



## PROPOSED LEGISLATIVE CHANGES TO KRS 342

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There are 6 proposed changes to worker's compensation in bills filed in the House LRC is reporting.

### **HB 296 filed by A. Koenig, B. Rowland, J. DeCesare, M. Dossett**

This is a big one, with several proposed changes that will drastically affect claims handling and values, particularly on medical expenses area. We suggest that you click on the link to the proposed bill to see that proposed changes in full display. Again, please remember that this is proposed legislation.

This bill provides, *inter alia*, and among other changes:

- A limit on the obligation to pay medical expenses indefinitely for certain permanent partial disabilities to 780 weeks, or 15 years;
- For older injured workers, a limit to entitlement to medical benefits to age 70, or four years after date of injury, whichever is later, except for total permanent total awards involving prosthetic devices;
- Limiting the number of urine drug screens for which an employer is obligated to pay;
- Requiring the Commissioner to develop and adopt and implement guidelines and a pharmaceutical formulary;
- Reduce interest paid on awards;
- Clarify that the four-year reopening window begins only from the date of the original order granting or denying benefits;
- Providing a statute of repose for cumulative trauma claims;
- Allowing payment of TTD benefits to be offset for net wages paid to an employee during a period of light-duty work or work in an alternative job position;
- Changes in attorney fees and subrogation recovery.

[\(Click here to view the proposed legislation\)](#)

### **HB 223 filed by J. Fischer**

This change to the law pertain to the rate of interest to be paid on past due benefits. KRS 343.020 would be amended to provide interest at 6% on past due benefits, instead of 12%; and, if delayed payment was without reasonable basis, the ALF could award 12%, instead of 18%.

This would apply to all worker's compensation orders entered on settlements approved on or after the effective date of the Act.

For those involved in civil litigation, a judgement, including one for prejudgment interest, shall bear 6% interest compounded annually instead of 12%.

This Act also addresses other statutory interest rates. ([Click here to view the proposed legislation](#))

### **HB 196 filed by S. Overly**

A new section of KRS Chapter 337 is created. This bill is sure to generate some buzz, as it will affect many branches and government departments, as well as employers. It is entitled "An ACT relating to misclassification of employees in the construction industry; and codifies the definition of independent contractor versus employee."

The introduction to the Act clearly established that certain "unscrupulous" employers are intentionally reporting employees as independent contractors to taxing agencies and workers' compensation carriers in record numbers, and an explosion of employers who operate in an underground economy.

The amount of money not available to state and federal taxing agencies, as well as the competitive advantage of employers who fail to report income is staggering.

This Act shall be enforced by Commissioner of the Department of Workplace Standards.

The pertinent provisions are as follows:

- Misclassification of an employee is a violation and a contractor who violates this Act shall be assessed a civil penalty not to exceed \$1,000.00, and for subsequent violations within a 5 year period, not to exceed \$5,000.00 each. If you willfully violate the Act, or obstruct the commissioner, your penalty doubles.
- "Willfully" is defined as knew or should have known.
- A person performing services for a contractor is PRSUMED to be an employee unless engaged in a distinct occupation or business and meets certain criteria, which is essentially a codification of the standard in Ratliff v. Redmon. This is a specific six part test in which all criteria need to be met in order to be a contractor, and not an employee.
- There are civil penalties for knowingly violating the act, including, if you are a corporation, exposure for officers or a shareholder of at least 10% of the outstanding shares. You may also be prohibited from contracting with the state.

[\(Click here to view the proposed legislation\)](#)

### **HB 211 filed by M. Cantell**

This bill would amend KRS 337.010 to remove exemptions in the definition of employee for agricultural workers and domestic service workers; amend KRS 342.630 to indicate that agricultural EMPLOYERS are subject to KRS Chapter 342; and amend KRS 342.650 to remove exemptions for domestic service employees and agricultural employees.

[\(Click here to view the proposed legislation\)](#)

**HB 75 filed by M. Dossett**

This Act relates to exemptions from worker's compensation coverage under KRS 342.650. This Act adds LAWN SERVICES to the exemptions list to work performed on a private home or on the premises of a business that employs no other workers subject to workers' compensation laws.

([Click here to view the proposed legislation](#))

**HB 293 filed by R. Rothenburger, B. Reed**

This bill deals with changes in the organization of the Labor Cabinet and should generally not have an impact on practitioners.

([Click here to view the proposed legislation](#))