

1 AN ACT relating to workers' compensation.

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

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

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

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

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

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

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

- 1 1. An application is filed within seventy-five (75) days prior to the
2 termination of the seven hundred eighty (780) week period;
- 3 2. The employee demonstrates that continued medical treatment is
4 reasonably necessary and related to the work injury or occupational
5 disease; and
- 6 3. An administrative law judge determines and orders that continued
7 benefits are reasonably necessary and related to the work injury or
8 occupational disease for additional time beyond the original seven
9 hundred eighty (780) week period provided in paragraph (a) of this
10 subsection.

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

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

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

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

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

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

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

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

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

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

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

1 which the employee claims compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 section.

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

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

17 (c) The commissioner shall promulgate administrative regulations governing
18 medical provider utilization review activities conducted by an insurance
19 carrier, self-insured group, or self-insured employer pursuant to this chapter.

20 *Utilization review required under administrative regulations may be waived*
21 *if the insurance carrier, self-insured group, or self-insured employer agrees*
22 *that the recommended medical treatment is medically necessary and*
23 *appropriate or if the injured employee elects not to proceed with the*
24 *recommended medical treatment.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable
- 2 on the regular payday of the employer, commencing with the second regular payday
- 3 after the award of the retraining incentive benefit by the administrative law judge
- 4 becomes final. Retraining incentive benefits shall be due and payable not less often
- 5 than semimonthly.
- 6 (4) Upon written request of the employee, all payments of compensation shall be
- 7 mailed to the employee at his or her last known address.
- 8 ➔Section 4. KRS 342.125 is amended to read as follows:
- 9 (1) Upon motion by any party or upon an administrative law judge's own motion, an
- 10 administrative law judge may reopen and review any award or order on any of the
- 11 following grounds:
- 12 (a) Fraud;
- 13 (b) Newly-discovered evidence which could not have been discovered with the
- 14 exercise of due diligence;
- 15 (c) Mistake; and
- 16 (d) Change of disability as shown by objective medical evidence of worsening or
- 17 improvement of impairment due to a condition caused by the injury since the
- 18 date of the award or order.
- 19 (2) No claim which has been previously dismissed or denied on the merits shall be
- 20 reopened except upon the grounds set forth in this section.
- 21 (3) Except for reopening solely for determination of the compensability of medical
- 22 expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for
- 23 reducing a permanent total disability award when an employee returns to work, or
- 24 seeking temporary total disability benefits during the period of an award, no claim
- 25 shall be reopened more than four (4) years following the date of the original award
- 26 or original order granting or denying benefits, when such an award or order
- 27 becomes final and nonappealable, and no party may file a motion to reopen within

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2) Settlement agreements concluded after July 14, 2000, providing for commuted
27 lump-sum payment of future income benefits which would otherwise be payable in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (5) Upon claims in which it is finally determined that the injured worker was not the
2 employee at the time of injury of an employer covered by this chapter, the special
3 fund shall reimburse the carrier for any evaluation performed pursuant to this
4 section for which the carrier has been erroneously compelled to make payment.
- 5 (6) Not less often than annually the designee of the secretary of the Cabinet for Health
6 and Family Services shall assess the performance of the medical schools and render
7 findings as to whether evaluations conducted under this section are being rendered
8 in a timely manner, whether examinations are conducted in accordance with
9 medically recognized techniques, whether impairment ratings are in conformity
10 with standards prescribed by the "Guides to the Evaluation of Permanent
11 Impairment," and whether coal workers' pneumoconiosis examinations are
12 conducted in accordance with the standards prescribed in this chapter.
- 13 (7) The General Assembly finds that good public policy mandates the realization of the
14 potential advantages, both economic and effectual, of the use of telemedicine and
15 telehealth. The commissioner may, to the extent that he or she finds it feasible and
16 appropriate, require the use of telemedicine and telehealth practices, as authorized
17 under KRS 194A.125, in the independent medical evaluation process required by
18 this chapter.

19 ➔Section 9. KRS 342.316 is amended to read as follows:

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

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

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

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

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

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

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

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

1 population.

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*

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

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

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

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

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

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

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[e]~~. 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.

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.

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

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

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

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

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

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

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

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

25 (7) No compensation shall be payable for occupational disease if the employee at the
26 time of entering the employment of the employer by whom compensation would
27 otherwise be payable, falsely represented himself or herself, in writing, as not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 occupational disease, or death.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the employee as follows:

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

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

17	AMA Impairment	Factor
18	0 to 5%	0.65
19	6 to 10%	0.85
20	11 to 15%	1.00
21	16 to 20%	1.00
22	21 to 25%	1.15
23	26 to 30%	1.35
24	31 to 35%	1.50
25	36% and above	1.70

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

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

6 (c) 1. If, due to an injury, an employee does not retain the physical capacity to
7 return to the type of work that the employee performed at the time of
8 injury, the benefit for permanent partial disability shall be multiplied by
9 three (3) times the amount otherwise determined under paragraph (b) of
10 this subsection, but this provision shall not be construed so as to extend
11 the duration of payments; or

12 2. If an employee returns to work at a weekly wage equal to or greater than
13 the average weekly wage at the time of injury, the weekly benefit for
14 permanent partial disability shall be determined under paragraph (b) of
15 this subsection for each week during which that employment is
16 sustained. During any period of cessation of that employment, temporary
17 or permanent, for any reason, with or without cause, payment of weekly
18 benefits for permanent partial disability during the period of cessation
19 shall be two (2) times the amount otherwise payable under paragraph (b)
20 of this subsection. This provision shall not be construed so as to extend
21 the duration of payments.

22 3. Recognizing that limited education and advancing age impact an
23 employee's post-injury earning capacity, an education and age factor,
24 when applicable, shall be added to the income benefit multiplier set
25 forth in paragraph (c)1. of this subsection. If at the time of injury, the
26 employee had less than eight (8) years of formal education, the
27 multiplier shall be increased by four-tenths (0.4); if the employee had

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

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

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

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

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

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

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

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

1 widow or widower, forty-five percent (45%) of the benefits specified in the
2 award, or forty percent (40%) of those benefits if such a child or children are
3 not living with the widow or widower; and, in addition thereto, fifteen percent
4 (15%) of the benefits specified in the award to each child. Where there are
5 more than two (2) such children, the indemnity benefits payable on account of
6 two (2) children shall be divided among all the children, share and share alike;
7 or

8 (c) If there is no widow or widower but such a child or children, then to the child
9 or children, fifty percent (50%) of the benefits specified in the award to one
10 (1) child, and fifteen percent (15%) of those benefits to a second child, to be
11 shared equally. If there are more than two (2) such children, the indemnity
12 benefits payable on account of two (2) children shall be divided equally
13 among all the children; or

14 (d) If there is no survivor in the above classes, then the parent or parents wholly
15 or partly actually dependent for support upon the decedent, or to other wholly
16 or partly actually dependent relatives listed in paragraph (g) of subsection (1)
17 of KRS 342.750, or to both, in proportions that the commissioner provides by
18 administrative regulation.

19 (e) To the widow or widower upon remarriage, up to two (2) years, benefits as
20 specified in the award and proportioned under paragraphs (a) or (b) of this
21 subsection, if the proportioned benefits remain unpaid, to be paid in a lump
22 sum.

23 (4) All income benefits payable pursuant to this chapter shall terminate as of the date
24 upon which the employee reaches the age of seventy (70)~~qualifies for normal old-~~
25 age ~~Social Security retirement benefits under the United States Social Security Act, 42~~
26 U.S.C. ~~secs. 301 to 1397f], or~~ four (4) years after the employee's injury or last
27 exposure, whichever last occurs. In like manner all income benefits payable

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

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

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

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

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

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

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

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

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

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

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

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 commissioner. These benefits shall be paid in the amount of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage not to exceed seventy-five percent (75%) of the state average weekly wage for a maximum period not to exceed seventeen (17) weeks. These income benefits shall be in addition to the maximum amount of retraining incentive benefits payable under this paragraph.
4. The employer shall also pay, directly to the institution conducting the training or education program, instruction, tuition, and material costs not to exceed five thousand dollars (\$5,000).
5. The employee shall notify the parties of his or her intention to retrain within thirty (30) days [period of weeks during which this benefit is payable shall begin no later than the thirtieth day] after the administrative law judge's order [awarding the benefit] becomes final, [except that an] The employee must initiate retraining within [may elect to defer the beginning of such benefits up to the] three hundred sixty-five days of the administrative law judge's final order [fifth day following the thirtieth day the order becomes final]. [Unless the employee has requested deferral of income benefits, those] Income benefits payable under subparagraphs 1. and 2. of this paragraph shall begin no later than thirty (30) days following conclusion of income benefits paid under subparagraph 3. if such benefits were paid.
6. If an employee who is awarded retraining incentive benefits under this paragraph successfully completes a bona fide training or education

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

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

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

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

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

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

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

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

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

1 the existence of a diagnosis of occupational pneumoconiosis and respiratory
2 impairment due to the occupational pneumoconiosis. The evidence submitted by the
3 employee shall include one (1) or more arterial blood gas studies performed in
4 accordance with accepted medical standards. Income benefits shall not be awarded
5 in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas
6 value is equal to or higher than one (1) standard deviation from the normal value
7 obtained by the formula $(103.5 - 0.42X)$, where X equals the claimant's age at the
8 time of the arterial blood gas study.

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

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

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

1 education or training program, including but not limited to the] **These**
2 **programs shall include** postsecondary programs registered with the Higher
3 Education Assistance Authority, and ~~successful completion of which~~ will
4 qualify the **employee**~~person completing the course~~ for a trade, occupation, or
5 profession. **The programs listed shall be capable of completion**~~], and which~~
6 ~~program can be completed~~] within the period benefits are payable under
7 subsection (1)(a) of this section;

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

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

22 (2) The original claim of any miner last exposed to the occupational hazards of coal workers' pneumoconiosis prior to December 12, 1996, which was subject to a university evaluation pursuant to KRS 342.315 and was dismissed upon a finding that the miner did not prove the presence of coal workers' pneumoconiosis radiographically may be reopened by the claimant notwithstanding the provisions of KRS 342.125, pursuant to administrative regulations adopted by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit

3 Court in conformity with KRS 13B.140.

4 (7) The following civil penalties shall be applicable for violations of particular

5 provisions of this chapter:

6 (a) Any employer, insurer, or payment obligor subject to this chapter who fails to

7 make a report required by KRS 342.038 within fifteen (15) days from the date

8 it was due, shall be fined not less than one hundred dollars (\$100) nor more

9 than one thousand dollars (\$1,000) for each offense;

10 (b) Any employer, insurer, or payment obligor acting on behalf of an employer

11 who fails to make timely payment of a statement for services under KRS

12 342.020(4){(1)} without having reasonable grounds to delay payment may be

13 fined not less than one hundred dollars (\$100) nor more than one thousand

14 dollars (\$1,000) for each offense;

15 (c) Any person who violates KRS 342.020(12){(9)}, 342.035(2), 342.040,

16 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one

17 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each

18 offense. With respect to employers who fail to maintain workers'

19 compensation insurance coverage on their employees, each employee of the

20 employer and each day of violation shall constitute a separate offense. With

21 respect to KRS 342.040, any employer's insurance carrier or other party

22 responsible for the payment of workers' compensation benefits shall be fined

23 for failure to notify the commissioner of a failure to make payments when due

24 if a report indicating the reason payment of income benefits did not

25 commence within twenty-one (21) days of the date the employer was notified

26 of an alleged work-related injury or disease is not filed with the commissioner

27 within twenty-one (21) days of the date the employer received notice, and if

1 the employee has not returned to work within that period of time. The date of
2 notice indicated in the report filed with the department pursuant to KRS
3 342.038(1), shall raise a rebuttable presumption of the date on which the
4 employer received notice;

- 5 (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
6 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two
7 hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each
8 offense. With respect to KRS 342.395, each required notice of rejection form
9 executed by an employee or potential employee of an employer shall
10 constitute a separate offense;
- 11 (e) Any person who fails to comply with the data reporting provisions of
12 administrative regulations promulgated by the commissioner pursuant to KRS
13 342.039, or with utilization review and medical bill audit administrative
14 regulations promulgated pursuant to KRS 342.035(5), shall be fined not less
15 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
16 for each violation;
- 17 (f) Except as provided in paragraph (g) of this subsection, a person who violates
18 any of the provisions of KRS 342.335(1) or (2) where the claim,
19 compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less
20 than or equal to three hundred dollars (\$300) shall be fined per occurrence not
21 more than one thousand dollars (\$1,000) per individual nor five thousand
22 dollars (\$5,000) per corporation, or twice the amount of gain received as a
23 result of the violation, whichever is greater;
- 24 (g) Any person who violates any of the provisions of KRS 342.335(1) or (2)
25 where the claim, compensation, benefit, or money referred to in KRS
26 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per
27 occurrence not more than five thousand dollars (\$5,000) per individual nor ten

1 thousand dollars (\$10,000) per corporation, or twice the amount of gain
2 received as a result of the violation, whichever is greater;

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

6 (i) Any violation of the provisions of this chapter relating to self-insureds shall
7 constitute grounds for decertification of such self-insured, a fine of not less
8 than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000)
9 per occurrence, or both; and

10 (j) Actions to collect the civil penalties imposed under this subsection shall be
11 instituted in the Franklin District Court and the Franklin Circuit Court.

12 (8) The commissioner shall initiate enforcement of a criminal penalty by causing a
13 complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to
14 act on the violation within twenty (20) days following the filing of the complaint,
15 the commissioner shall certify the inaction by the local prosecutor to the Attorney
16 General who shall initiate proceedings to prosecute the violation. The provisions of
17 KRS 15.715 shall not apply to this section.

18 (9) The following criminal penalties shall be applicable for violations of particular
19 provisions of this chapter:

20 (a) Any person who violates KRS 342.020(12){(9)}, 342.035(2), 342.040,
21 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than
22 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or
23 imprisoned for not less than thirty (30) days nor more than one hundred eighty
24 (180) days, or both;

25 (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
26 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than
27 two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or

imprisoned for not less than thirty (30) days nor more than one hundred and
eighty (180) days, or both;

3 (c) Any corporation, partnership, sole proprietorship, or other form of business
4 entity and any officer, general partner, agent, or representative of the
5 foregoing who knowingly utilizes or participates in any employee leasing
6 arrangement or mechanism as defined in KRS 342.615 for the purpose of
7 depriving one (1) or more insurers of premium otherwise properly payable or
8 for the purpose of depriving the Commonwealth of any tax or assessment due
9 and owing and based upon said premium shall upon conviction thereof be
10 subject to a fine of not less than five hundred dollars (\$500) nor more than
11 five thousand dollars (\$5,000), or imprisonment for not more than one
12 hundred eighty (180) days, or both, for each offense; and

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

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

27 (11) In addition to the penalties provided in this section, the commissioner and any

1 administrative law judge or court of jurisdiction may order restitution of a benefit
2 secured through conduct proscribed by this chapter.

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

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

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

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

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

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