

1 AN ACT relating to workers' compensation and declaring an emergency.

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

3 ➔Section 1. KRS 342.1223 is amended to read as follows:

- 4 (1) The Kentucky Workers' Compensation Funding Commission is created as an
5 agency of the Commonwealth for the public purpose of controlling, investing, and
6 managing the funds collected pursuant to KRS 342.122.
- 7 (2) The commission shall:
- 8 (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS
9 342.122 and its other funds separate and apart from all "state funds" or "public
10 funds," as defined in KRS Chapter 446;
- 11 (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power
12 over the funds collected pursuant to KRS 342.122, and may invest association
13 funds through one (1) or more banks, trust companies, or other financial
14 institutions with offices in Kentucky in good standing with the Department of
15 Financial Institutions, in investments described in KRS Chapter 386, except
16 that the funding commission may, at its discretion, invest in nondividend-
17 paying equity securities;
- 18 (c) Report to the General Assembly at each even-numbered-year regular session
19 the actuarial soundness and adequacy of the funding mechanism for the
20 special fund and other programs supported by the mechanism, including
21 detailed information on the investment of funds and yields thereon;
- 22 (d) Recommend to the General Assembly, not later than October 31 of the year
23 prior to each even-numbered-year regular legislative session, changes deemed
24 necessary in the level of the assessments imposed in this chapter;
- 25 (e) In conjunction with the Labor Cabinet, submit to the General Assembly, not
26 later than October 31 of the year prior to each even-numbered-year regular
27 legislative session, a proposed budget for the biennium beginning July 1

- 1 following the even-numbered-year regular session of the General Assembly;
- 2 (f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee
3 on Appropriations and Revenue an annual budget and detailed quarterly
4 financial reports;
- 5 (g) Conduct periodic audits, independently or in cooperation with the Labor
6 Cabinet or the Department of Revenue, of all entities subject to the
7 assessments imposed in this chapter; and
- 8 (h) Report monthly to the Committees on Appropriations and Revenue and on
9 Labor and Industry its monthly expenditures of restricted agency funds and the
10 nature of the expenditures.
- 11 (3) The commission shall have all of the powers necessary or convenient to carry out
12 and effectuate the purposes for which it was established, including, but not limited
13 to, the power:
- 14 (a) To sue and be sued, complain, or defend, in its name;
- 15 (b) To elect, appoint, or hire officers, agents, and employees, and define their
16 duties and fix their compensation within the limits of its budget approved by
17 the General Assembly;
- 18 (c) To contract for investment counseling, legal, actuarial, auditing, and other
19 professional services in accordance with the provisions relating to personal
20 service contracts contained in KRS Chapter 45A;
- 21 (d) To appoint, hire, and contract with banks, trust companies, and other entities
22 to serve as depositories and custodians of its investment receipts and other
23 funds;
- 24 (e) To take any and all other actions consistent with the purposes of the
25 commission and the provisions of this chapter; and
- 26 (f) To make and promulgate administrative regulations.
- 27 (4) *The Kentucky Workers' Compensation Funding Commission may utilize the*

1 investment expertise and advice of the Office of Financial Management within
 2 the Finance and Administration Cabinet. The Kentucky Workers' Compensation
 3 Funding Commission may procure one (1) or more consulting firms and enter
 4 into a personal service contract with such consulting firms to provide investment
 5 advisory, investment counseling, or investment management services. The Office
 6 of Financial Management shall participate in the selection of any firms for
 7 investment services provided, however, the Kentucky Workers' Compensation
 8 Funding Commission shall have the right to make the final decision on the
 9 selection of any firms. Notwithstanding any provisions of this section to the
 10 contrary, all contracts for investment advisory, investment counseling, or
 11 investment management services or for the management of assets shall be subject
 12 to KRS Chapter 45A. The fees charged by financial institutions for managing the
 13 investments of the funds of the funding commission shall be paid from the
 14 investment earnings of the funds[Notwithstanding the provisions of this chapter to
 15 the contrary, The Kentucky Workers' Compensation Funding Commission shall
 16 utilize the investment expertise and advice of the Office of Financial Management
 17 in the Office of the Controller within the Finance and Administration Cabinet rather
 18 than entering into a consulting contract for investment counseling. The fees charged
 19 by financial institutions for managing the investments of the funds of the funding
 20 commission shall be paid from the investment earnings of the funds].

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

23 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO
 24 READ AS FOLLOWS:

25 (1) The General Assembly declares:

26 (a) The Kentucky coal workers' pneumoconiosis fund was created in 1996 for
 27 the purpose of placing the financial responsibility for liabilities incurred as

1 a result of workers' compensation awards for coal workers' pneumoconiosis
2 on the employers engaged in the severance and processing of coal through
3 assessments placed on workers' compensation premiums and self-insured
4 employers and severed coal. These assessments have been used to pay fifty
5 percent (50%) of indemnity benefits of a coal workers' pneumoconiosis
6 claim. However, the combination of the severe downturn in the amount of
7 coal being severed in Kentucky, the drastic reduction in the number of coal
8 employers and employees, and the significant increase in coal workers'
9 pneumoconiosis claims being filed have had a severe negative impact on the
10 Kentucky coal workers' pneumoconiosis fund.

11 (b) For calendar year 2017, the Kentucky Workers' Funding Commission,
12 which is required to assess all employers engaged in the severance and
13 processing of coal at a rate that would fully fund and prefund all claim
14 liabilities and administrative expenses through December 31 of the
15 following year, assessed coal employers forty-nine and one-half percent
16 (49.5%) on employers' workers' compensation insurance premiums and
17 assessed forty-one and seventy-four hundredths cents (\$0.4174) per ton of
18 severed coal.

19 (c) The Kentucky coal workers' pneumoconiosis fund will not have adequate
20 funding without burdensome assessments on coal employers in order to
21 meet claim liabilities and administrative expenses in the upcoming years.

22 (2) Therefore, it is the intent of the General Assembly to close the Kentucky coal
23 workers' pneumoconiosis fund on July 1, 2017, to any coal workers'
24 pneumoconiosis claims filed after June 30, 2017, and have the assets and
25 liabilities of the Kentucky coal workers' pneumoconiosis fund transferred
26 through a loss portfolio transfer agreement to the Kentucky Employers' Mutual
27 Insurance Authority, which is a nonprofit, independent, self-supporting de jure

1 municipal corporation and political subdivision of the Commonwealth.

2 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) Notwithstanding any provisions of KRS Chapter 342 or any other provisions to
5 the contrary, the Kentucky coal workers' pneumoconiosis fund shall have no
6 liability for income benefits for coal workers' pneumoconiosis claims filed or
7 reopened on or after July 1, 2017.

8 (2) Notwithstanding any provisions of KRS Chapter 342 or any other provisions to
9 the contrary, as soon as practically possible after July 1, 2017, all of the assets
10 and liabilities of the Kentucky coal workers' pneumoconiosis fund shall be
11 transferred from the Kentucky Workers' Compensation Funding Commission
12 and Division of Workers' Compensation Funds to the Kentucky Employers'
13 Mutual Insurance Authority through a loss portfolio transfer agreement. The
14 Kentucky Employers' Mutual Insurance Authority shall have full authority and
15 responsibility over the Kentucky coal workers' pneumoconiosis fund's claims and
16 shall administer the claims as permitted pursuant to KRS Chapter 342.

17 (3) Notwithstanding the provisions of Section 4 of this Act, the Workers'
18 Compensation Funding Commission shall impose an assessment at an annual
19 rate of fourteen percent (14%) upon the amount of workers' compensation
20 premiums received on or after January 1, 2017, through December 31, 2017, by
21 every insurance carrier writing workers' compensation insurance in the
22 Commonwealth and by every self-insured group operating under the provisions
23 of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or
24 processing of coal. Likewise, on or after January 1, 2017, through December 31,
25 2017, an assessment at the rate of fourteen percent (14%) of premium shall be
26 paid by every employer engaged in the severance or processing of coal who is
27 carrying his or her own risk.

- 1 (4) Notwithstanding the provisions of Section 4 of this Act, the Workers'
2 Compensation Funding Commission shall impose an assessment at an annual
3 rate of fourteen percent (14%) upon the amount of workers' compensation
4 premiums received on or after January 1, 2018, through December 31, 2018, by
5 every insurance carrier writing workers' compensation insurance in the
6 Commonwealth and by every self-insured group operating under the provisions
7 of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or
8 processing of coal. Likewise, on or after January 1, 2018, through December 31,
9 2018, an assessment at the rate of fourteen percent (14%) of premium shall be
10 paid by every employer engaged in the severance or processing of coal who is
11 carrying his or her own risk.
- 12 (5) Notwithstanding the provisions of Section 4 of this Act, in addition to the
13 assessments in subsection (3) and (4) of this section, for the calendar years of
14 2017 and 2018, an assessment at the rate of fifteen cents (\$0.15) per ton shall be
15 imposed upon the total annual amount of tons of coal severed by every entity
16 engaged in the severance of coal as required pursuant to KRS Chapter 143.
- 17 (6) The assessments imposed by this section shall supersede any assessment imposed
18 pursuant to Section 4 of this Act for the calendar years of 2017 and 2018. Any
19 amount paid and collected that exceeds the assessment imposed by this section in
20 the calendar year of 2017 shall be reimbursed to the employer or credited to the
21 employer's account subject to the preference of the employer.
- 22 (7) Assessments pursuant to this section and Section 4 of this Act that are collected
23 by the Kentucky Worker's Compensation Funding Commission shall be
24 transferred to the Kentucky Employers' Mutual Insurance Authority.
- 25 (8) When the Kentucky Workers' Compensation Funding Commission and the
26 Kentucky Employers' Mutual Insurance Authority have determined that the
27 Kentucky coal workers' pneumoconiosis fund has fully funded its liabilities, then

1 *the authority for imposing assessments pursuant to this section and Section 4 of*
 2 *this Act shall cease to exist, and the Kentucky coal workers' pneumoconiosis fund*
 3 *shall be abolished. Any remaining assessments received following the exhaustion*
 4 *of liabilities shall be refunded pro rata to all employers who have paid an*
 5 *assessment in the year that liabilities are fully funded.*

6 ➔Section 4. KRS 342.1242 is amended to read as follows:

- 7 (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have
 8 one-half (1/2) of the liability for income benefits, including retraining benefits,
 9 payable for claims brought under KRS 342.732 for last exposure incurred on or
 10 after December 12, 1996, *which are filed on or before June 30, 2017.* Income
 11 benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made
 12 contemporaneous with the payments made by the employer, except that the
 13 employer shall make all payments due under a final award or approved settlement
 14 *for any claims filed after June 30, 2017*~~until the liability of the Kentucky coal~~
 15 ~~workers' pneumoconiosis fund is established under subsection (2) of this section~~
 16 ~~and the coal workers' pneumoconiosis fund shall reimburse the employer for such~~
 17 ~~payments to the extent of its liability].~~
- 18 (2) *For claims brought under Section 7 of this Act for last exposure incurred on or*
 19 *after December 12, 1996 which are filed on or before June 30, 2017,* the employer
 20 shall defend any claim brought under KRS 342.732 and upon conclusion shall seek
 21 participation in payment of the final award or settlement by the Kentucky coal
 22 workers' pneumoconiosis fund by making written request upon the director in the
 23 manner prescribed by administrative regulation to be promulgated by the
 24 commissioner of the Department of Workers' Claims.
- 25 (3) (a) For the purpose of funding ~~and prefunding~~ the liabilities of the Kentucky
 26 coal workers' pneumoconiosis fund and financing the administration and
 27 operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in

1 the budget of the Commonwealth enacted by the General Assembly, a
2 Kentucky coal workers' pneumoconiosis fund assessment at the rate of three
3 percent (3%) is hereby imposed upon the amount of workers' compensation
4 premiums received on and after January 1, 1997, through December 31, 1997,
5 by every insurance carrier writing workers' compensation insurance in the
6 Commonwealth and by every self-insured group operating under the
7 provisions of KRS 342.350(4) and Chapter 304, from employers engaged in
8 the severance or processing of coal. Likewise, on and after January 1, 1997,
9 through December 31, 1997, an assessment at the rate of three percent (3%) of
10 premium shall be paid by every employer engaged in the severance or
11 processing of coal who is carrying his or her own risk.

12 (b) In addition to the assessment imposed in paragraph (a) of this subsection, an
13 additional Kentucky coal workers' pneumoconiosis fund assessment at the rate
14 of two and one-half cents (\$0.025) per ton is hereby imposed upon the total
15 annual amount of tons of coal severed on or after January 1, 1997, through
16 December 31, 1997, by every entity engaged in the severance of coal as
17 required pursuant to KRS Chapter 143.

18 (c) As of June 30, 2018~~[2006]~~, and each year thereafter until the liabilities of the
19 fund are fully funded, the Funding Commission and the Kentucky
20 Employers' Mutual Insurance Authority~~[funding commission]~~ shall
21 determine the assets of the fund and the claim ~~[and administrative expense~~
22 ~~]liability~~ incurred by the fund for all previous years and shall establish the
23 rates under the provisions of paragraphs (a) and (b) of this subsection
24 necessary as of January 1 of the next year to ~~[fully]~~ fund ~~[and pre-fund all~~
25 ~~]claim liabilities [and administrative expenses]~~through December 31 of the
26 next year of operations. The assessment rate authorized by this section for
27 premiums received and tons of coal severed shall be set so as to receive fifty

1 percent (50%) of the needed revenue from each assessment. Notice of any rate
2 changes shall be provided no later than October 1 of the year preceding the
3 rate change.

4 (4) All assessments imposed by this section shall be paid to the Kentucky Workers'
5 Compensation Funding Commission and shall be transferred to the Kentucky
6 Employers' Mutual Insurance Authority, which is administering the coal
7 workers' pneumoconiosis fund~~credited to a separate account within the benefit~~
8 ~~reserve fund within the Kentucky Workers' Compensation Funding Commission~~.
9 In addition, the powers and responsibilities of the Kentucky Workers'
10 Compensation Funding Commission including its fiduciary duties and
11 responsibilities relating to assessments collected for the special fund pursuant to
12 KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply
13 to assessments collected for the Kentucky coal workers' pneumoconiosis fund
14 created pursuant to this section. Each entity subject to assessments for the Kentucky
15 coal workers' pneumoconiosis fund shall provide any and all information requested
16 by the Kentucky Workers' Compensation Funding Commission necessary to carry
17 out its powers and responsibilities relating thereto.

18 (5) These assessments shall be paid quarterly not later than the thirtieth day of the
19 month following the end of the quarter in which the premium is received or the coal
20 is processed or severed. Receipt shall be considered timely through actual physical
21 receipt or by postmark by the United States Postal Service. Employers carrying their
22 own risk and employers defined in KRS 342.630(2) shall pay the annual
23 assessments in four (4) equal quarterly installments. Penalty and interest penalties
24 imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers'
25 Compensation Funding Commission to waive part or all of the penalty shall apply
26 to assessments for the Kentucky coal workers' pneumoconiosis fund in the same
27 manner and amount as they are imposed on assessments for the special fund under

1 KRS 342.122.

2 (6) Notwithstanding any other provisions of this section or this chapter to the contrary,
3 the total amount of funds collected pursuant to the assessment rates adopted by the
4 funding commission shall not be limited to the provisions of this section.

5 (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis
6 shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers'
7 pneumoconiosis fund shall be liable for payment of a part of the liability only for
8 employees of employers engaged in the severance or processing of coal as defined
9 in KRS 342.0011(23)(a) and (b).

10 **(8) Assessments issued pursuant to this section shall cease to be imposed once the**
11 **liabilities of the fund are fully funded. After the liabilities are fully funded, any**
12 **excess assessments shall be refunded to the employers on a pro rata basis.**

13 ➔Section 5. KRS 342.316 is amended to read as follows:

14 (1) (a) The employer liable for compensation for occupational disease shall be the
15 employer in whose employment the employee was last exposed to the hazard
16 of the occupational disease. During any period in which this section is
17 applicable to a coal mine, an operator who acquired it or substantially all of its
18 assets from a person who was its operator on and after January 1, 1973, shall
19 be liable for, and secure the payment of, the benefits which would have been
20 payable by the prior operator under this section with respect to miners
21 previously employed in the mine if it had not been acquired by such later
22 operator. At the same time, however, this subsection does not relieve the prior
23 operator of any liability under this section. Also, it does not affect whatever
24 rights the later operator might have against the prior operator.

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

- 1 (2) The procedure with respect to the giving of notice and determination of claims in
2 occupational disease cases and the compensation and medical benefits payable for
3 disability or death due to the disease shall be the same as in cases of accidental
4 injury or death under the general provisions of this chapter, except that notice of
5 claim shall be given to the employer as soon as practicable after the employee first
6 experiences a distinct manifestation of an occupational disease in the form of
7 symptoms reasonably sufficient to apprise the employee that he or she has
8 contracted the disease, or a diagnosis of the disease is first communicated to him or
9 her, whichever shall first occur.
- 10 (3) The procedure for filing occupational disease claims shall be as follows:
- 11 (a) The application for resolution of claim shall set forth the complete work
12 history of the employee with a concise description of injurious exposure to a
13 specific occupational disease, together with the name and addresses of the
14 employer or employers with the approximate dates of employment. The
15 application shall also include at least one (1) written medical report supporting
16 his or her claim. This medical report shall be made on the basis of clinical or
17 X-ray examination performed in accordance with accepted medical standards
18 and shall contain full and complete statements of all examinations performed
19 and the results thereof. The report shall be made by a duly-licensed physician.
20 The commissioner shall promulgate administrative regulations which
21 prescribe the format of the medical report required by this section and the
22 manner in which the report shall be completed.
- 23 1. For coal-related occupational pneumoconiosis claims, each clinical
24 examination shall include a chest X-ray interpretation by a National
25 Institute of Occupational Safety and Health (NIOSH) certified "B"
26 reader. The chest X-ray upon which the report is made shall be filed
27 with the application as well as spirometric tests when pulmonary

1 dysfunction is alleged.

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

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

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

19 2. Spirometric testing shall be conducted in accordance with the standards
20 recommended in the "Guides to the Evaluation of Permanent
21 Impairment" and the 1978 ATS epidemiology standardization project
22 with the exception that the predicted normal values for lung function
23 shall not be adjusted based upon the race of the subject. The FVC or the
24 FEV1 values shall represent the largest of such values obtained from
25 three (3) acceptable forced expiratory volume maneuvers as corrected to
26 BTPS (body temperature, ambient pressure and saturated with water
27 vapor at these conditions) and the variance between the two (2) largest

1 acceptable FVC values shall be either less than five percent (5%) of the
2 largest FVC value or less than one hundred (100) milliliters, whichever
3 is greater. The variance between the two (2) largest acceptable FEV1
4 values shall be either less than five percent (5%) of the largest FEV1
5 value or less than one hundred (100) milliliters, whichever is greater.
6 Reports of spirometric testing shall include a description by the
7 physician of the procedures utilized in conducting such spirometric
8 testing and a copy of the spirometric chart and tracings from which
9 spirometric values submitted as evidence were taken.

10 3. The commissioner shall promulgate administrative regulations pursuant
11 to KRS Chapter 13A as necessary to effectuate the purposes of this
12 section. The commissioner shall periodically review the applicability of
13 the spirometric test values contained in the "Guides to the Evaluation of
14 Permanent Impairment" and may by administrative regulation substitute
15 other spirometric test values which are found to be more closely
16 representative of the normal pulmonary function of the coal mining
17 population.

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

20 a. Immediately upon receipt of an application for resolution of claim,
21 the commissioner shall notify the responsible employer and all
22 other interested parties and shall furnish them with a full and
23 complete copy of the application.

24 b. The commissioner shall assign the claim to an administrative law
25 judge and, except for coal workers' pneumoconiosis claims, shall
26 promptly refer the employee to such physician or medical facility
27 as the commissioner may select for examination. The report from

1 this examination shall be provided to all parties of record. The
2 employee shall not be referred by the commissioner for
3 examination within two (2) years following any prior referral for
4 examination for the same disease.

5 c. Except for coal workers' pneumoconiosis claims, within forty-five
6 (45) days following the notice of filing an application for
7 resolution of claim, the employer or carrier shall notify the
8 commissioner and all parties of record of its acceptance or denial
9 of the claim. A denial shall be in writing and shall state the
10 specific basis for the denial. In coal workers' pneumoconiosis
11 claims, the employer's notice of claim denial or acceptance shall be
12 filed within thirty (30) days of the issuance by the commissioner of
13 the notice of the consensus reading unless the consensus is that the
14 miner has not developed coal workers' pneumoconiosis category
15 1/0 or greater. In the event the consensus procedure is exhausted
16 without consensus being established, the employer's notice of
17 claim denial or acceptance shall be filed within thirty (30) days of
18 the commissioner notification to the administrative law judge that
19 consensus has not been reached.

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

- 1 determine whether the X-ray interpretations filed by the parties are
2 in consensus.
- 3 e. If the readings are not in consensus, the commissioner shall
4 forward both films, masking information identifying the facility
5 where the X-ray was obtained and the referring physician,
6 consecutively to three (3) "B" readers selected randomly from a list
7 maintained by the commissioner for interpretation. Each "B"
8 reader shall select the highest quality film and report only the
9 interpretation of that film. The commissioner shall determine if
10 two (2) of the X-ray interpretations filed by the three (3) "B"
11 readers selected randomly are in consensus. If consensus is
12 reached, the commissioner shall forward copies of the report to all
13 parties as well as notice of the consensus reading which shall be
14 considered as evidence. If consensus is not reached, the
15 administrative law judge shall decide the claim on the evidence
16 submitted.
- 17 f. "Consensus" is reached between two (2) chest X-ray interpreters
18 when their classifications meet one (1) of the following criteria:
19 each finds either category A, B, or C progressive massive fibrosis;
20 or findings with regard to simple pneumoconiosis are both in the
21 same major category and within one (1) minor category (ILO
22 category twelve (12) point scale) of each other.
- 23 g. The administrative law judge shall conduct such proceedings as
24 are necessary to resolve the claim and shall have authority to grant
25 or deny any relief, including interlocutory relief, to order additional
26 proof, to conduct a benefit review conference, or to take such other
27 action as may be appropriate to resolve the claim.

- 1 h. Unless a voluntary settlement is reached by the parties, or the
2 parties agree otherwise, the administrative law judge shall issue a
3 written determination within sixty (60) days following a hearing.
4 The written determination shall address all contested issues and
5 shall be enforceable under KRS 342.305.
- 6 5. The procedure for appeal from a determination of an administrative law
7 judge shall be as set forth in KRS 342.285.
- 8 (4) (a) The right to compensation under this chapter resulting from an occupational
9 disease shall be forever barred unless a claim is filed with the commissioner
10 within three (3) years after the last injurious exposure to the occupational
11 hazard or after the employee first experiences a distinct manifestation of an
12 occupational disease in the form of symptoms reasonably sufficient to apprise
13 the employee that he or she has contracted the disease, whichever shall last
14 occur; and if death results from the occupational disease within that period,
15 unless a claim therefor be filed with the commissioner within three (3) years
16 after the death; but that notice of claim shall be deemed waived in case of
17 disability or death where the employer, or its insurance carrier, voluntarily
18 makes payment therefor, or if the incurrence of the disease or the death of the
19 employee and its cause was known to the employer. However, the right to
20 compensation for any occupational disease shall be forever barred, unless a
21 claim is filed with the commissioner within five (5) years from the last
22 injurious exposure to the occupational hazard, except that, in cases of
23 radiation disease or asbestos-related disease, a claim must be filed within
24 twenty (20) years from the last injurious exposure to the occupational hazard.
- 25 (b) Income benefits for the disease of pneumoconiosis resulting from exposure to
26 coal dust or death therefrom shall not be payable unless the employee has
27 been exposed to the hazards of such pneumoconiosis in the Commonwealth of

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

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

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

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

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

25 (10) When an employee has an occupational disease that is covered by this chapter, the
26 employer in whose employment he or she was last injuriously exposed to the hazard
27 of the disease, and the employer's insurance carrier, if any, at the time of the

1 exposure, shall alone be liable therefor, without right to contribution from any prior
2 employer or insurance carrier, except as otherwise provided in this chapter.

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

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

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

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

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

1 specially stated in the administrative law judge's order.

2 ➔Section 6. KRS 342.320 is amended to read as follows:

- 3 (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter,
4 shall be subject to the approval of an administrative law judge pursuant to the
5 statutes and administrative regulations.
- 6 (2) In an original claim, attorney's fees for services under this chapter on behalf of an
7 employee shall be subject to the following maximum limits:
- 8 (a) Twenty percent (20%) of the first twenty-five thousand dollars (\$25,000) of
9 the award, fifteen percent (15%) of the next ten thousand dollars (\$10,000),
10 and five percent (5%) of the remainder of the award, not to exceed a
11 maximum fee of twelve thousand dollars (\$12,000). This fee shall be paid by
12 the employee from the proceeds of the award or settlement; and
- 13 (b) Attorney-client employment contracts entered into and signed after July 14,
14 2000, shall be subject to the conditions of paragraph (a) of this subsection.
- 15 (3) In approving an allowance of attorney's fees, the administrative law judge shall
16 consider the extent, complexity, and quality of services rendered, and in the case of
17 death, the Remarriage Tables of the Dutch Royal Insurance Institute. An attorney's
18 fee may be denied or reduced upon proof of solicitation by the attorney. However,
19 this provision shall not be construed to preclude advertising in conformity with
20 standards prescribed by the Kentucky Supreme Court.
- 21 (4) No attorney's fee in any case involving benefits under this chapter shall be paid until
22 the fee is approved by the administrative law judge, and any contract for the
23 payment of attorney's fees otherwise than as provided in this section shall be void.
24 The motion for approval of an attorney's fee shall be submitted within thirty (30)
25 days following finality of the claim. Except when the attorney's fee is to be paid by
26 the employer or carrier, the attorney's fee shall be paid in one (1) of the following
27 ways:

- 1 (a) The employee may pay the attorney's fee out of his or her personal funds or
2 from the proceeds of a lump-sum settlement; or
- 3 (b) The administrative law judge, upon request of the employee, may order the
4 payment of the attorney's fee in a lump sum directly to the attorney of record
5 and deduct the attorney's fee from the weekly benefits payable to the employee
6 in equal installments over the duration of the award or until the attorney's fee
7 has been paid, commuting sufficient sums to pay the fee.
- 8 (5) At the commencement of the attorney-client relationship, the attorney shall explain
9 to the employee the methods by which this section provides for the payment of the
10 attorney's fee, and the employee shall select the method in which the attorney's fee
11 is to be paid. His or her selection and statement that he or she fully understands the
12 method to be used shall be submitted by his or her attorney, on a notarized form
13 signed by the employee, at the time the motion for approval of the attorney's fee is
14 submitted. The commissioner shall develop the format and content of the form to be
15 used pursuant to this section. The form to be used shall list on its face all options
16 permitted in this section for the payment of an attorney's fees and contain an
17 explanation in nontechnical language of each method.
- 18 (6) The General Assembly declares that by the enactment of KRS 342.316(3), it is the
19 legislative intent to encourage settlement and prompt administrative handling of
20 those claims and thereby reduce expenses to claimants for compensation under the
21 provisions of KRS 342.316, and the administrative law judge shall give due regard
22 to this legislative intent in the handling of uncontested claims and the allowance of
23 attorney's fees therein.
- 24 (7) In a claim that has been reopened pursuant to the provisions of this chapter, an
25 attorney's fee may be awarded by the administrative law judge subject to the limits
26 set forth in subsection (2) of this section. In awarding the attorney's fee, the
27 administrative law judge shall consider the factors set forth in subsection (3) of this

1 section. If no additional amount is recovered upon reopening, no attorney's fee shall
2 be awarded. No attorney's fee shall be allowed or approved exceeding the amounts
3 provided in subsection (2)(a) of this section applicable to any additional amount
4 recovered.

5 (8) Attorney's fees for representing employers in proceedings under this chapter
6 pursuant to contract with the employer shall be subject to approval of the
7 administrative law judge in the same manner as prescribed for attorney
8 representation of employees. Employer attorney's fees are subject to the limitation
9 of twelve thousand dollars (\$12,000) maximum fees except that fees for
10 representing employers shall not be dependent upon the result achieved. Employer
11 attorney's fees may be paid on a periodic basis while a claim is adjudicated and the
12 payments need not be approved until the claims resolution process is completed.
13 ~~[Fees for legal services in presenting a claim for reimbursement from the Kentucky~~
14 ~~coal workers' pneumoconiosis fund shall not exceed one thousand dollars (\$1,000).]~~
15 All such approved fees shall be paid by the employer and in no event shall exceed
16 the amount the employer agreed by contract to pay.

17 ➔Section 7. KRS 342.732 is amended to read as follows:

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

21 (a) 1. If an employee has a radiographic classification of category 1/0, 1/1 or
22 1/2, coal workers' pneumoconiosis and spirometric test values of eighty
23 percent (80%) or more, the employee shall be awarded a one (1) time
24 only retraining incentive benefit which shall be an amount equal to
25 sixty-six and two-thirds percent (66-2/3%) of the employee's average
26 weekly wage as determined by KRS 342.740, but not more than seventy-
27 five percent (75%) of the state average weekly wage, payable

1 semimonthly for a period not to exceed one hundred four (104) weeks,
2 except as provided in subparagraph 3. of this paragraph.

3 2. Except as provided in subparagraph 3. of this paragraph, these benefits
4 shall be paid only while the employee is enrolled and actively and
5 successfully participating as a full-time student taking the equivalent of
6 twelve (12) or more credit hours per week in a bona fide training or
7 education program that if successfully completed will qualify the person
8 completing the course for a trade, occupation, or profession and which
9 program can be completed within the period benefits are payable under
10 this subsection. The program must be approved under administrative
11 regulations to be promulgated by the commissioner. These benefits shall
12 also be paid to an employee who is a part-time student taking not less
13 than the equivalent of six (6) nor more than eleven (11) credit hours per
14 week, except that benefits shall be an amount equal to thirty-three and
15 one-third percent (33-1/3%) of the employee's average weekly wage as
16 determined by KRS 342.740, but not more than thirty-seven and one-
17 half percent (37-1/2%) of the state average weekly wage, payable
18 biweekly for a period not to exceed two hundred eight (208) weeks.

19 3. These benefits shall also be paid biweekly while an employee is actively
20 and successfully pursuing a General Equivalency Diploma (GED) in
21 accordance with administrative regulations promulgated by the
22 commissioner. These benefits shall be paid in the amount of sixty-six
23 and two-thirds percent (66-2/3%) of the employee's average weekly
24 wage not to exceed seventy-five percent (75%) of the state average
25 weekly wage for a maximum period not to exceed seventeen (17) weeks.
26 These income benefits shall be in addition to the maximum amount of
27 retraining incentive benefits payable under this paragraph.

- 1 4. The employer shall also pay, directly to the institution conducting the
2 training or education program, instruction, tuition, and material costs not
3 to exceed five thousand dollars (\$5,000).
- 4 5. The period of weeks during which this benefit is payable shall begin no
5 later than the thirtieth day after the administrative law judge's order
6 awarding the benefit becomes final, except that an employee may elect
7 to defer the beginning of such benefits up to the three hundred sixty-fifth
8 day following the thirtieth day the order becomes final. Unless the
9 employee has requested deferral of income benefits, those income
10 benefits payable under subparagraphs 1. and 2. of this paragraph shall
11 begin no later than thirty (30) days following conclusion of income
12 benefits paid under subparagraph 3. if such benefits were paid.
- 13 6. If an employee who is awarded retraining incentive benefits under this
14 paragraph successfully completes a bona fide training or education
15 program approved by the commissioner, upon completion of the training
16 or education program, the employer shall pay to that employee the sum
17 of five thousand dollars (\$5,000) for successful completion of a program
18 that requires a course of study of not less than twelve (12) months nor
19 more than eighteen (18) months, or the sum of ten thousand dollars
20 (\$10,000) for successful completion of a program that requires a course
21 of study of more than eighteen (18) months. This amount shall be in
22 addition to retraining incentive benefits awarded under this paragraph,
23 and tuition expenses paid by the employer.
- 24 7. An employee who is age fifty-seven (57) years or older on the date of
25 last exposure and who is awarded retraining incentive benefits under
26 subparagraphs 1. to 4. of this paragraph, may elect to receive in lieu of
27 retraining incentive benefits, an amount equal to sixty-six and two-thirds

- 1 percent (66-2/3%) of the employee's average weekly wage, not to exceed
2 seventy-five percent (75%) of the state average weekly wage as
3 determined by KRS 342.740 multiplied by the disability rating of
4 twenty-five percent (25%) for a period not to exceed four hundred
5 twenty-five (425) weeks, or until the employee reaches sixty-five (65)
6 years of age, whichever occurs first, KRS 342.730(4) notwithstanding.
- 7 8. A claim for retraining incentive benefits provided under this section may
8 be filed, but benefits shall not be payable, while an employee is
9 employed in the severance or processing of coal as defined in KRS
10 342.0011(23).
- 11 9. If an employer appeals an award of retraining incentive benefits, upon an
12 employee's motion, an administrative law judge may grant retraining
13 incentive benefits pending appeal as interlocutory relief.
- 14 10. If an employee elects to defer payment of retraining incentive benefits
15 for a period of retraining longer than three hundred sixty-five (365) days,
16 benefits otherwise payable shall be reduced week-for-week for each
17 week retraining benefits are further deferred;
- 18 (b) 1. If an employee has a radiographic classification of category 1/0, 1/1, or
19 1/2 coal workers' pneumoconiosis and respiratory impairment evidenced
20 by spirometric test values of fifty-five percent (55%) or more but less
21 than eighty percent (80%) of the predicted normal values, or category
22 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and spirometric test values
23 of eighty percent (80%) or more of the predicted normal values, there
24 shall be an irrebuttable presumption that the employee has a disability
25 rating of twenty-five percent (25%) resulting from exposure to coal dust,
26 and the employee shall be awarded an income benefit which shall be an
27 amount equal to sixty-six and two-thirds percent (66-2/3%) of the

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

6 2. An employee who is awarded benefits under this paragraph may, at the
7 time of the award or before benefit payments begin, elect to receive
8 retraining incentive benefits provided under paragraph (a)1. to 6. of this
9 subsection, in lieu of income benefits awarded under this paragraph,
10 provided that such option is available one (1) time only and is not
11 revocable~~revokable~~, and provided that in no event shall income
12 benefits payable under this paragraph be stacked or added to retraining
13 incentive income benefits paid or payable under subparagraphs 1. to 6.
14 of paragraph (a)1. to 6. of this subsection to extend the period of
15 disability;

16 (c) If it is determined that an employee has a radiographic classification of
17 category 1/0, 1/1, or 1/2, and respiratory impairment resulting from exposure
18 to coal dust as evidenced by spirometric test values of less than fifty-five
19 percent (55%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal
20 workers' pneumoconiosis and respiratory impairment evidenced by
21 spirometric test values of fifty-five percent (55%) or more but less than eighty
22 percent (80%) of the predicted normal values, or category 3/2 or 3/3 coal
23 workers' pneumoconiosis and spirometric test values of eighty percent (80%)
24 or more, there shall be an irrebuttable presumption that the employee has a
25 disability rating of fifty percent (50%) resulting from exposure to coal dust,
26 and the employee shall be awarded an income benefit which shall be an
27 amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's

1 average weekly wage but not to exceed seventy-five percent (75%) of the state
2 average weekly wage as determined by KRS 342.740 multiplied by the
3 disability rating of fifty percent (50%). The award shall be payable for a
4 period not to exceed four hundred twenty-five (425) weeks;

5 (d) If it is determined that an employee has a radiographic classification of
6 category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis, based on the latest
7 ILO International Classification of Radiographics, and respiratory impairment
8 as evidenced by spirometric test values of less than fifty-five percent (55%) of
9 the predicted normal values or category 3/2 or 3/3 pneumoconiosis and
10 respiratory impairment evidenced by spirometric test values of fifty-five
11 percent (55%) or more but less than eighty percent (80%) of the predicted
12 normal values, there shall be an irrebuttable presumption that the employee
13 has a seventy-five percent (75%) disability rating resulting from exposure to
14 coal dust and the employee shall be awarded income benefits which shall be
15 equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average
16 weekly wage but not to exceed seventy-five percent (75%) of the state average
17 weekly wage as determined by KRS 342.740 multiplied by the disability
18 rating of seventy-five percent (75%). The award shall be payable for a period
19 not to exceed five hundred twenty (520) weeks. Income benefits awarded
20 under this paragraph shall be payable to the employee during the disability;
21 and

22 (e) If it is determined that an employee has radiographic classification of 3/2 or
23 3/3 occupational pneumoconiosis and respiratory impairment evidenced by
24 spirometric test values of less than fifty-five percent (55%) of the predicted
25 normal values, or complicated pneumoconiosis (large opacities category A, B,
26 or C progressive massive fibrosis), there shall be an irrebuttable presumption
27 that the employee is totally disabled resulting from exposure to coal dust, and

1 the employee shall be awarded income benefits equal to sixty-six and two-
2 thirds percent (66-2/3%) of the employee's average weekly wage but not more
3 than one hundred percent (100%) of the state average weekly wage and not
4 less than twenty percent (20%) of the average weekly wage of the state as
5 determined by KRS 342.740. Income benefits awarded under this paragraph
6 shall be payable to the employee during such disability.

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

12 (3) When valid spirometric tests are not provided and a physician certifies to the
13 administrative law judge that spirometric testing is not medically indicated because
14 of the permanent physical condition of the employee, the administrative law judge
15 shall make his or her decision on the basis of evidence admitted which establishes
16 the existence of a diagnosis of occupational pneumoconiosis and respiratory
17 impairment due to the occupational pneumoconiosis. The evidence submitted by the
18 employee shall include one (1) or more arterial blood gas studies performed in
19 accordance with accepted medical standards. Income benefits shall not be awarded
20 in the absence of valid spirometric tests if the claimant's PO₂ arterial blood gas
21 value is equal to or higher than one (1) standard deviation from the normal value
22 obtained by the formula $(103.5 - 0.42X)$, where X equals the claimant's age at the
23 time of the arterial blood gas study.

24 (4) Upon request, the commissioner shall refer an employee who has been awarded
25 retraining incentive benefits under subsection (1)(a) of this section to the Office of
26 Vocational Rehabilitation for evaluation and assessment of the training, education,
27 or other services necessary to prepare the employee for a trade, occupation, or

1 profession that will return the employee to remunerative employment, or services
2 necessary and appropriate to prepare and enable the employee to successfully
3 complete a bona fide training or education program approved by the commissioner.
4 The commissioner shall contract with the Office of Vocational Rehabilitation to
5 provide vocational rehabilitation or education services commensurate with the skill
6 levels and abilities of the employee. Services provided under this subsection shall
7 be funded by the coal workers' pneumoconiosis fund, KRS 342.~~1~~1242
8 notwithstanding, for claims filed on or before June 30, 2017, and by the employer
9 for claims filed after June 30, 2017.

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

13 (a) Define a "bona fide training or education program" to mean a postsecondary
14 education or training program, including but not limited to the postsecondary
15 programs registered with the Higher Education Assistance Authority, and
16 successful completion of which will qualify the person completing the course
17 for a trade, occupation, or profession, and which program can be completed
18 within the period benefits are payable under subsection (1)(a) of this section;

19 (b) Establish requirements for approval and certification of a bona fide training or
20 education program;

21 (c) Provide that funds paid to the training or education program by the employer
22 as required under subsection (1)(a)4. of this section shall be applied only to
23 instruction, tuition, material costs, and any fees necessary for the completion
24 of the program;

25 (d) Establish requirements for successful participation in and completion of an
26 approved and certified bona fide training or education program, and eligibility
27 standards that must be satisfied to receive sums to be paid by the employer

1 pursuant to subsection (1)(a)6. of this section; and

2 (e) Establish attendance, performance and progress standards, and reporting
3 requirements in consultation with the Kentucky Adult Education Program
4 within the Council on Postsecondary Education as conditions that must be
5 satisfied to receive retraining incentive income benefits pursuant to subsection
6 (1)(a)3. of this section.

7 (6) In no event shall income benefits awarded under this section be stacked or added to
8 income benefits awarded under KRS 342.730 to extend the period of disability and
9 in no event shall income or retraining incentive benefits be paid to the employee
10 while the employee is working in the mining industry in the severance or processing
11 of coal as defined in KRS 342.0011(23)(a).

12 ➔Section 8. KRS 342.792 is amended to read as follows:

13 (1) The claim of any miner last exposed to the occupational hazards of coal workers'
14 pneumoconiosis between December 12, 1996, and July 15, 2002, shall nonetheless
15 be governed by the provisions of KRS 342.732 and notwithstanding the provisions
16 of KRS 342.125 all claims for benefits which were filed for last injurious
17 occupational exposure to coal dust occurring between December 12, 1996, and July
18 15, 2002, shall be considered pursuant to the provisions of KRS 342.732 and
19 administrative regulations promulgated by the commissioner, and closed claims,
20 except claims dismissed for reasons other than failure to meet medical eligibility
21 standards, may be reopened by the claimant. Income or retraining incentive benefits
22 shall be awarded thereon as if the entitlement standards established by the
23 amendments to KRS 342.732 were effective at the time of last exposure. Any
24 benefits previously granted by an award or settlement shall be credited against any
25 subsequent award or settlement and no interest shall be payable on additional
26 benefits. A previous grant of retraining incentive benefits shall be credited only to
27 the extent that the benefits were actually paid. All income or retraining incentive

1 benefits greater than those which would have been awarded were not these new
2 provisions applicable shall be paid without interest from the Kentucky coal workers'
3 pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding, for claims
4 filed on or before June 30, 2017, and by the employer for claims filed after June
5 30, 2017.

6 (2) The original claim of any miner last exposed to the occupational hazards of coal
7 workers' pneumoconiosis prior to December 12, 1996, which was subject to a
8 university evaluation pursuant to KRS 342.315 and was dismissed upon a finding
9 that the miner did not prove the presence of coal workers' pneumoconiosis
10 radiographically may be reopened by the claimant notwithstanding the provisions of
11 KRS 342.125, pursuant to administrative regulations adopted by the commissioner.
12 Income benefits may be awarded thereon pursuant to entitlement standards effective
13 as of the date of last exposure, except the income or retraining benefits shall be paid
14 without interest from the Kentucky coal workers' pneumoconiosis fund, the
15 provisions of KRS 342.1242 notwithstanding, for claims filed on or before June
16 30, 2017, and by the employer for claims filed after June 30, 2017.

17 (3) Notwithstanding the provisions of KRS 342.316(4)(a), the coal workers'
18 pneumoconiosis claim of any miner last exposed between December 12, 1996, and
19 July 15, 2002, may be filed with the commissioner on or before December 12, 2003,
20 or within the time frame prescribed by KRS 342.316(4)(a), whichever is longer. All
21 income or retraining incentive benefits greater than those which would have been
22 awarded were not these new provisions applicable shall be paid by the Kentucky
23 coal workers' pneumoconiosis fund without interest, the provisions of KRS
24 342.1242 notwithstanding, for claims filed on or before June 30, 2017, and by the
25 employer for claims filed after June 30, 2017.

26 (4) Administrative regulations promulgated by the commissioner pursuant to
27 subsections (1) and (2) of this section shall provide that chest X-rays previously

1 taken at university medical schools pursuant to KRS 342.315 shall be obtained by
2 the commissioner and forwarded to three (3) randomly selected "B" readers for
3 determination of consensus pursuant to KRS 342.316(3)(b)4.e. The claim shall be
4 assigned to an administrative law judge for determination of whether the claim
5 should be reopened and the award of additional benefits, if any.

6 ➔Section 9. KRS 342.794 is amended to read as follows:

- 7 (1) The commissioner shall maintain a list of duly qualified "B" reader physicians who
8 are licensed in the Commonwealth. The list shall include "B" reader physicians at
9 the university medical schools and other "B" reader physicians certified by the
10 National Institute of Occupational Safety and Health (NIOSH) who have agreed to
11 interpret chest X-rays pursuant to KRS 342.316 for a fee to be fixed by the
12 commissioner and paid by the Kentucky coal workers' pneumoconiosis fund, the
13 provisions of KRS 342.1242 notwithstanding, for claims filed on or before June
14 30, 2017, and by the employer for claims filed after June 30, 2017.
- 15 (2) Physicians from the "B" reader list shall be utilized as necessary to obtain consensus
16 classifications of chest films in coal workers' pneumoconiosis claims. The
17 consensus classification shall be presumed to be the correct classification of the
18 employee's condition unless overcome by clear and convincing evidence. If an
19 administrative law judge finds that the presumption of correctness of the consensus
20 reading has been overcome, the reasons shall be specially stated in the
21 administrative law judge's order.
- 22 (3) "'B' reader" means a physician who has demonstrated proficiency in evaluating
23 chest roentgenograms for roentgenographic quality and in the use of the ILO
24 classification for interpreting chest roentgenograms for pneumoconiosis and other
25 diseases by taking and passing a specially designed proficiency examination given
26 on behalf of the National Institute of Occupational Safety and Health (NIOSH) or
27 by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or

1 successors.

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

13 ➔Section 10. KRS 342.120 is amended to read as follows:

14 (1) There is created the Division of Workers' Compensation Funds in the Department
15 of Workplace Standards which shall be responsible for the administration of the
16 special fund and the coal workers' pneumoconiosis fund and the maintenance of
17 records regarding the payment of claims by these funds. **The Division of Workers'**
18 **Compensation Funds shall have no responsibility for the coal workers'**
19 **pneumoconiosis fund once the assets and liabilities have been transferred to the**
20 **Kentucky Employers' Mutual Insurance Authority, which will administer the**
21 **fund pursuant to Section 3 of this Act.** The Division of Workers' Compensation
22 Funds shall be headed by a director appointed by the secretary of the Labor Cabinet,
23 with the prior written approval of the Governor pursuant to KRS 12.050. The
24 director shall be responsible for overseeing the administration of the funds and the
25 maintenance of records regarding the payment of claims by the funds.

26 (2) The special fund shall have no liability upon any claim in which the injury occurred,
27 or for cumulative trauma, the disability became manifest, or, for occupational

1 disease, if the date of injury or last exposure occurred, after December 12, 1996.

2 (3) Where the employer has settled its liability for income benefits and thereafter a
3 determination has been made of the special fund's liability, the special fund portion
4 of the benefit rate shall be paid over the maximum period provided for by statute for
5 that disability, with the period of payment beginning on the date settlement was
6 approved by an administrative law judge. This provision is remedial and shall apply
7 to all pending and future claims.

8 ➔Section 11. The following KRS section is repealed:

9 342.1241 Legislative findings and declarations on Kentucky coal workers'
10 pneumoconiosis fund.

11 ➔Section 12. Whereas the economic decline of the coal industry requires
12 immediate action with regard to the funding of the Kentucky coal workers'
13 pneumoconiosis fund, which directly impacts the economic well-being of coal employers
14 and employees, an emergency is declared to exist and this Act takes effect upon its
15 passage and approval by the Governor or upon its otherwise becoming a law.