the report filed with the department pursuant to KRS
25 342.038(1), shall raise a rebuttable presumption of the date on which the
26 employer received notice;
- 27 (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335,

1 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two
2 hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each
3 offense. With respect to KRS 342.395, each required notice of rejection form
4 executed by an employee or potential employee of an employer shall
5 constitute a separate offense;

6 (e) Any person who fails to comply with the data reporting provisions of
7 administrative regulations promulgated by the commissioner pursuant to KRS
8 342.039, or with utilization review and medical bill audit administrative
9 regulations promulgated pursuant to KRS 342.035(5), shall be fined not less
10 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
11 for each violation;

12 (f) Except as provided in paragraph (g) of this subsection, a person who violates
13 any of the provisions of KRS 342.335(1) or (2) where the claim,
14 compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less
15 than or equal to three hundred dollars (\$300) shall be fined per occurrence not
16 more than one thousand dollars (\$1,000) per individual nor five thousand
17 dollars (\$5,000) per corporation, or twice the amount of gain received as a
18 result of the violation, whichever is greater;

19 (g) Any person who violates any of the provisions of KRS 342.335(1) or (2)
20 where the claim, compensation, benefit, or money referred to in KRS
21 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per
22 occurrence not more than five thousand dollars (\$5,000) per individual nor ten
23 thousand dollars (\$10,000) per corporation, or twice the amount of gain
24 received as a result of the violation, whichever is greater;

25 (h) Any person who violates the employee leasing provision of this chapter shall
26 be fined not less than five hundred dollars (\$500) nor more than five thousand
27 dollars (\$5,000) for each violation;

- 1 (i) Any violation of the provisions of this chapter relating to self-insureds shall
2 constitute grounds for decertification of such self-insured, a fine of not less
3 than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000)
4 per occurrence, or both; and
- 5 (j) Actions to collect the civil penalties imposed under this subsection shall be
6 instituted in the Franklin District Court and the Franklin Circuit Court.
- 7 (8) The commissioner shall initiate enforcement of a criminal penalty by causing a
8 complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to
9 act on the violation within twenty (20) days following the filing of the complaint,
10 the commissioner shall certify the inaction by the local prosecutor to the Attorney
11 General who shall initiate proceedings to prosecute the violation. The provisions of
12 KRS 15.715 shall not apply to this section.
- 13 (9) The following criminal penalties shall be applicable for violations of particular
14 provisions of this chapter:
- 15 (a) Any person who violates KRS 342.020~~(12)~~~~(9)~~, 342.035(2), 342.040,
16 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than
17 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or
18 imprisoned for not less than thirty (30) days nor more than one hundred eighty
19 (180) days, or both;
- 20 (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
21 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than
22 two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or
23 imprisoned for not less than thirty (30) days nor more than one hundred and
24 eighty (180) days, or both;
- 25 (c) Any corporation, partnership, sole proprietorship, or other form of business
26 entity and any officer, general partner, agent, or representative of the
27 foregoing who knowingly utilizes or participates in any employee leasing

1 arrangement or mechanism as defined in KRS 342.615 for the purpose of
2 depriving one (1) or more insurers of premium otherwise properly payable or
3 for the purpose of depriving the Commonwealth of any tax or assessment due
4 and owing and based upon said premium shall upon conviction thereof be
5 subject to a fine of not less than five hundred dollars (\$500) nor more than
6 five thousand dollars (\$5,000), or imprisonment for not more than one
7 hundred eighty (180) days, or both, for each offense; and

8 (d) Notwithstanding any other provisions of this chapter to the contrary, when any
9 employer, insurance carrier, or individual self-insured fails to comply with
10 this chapter for which a penalty is provided in subparagraphs (7), (8), and (9)
11 above, such person, if the person is an owner in the case of a sole
12 proprietorship, a partner in the case of a partnership, a principal in the case of
13 a limited liability company, or a corporate officer in the case of a corporation,
14 who knowingly authorized, ordered, or carried out the violation, failure, or
15 refusal shall be personally and individually liable, both jointly and severally,
16 for the penalties imposed in the above cited subparagraphs. Neither the
17 dissolution nor withdrawal of the corporation, partnership, or other entity from
18 the state, nor the cessation of holding status as a proprietor, partner, principal,
19 or officer shall discharge the foregoing liability of any person.

20 (10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall
21 be paid into the self-insurance fund established in KRS 342.920.

22 (11) In addition to the penalties provided in this section, the commissioner and any
23 administrative law judge or court of jurisdiction may order restitution of a benefit
24 secured through conduct proscribed by this chapter.

25 ➔Section 18. If any provisions of this Act or its application to any person or
26 circumstance is held invalid, the invalidity does not affect other provisions or applications
27 of the Act which can be given effect without the invalid provision or application, and to

1 this end the provisions of this Act are severable.

2 ➔Section 19. (1) Sections 1, 3, and 11 of this Act shall apply to any claim
3 arising from an injury or occupational disease or last exposure to the hazards of an
4 occupational disease or cumulative trauma occurring on or after the effective date of this
5 Act.

6 (2) Sections 2, 4, and 5 and subsection (7) of Section 12 of this Act are remedial
7 and shall apply to all claims irrespective of the date of injury or last exposure.

8 (3) Subsection (4) of Section 12 of this Act shall apply to all claims that have not
9 been fully and finally adjudicated and to all claims in the appellate process or for which
10 time to file an appeal has not lapsed, as of the effective date of this Act, and for which the
11 date of injury or date of last exposure occurred on or after December 12, 1996.