

1 AN ACT relating to the recognition and registration of professional employer  
2 organizations.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
5 READ AS FOLLOWS:

6 *The General Assembly finds and declares that:*

7 *(1) Professional employer organizations provide a valuable service to commerce and*  
8 *the citizens of this Commonwealth by increasing the opportunities of employers*  
9 *to develop cost-effective methods of satisfying their personnel requirements and*  
10 *providing employees with access to certain employment benefits which might not*  
11 *otherwise be available; and*

12 *(2) Professional employer organizations operating in this Commonwealth should be*  
13 *properly recognized and regulated.*

14 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
15 READ AS FOLLOWS:

16 *As used in Sections 1 to 11 of this Act, unless the context requires otherwise:*

17 *(1) "Client" means any person who enters into a professional employer agreement*  
18 *with a professional employer organization.*

19 *(2) "Co-employer" means either a professional employer organization or a client.*

20 *(3) "Co-employment relationship" means a relationship which is intended to be an*  
21 *ongoing relationship rather than a temporary or project-specific relationship*  
22 *wherein the rights, duties, and obligations of an employer which arise out of an*  
23 *employment relationship have been allocated between co-employers, wherein:*

24 *(a) The professional employer organization is entitled to enforce only such*  
25 *employer rights and is subject to only those obligations specifically allocated*  
26 *to the professional employer organization;*

27 *(b) The client is entitled to enforce those rights, and obligated to provide and*

1 perform those employer obligations, allocated to the client; and  
2 (c) The client is entitled to enforce any right and obligated to perform any  
3 obligation of an employer not specifically obligated to the professional  
4 employer organization;  
5 by the professional employer agreement or Sections 1 to 11 of this Act.

6 (4) "Covered employee" means an individual having a co-employment relationship  
7 with a professional employer organization and a client who meets the following  
8 criteria:

9 (a) The individual has received written notice of co-employment with the  
10 professional employer organization; and

11 (b) The individual's co-employment relationship is pursuant to a professional  
12 employer agreement under Sections 1 to 11 of this Act.

13 Individuals who are officers, directors, shareholders, partners, and managers of  
14 the client will be covered employees except to the extent the professional employer  
15 organization and the client have expressly agreed in the professional employer  
16 agreement that these individuals would not be covered employees, provided these  
17 individuals meet the criteria of this subsection and act as operational managers  
18 or perform day-to-day operational services for the client.

19 (5) "Insurer" includes every person engaged as principal and as indemnitor, surety,  
20 or contractor in the business of entering into contracts of insurance as defined by  
21 KRS 304.1-040.

22 (6) "Professional employer organization group" means two (2) or more professional  
23 employer organizations that are majority owned or commonly controlled by the  
24 same entity, parent, or controlling person or persons.

25 (7) "Person" means any individual, partnership, corporation, limited liability  
26 company, association, or any other form of legally recognized entity.

27 (8) "Professional employer agreement" means a written contract by and between a

1 client and a professional employer organization that provides for:

2 (a) The co-employment of covered employees;

3 (b) The allocation of employer rights and obligations between the client and the  
4 professional employer organization with respect to the covered employees;  
5 and

6 (c) The assumption of responsibilities required under Sections 1 to 11 of this  
7 Act by the client and the professional employer organization.

8 (9) (a) "Professional employer organization" means any person engaged in the  
9 business of providing professional employer services or conducting business  
10 as a staff leasing company, registered staff leasing company, employee  
11 leasing company, administrative employer, or other similar name.

12 (b) "Professional employer organization" does not mean:

13 1. Persons providing temporary help services;

14 2. Independent contractor arrangements by which a person assumes  
15 responsibility for the product produced or service performed by the  
16 person or the person's agents and retains and exercises primary  
17 direction and control over the work performed by the individuals  
18 whose services are supplied under these arrangements; and

19 3. Arrangements wherein a person, whose principal business activity is  
20 not entering into professional employer arrangements and which does  
21 not hold itself out as a professional employer organization, shares  
22 employees with a commonly owned company within the meaning of  
23 Section 414(b) and (c) of the Internal Revenue Code of 1986, as  
24 amended.

25 (10) "Professional employer services" means the service of entering into a co-  
26 employment relationship under Sections 1 to 11 this Act in which all or a  
27 majority of the employees providing services to a client or to a division or work

1 unit of a client are covered employees.

2 (11) "Registrant" means a professional employer organization registered under  
3 Sections 1 to 11 this Act.

4 (12) "Temporary help service" means services consisting of a person:

5 (a) Recruiting and hiring its own employees;

6 (b) Finding other organizations that need the services of those employees;

7 (c) Assigning those employees to perform work at or services for the other  
8 organizations to support or supplement the other organizations' workforce,  
9 or to provide assistance in special work situations, such as but not limited to  
10 employee absences, skill shortages, seasonal workloads, or performing  
11 special assignments or projects; and

12 (d) Customarily attempting to reassign the employees to other organizations  
13 when they finish each assignment.

14 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
15 READ AS FOLLOWS:

16 (1) Nothing in any professional employer agreement, or in Sections 1 to 11 this Act,  
17 shall:

18 (a) Affect, modify, or amend any collective bargaining agreement, or the rights  
19 or obligations of any covered employee, client, or professional employer  
20 organization, covered by the federal Railway Labor Act or the National  
21 Labor Relations Act;

22 (b) Affect, modify, or amend any contractual relationship or restrictive  
23 covenant between a covered employee and any client in effect at the time a  
24 professional employer agreement becomes effective or any contractual  
25 relationship or restrictive covenant that is entered into subsequently  
26 between a client and a covered employee. A professional employer  
27 organization shall have no responsibility in connection with, or arising out

1 of, any existing or new contractual relationship or restrictive covenant  
2 between the covered employee and client unless the professional employer  
3 organization has specifically agreed otherwise in writing;

4 (c) Diminish, abolish, or remove rights of covered employees to a client or  
5 obligations of the client to a covered employee existing prior to the effective  
6 date of the professional employer agreement;

7 (d) Create any new or additional enforceable right of a covered employee  
8 against a professional employer organization that is not specifically  
9 provided by the professional employer agreement or Sections 1 to 11 of this  
10 Act; or

11 (e) Affect, modify, or amend any state, local, or federal licensing, registration,  
12 or certification requirement applicable to any client or covered employee. A  
13 covered employee who must be licensed, registered, or certified according to  
14 statute or administrative regulation is deemed solely an employee of the  
15 client for purposes of any such license, registration, or certification  
16 requirement. A professional employer organization shall not be deemed to  
17 engage in any occupation, trade, profession, or other activity that is subject  
18 to licensing, registration, or certification requirements, or is otherwise  
19 regulated by a governmental entity, solely by entering into and maintaining  
20 a co-employment relationship with a covered employee who is subject to  
21 those requirements or regulations. A client shall have the sole right of  
22 direction and control of the professional or licensed activities of a covered  
23 employee and of the client's business. The covered employees and clients  
24 shall remain subject to regulation by the regulatory agency responsible for  
25 licensing, registration, or certification of the covered employees or clients.

26 (2) For purposes of determining tax credits or other economic incentives provided by  
27 the Commonwealth based on employment, covered employees shall be deemed

1 employees solely of the client. A client shall be entitled to the benefit of any tax  
2 credit, economic incentive, or other benefit arising as the result of the  
3 employment of a covered employee of such client. Notwithstanding that the  
4 professional employer organization is the federal form W-2 wage and tax  
5 statement reporting employer, the client shall continue to qualify for the tax  
6 credit, economic incentive, or benefit. If the grant or amount of any incentive is  
7 based on the number of employees, then each client shall be treated as employing  
8 only those covered employees that are co-employed by each client. Covered  
9 employees working for other clients of the professional employer organization  
10 shall not be counted. Each professional employer organization shall provide,  
11 upon request by a client or any state agency responsible for administration of any  
12 tax credit, economic incentive, or benefit, information reasonably required to  
13 support any request, claim, application, or any other action by a client seeking  
14 any tax credit, economic incentive, or benefit, including wage information,  
15 locations, and duties of covered employees.

16 (3) With respect to a bid, contract, purchase order, or agreement entered into with  
17 the Commonwealth or any political subdivision of the Commonwealth, a client  
18 company's status or certification as a small, minority-owned, disadvantaged, or  
19 woman-owned business enterprise or as a historically underutilized business  
20 shall not be affected because the client company has entered into an agreement with  
21 or uses the services of a professional employer organization.

22 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
23 READ AS FOLLOWS:

24 (1) A person engaged in providing professional employer services pursuant to a co-  
25 employment relationship in which all or a majority of the employees of a client  
26 are covered employees shall be registered under Sections 1 to 11 of this Act. A  
27 person who is not registered under Sections 1 to 11 of this Act shall not offer or

1 provide professional employer services in this Commonwealth and shall not use  
2 the names professional employer organization, PEO, staff leasing company,  
3 employee leasing company, administrative employer, or any other name or title  
4 representing professional employer services.

5 (2) Each applicant for registration under Sections 1 to 11 of this Act shall provide  
6 the Department of Workers' Claims with the following:

7 (a) The name or names under which the professional employer organization  
8 conducts business;

9 (b) The address of the principal place of business of the professional employer  
10 organization and the address of each office it maintains in this  
11 Commonwealth;

12 (c) The professional employer organization's taxpayer identification number or  
13 federal and state employer identification number;

14 (d) A list by, jurisdiction, of each name under which the professional employer  
15 organization has operated in the preceding five (5) years, including any  
16 alternative names, names of predecessors, and, if known, successor  
17 business entities;

18 (e) A statement of ownership which shall include the name and evidence of the  
19 business experience of any person that, individually or acting in concert  
20 with one or more other persons, owns or controls, directly or indirectly,  
21 twenty-five percent (25%) or more of the equity interest in the professional  
22 employer organization; and

23 (f) A financial statement setting forth the financial condition of the  
24 professional employer organization or professional employer organization  
25 group. At the time of the initial application for a new registration, the  
26 applicant shall submit the most recent audit of the applicant, which shall  
27 not be older than thirteen (13) months. Thereafter, a professional employer

1           organization or professional employer organization group shall file a  
2           succeeding audit on an annual basis within one hundred eighty (180) days  
3           after the end of the fiscal year. An applicant may apply for an extension  
4           with the Department of Workers' Claims but any extension request shall be  
5           accompanied by a letter from the auditors stating the reasons for the delay  
6           and the anticipated date for completion of the audit. The financial statement  
7           shall be prepared in accordance with generally accepted accounting  
8           principles and audited by an independent certified public accountant  
9           licensed to practice in the jurisdiction in which such accountant is located,  
10          and shall be without qualification as to the going concern status of the  
11          professional employer organization. A professional organization group may  
12          submit combined or consolidated audited financial statements to meet the  
13          requirements of this paragraph. A professional employer organization that  
14          has not had sufficient operating history to have audited financial statements  
15          based on at least twelve (12) months of operating history must meet the  
16          requirements in Section 6 of this Act and present financial statements  
17          reviewed by a certified public accountant.

18          (3) Each professional employer organization operating within this Commonwealth  
19          as of the effective date of this Act shall complete its initial registration no later  
20          than one hundred eighty (180) days after the effective date of this Act. The initial  
21          registration shall be valid until one hundred and eighty (180) days from the end  
22          of the professional employer organization's first fiscal year that is more than one  
23          (1) fiscal year after the effective date of this Act.

24          (4) Each professional employer organization not operating within this  
25          Commonwealth as of the effective date of this Act shall complete its initial  
26          registration prior to initiating operations within this Commonwealth. If a  
27          professional employer organization not operating within this Commonwealth



1 becomes aware that an existing client that is not based in this Commonwealth  
2 had employees and operations in this Commonwealth, the professional employer  
3 organization shall either decline to provide professional employer services for  
4 those employees or notify the Department of Workers' Claims within five (5)  
5 business days of its knowledge of this fact and file a limited registration  
6 application or file a full business registration if there are more than fifty (50)  
7 covered employees. The Department of Workers' Claims may issue an interim  
8 operating permit for the period the registration application is pending if the  
9 professional employer organization is currently registered or licensed by another  
10 state and the Department of Workers' Claims determines it to be in the best  
11 interests of the potential covered employees.

12 (5) Within one hundred eighty (180) days after the end of the fiscal year, a registrant  
13 shall renew its registration by notifying the Department of Workers' Claims of  
14 any changes in the information provided in the registrant's most recent  
15 registration or renewal. A registrant's existing registration shall remain in effect  
16 during the pendency of a renewal application.

17 (6) Professional employer organizations in a professional employer organization  
18 group may satisfy the reporting and financial requirements of Sections 1 to 11 of  
19 this Act on a combined or consolidated basis provided that each member of the  
20 professional employer organization group guarantees the financial capacity  
21 obligations under Sections 1 to 11 of this Act of each other member of the  
22 professional employer organization group. In the case of a professional employer  
23 organization group that submits a combined or consolidated audited financial  
24 statement that includes entities that are not professional employer organizations  
25 or that are not in the professional employer organization group, the controlling  
26 entity of the professional employer organization group under the consolidated or  
27 combined statement must guarantee the obligations of the professional employer

- 1        organizations in the professional employer organization group.
- 2        (7) (a) A professional employer organization is eligible for a limited registration  
3                under Sections 1 to 11 of this Act if the professional employer organization:  
4                1. Submits a properly executed request for limited registration on a form  
5                        provided by the Labor Cabinet;  
6                2. Is domiciled outside this Commonwealth and is licensed or registered  
7                        as a professional employer organization in another state;  
8                3. Does not maintain an office in this Commonwealth or directly solicit  
9                        clients located or domiciled within this Commonwealth; and  
10                4. Does not have more than fifty (50) covered employees domiciled or  
11                        employed in this Commonwealth on any given day.
- 12        (b) A limited registration is valid for one (1) year and may be renewed.
- 13        (c) A professional employer organization seeking limited registration under  
14                this subsection shall provide the Department of Workers' Claims with  
15                information and documentation necessary to show that the professional  
16                employer organization qualifies for a limited registration.
- 17        (d) Section 6 of this Act does not apply to applicants for limited registration.
- 18        (8) The Department of Workers' Claims shall maintain a list of professional  
19                employer organizations registered pursuant to Sections 1 to 11 of this Act that is  
20                readily available to the public by electronic or other means.
- 21        (9) The Department of Workers' Claims shall to the extent practical permit by  
22                administrative regulation the acceptance of electronic filings, including  
23                applications, documents, reports, and other filings required under Sections 1 to  
24                11 of this Act. The Department of Workers' Claims may provide for the  
25                acceptance of electronic filings and other assurance by an independent and  
26                qualified assurance organization approved by the secretary that provides  
27                satisfactory assurance of compliance acceptable to the Department of Workers'

1       Claims consistent with or in lieu of the requirements of this section and Section 6  
 2       of this Act, and other requirements of Sections 1 to 11 of this Act. The secretary  
 3       shall permit a professional employer organization to authorize an approved  
 4       assurance organization to act on behalf of the professional employer  
 5       organization in complying with the registration requirements of Sections 1 to 11  
 6       of this Act, including electronic filings of information and payment of  
 7       registration fees. Use of an approved assurance organization shall be optional for  
 8       a registrant. Nothing in this subsection shall limit or change the Department of  
 9       Workers' Claims' authority to register or terminate registration of a professional  
 10       employer organization or to investigate or enforce any provision of Sections 1 to  
 11       11 of this Act.

12       (10) All records, reports, and other information obtained from a professional  
 13       employer organization under Sections 1 to 11 of this Act, except to the extent  
 14       necessary for proper administration by the Department of Workers' Claims, shall  
 15       be confidential and shall not be published or open to public inspection other than  
 16       to public employees in the performance of their public duties.

17       (11) The Department of Workers' Claims may promulgate administrative regulations  
 18       and prescribe forms necessary to promote the efficient administration of this  
 19       section.

20       ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
 21 READ AS FOLLOWS:

22       (1) Upon filing an initial registration statement pursuant to Sections 1 to 11 of this  
 23       Act, a professional employer organization shall pay an initial registration fee not  
 24       to exceed five hundred dollars (\$500).

25       (2) Upon each annual renewal of a registration statement filed under Sections 1 to  
 26       11 of this Act, a professional employer organization shall pay a renewal fee not to  
 27       exceed two hundred fifty dollars (\$250).

1 (3) Each professional employer organization seeking limited registration under  
 2 Section 4 of this Act shall pay a fee in the amount not to exceed two hundred fifty  
 3 dollars (\$250) upon initial application for the limited registration and upon each  
 4 annual renewal of limited registration.

5 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
 6 READ AS FOLLOWS:

7 Except as provided in Section 4 of this Act, each professional employer organization or  
 8 collectively each professional employer organization group shall either:

9 (1) Maintain positive working capital as indicated by current assets minus current  
 10 liabilities and defined by generally accepted accounting principles at registration  
 11 as reflected in the financial statements submitted to the Department of Workers'  
 12 Claims with the initial registration; or

13 (2) Provide a bond, irrevocable letter of credit, or securities with a minimum market  
 14 value equaling the deficiency plus one hundred thousand dollars (\$100,000) to  
 15 the Department of Workers' Claims if the professional employer organization or  
 16 professional employer organization group does not have positive working capital.  
 17 The bond shall be held by a depository designated by the Department of Workers'  
 18 Claims, securing payment by the professional employer organization of all taxes,  
 19 wages, benefits, or other entitlement due to or with respect to covered employees  
 20 should the professional employer organization fail to make payments when due.

21 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
 22 READ AS FOLLOWS:

23 (1) Except as specifically provided in Sections 1 to 11 of this Act, or in a professional  
 24 employer agreement, in each co-employment relationship:

25 (a) The client shall be entitled to exercise all rights, and shall be obligated to  
 26 perform all duties and responsibilities, otherwise applicable to an employer  
 27 in an employment relationship;

1       **(b) The professional employer organization shall be entitled to exercise only**  
2       **those rights, and shall be obligated to perform only those duties and**  
3       **responsibilities, specifically required by Sections 1 to 11 of this Act or set**  
4       **forth in the professional employer agreement. The rights, duties, and**  
5       **obligations of the professional employer organization as co-employer with**  
6       **respect to any covered employee shall be limited to those arising out of the**  
7       **professional employer agreement and Sections 1 to 11 of this Act during the**  
8       **term of co-employment by the professional employer organization of the**  
9       **covered employee; and**

10       **(c) Unless otherwise expressly agreed by the professional employer**  
11       **organization and the client in a professional employer agreement, the client**  
12       **retains the exclusive right to direct and control the covered employees as**  
13       **necessary to conduct the client's business, to discharge any of the client's**  
14       **fiduciary responsibilities, or to comply with any licensure requirements**  
15       **applicable to the client of the covered employees.**

16       **(2) Except as otherwise provided in Sections 1 to 11 of this Act, the co-employment**  
17       **relationship between the client and the professional employer organization, and**  
18       **between each co-employer and each covered employee, shall be governed by the**  
19       **professional employer agreement. Each professional employer agreement shall:**

20       **(a) Include the allocation of rights, duties, and obligations as set forth in**  
21       **subsection (1) of this section;**

22       **(b) Provide that the professional employer organization shall have**  
23       **responsibility to pay wages to covered employees; to withhold, collect, report**  
24       **and remit payroll and unemployment taxes; and, to the extent the**  
25       **professional employer organization has assumed responsibility in the**  
26       **professional employer agreement, to make payments for employee benefits**  
27       **for covered employees as a result of the outsourcing of payroll duty to the**

1           professional employer organization by the client. As used in this paragraph,  
2           "wages" does not include any obligation between a client and a covered  
3           employee for payments beyond or in addition to the covered employee's  
4           salary, draw, or regular rate of pay such as bonuses, commissions,  
5           severance pay, deferred compensation, profit sharing, or vacation, sick, or  
6           other paid time off, unless the professional employer organization has  
7           expressly agreed to assume liability for payments in the professional  
8           employer agreement;

9           (c) Provide that the professional employer organization shall have a right to  
10           hire, discipline, and terminate a covered employee as may be necessary to  
11           fulfill the professional employer organization's responsibilities under  
12           Section 1 to 11 of this Act and the professional employer agreement. The  
13           client shall have a right to hire, discipline, and terminate a covered  
14           employee; and

15           (d) Provide that the responsibility to obtain and maintain workers'  
16           compensation coverage for covered employees from an insurer licensed to  
17           do business in this Commonwealth and otherwise in compliance with all  
18           applicable requirements shall be specifically allocated to either the client or  
19           the professional employer organization in the professional employment  
20           agreement.

21           (3) A professional employer organization shall provide written notice to each covered  
22           employee affected by a professional employer agreement entered into by a  
23           professional employer organization. The notice shall set forth the general nature  
24           of the co-employment relationship between and among the professional employer  
25           organization, the client, and the covered employees.

26           (4) Except to the extent otherwise expressly provided by the applicable professional  
27           employer agreement:

- 1        (a) A client shall be solely responsible for workplace safety and for the quality  
2        and adequacy of the goods and services produced or sold in the client's  
3        business;
- 4        (b) A client shall be solely responsible for directing, supervising, training, and  
5        controlling the work of the covered employees with respect to the business  
6        activities of the client and for the acts, errors, or omissions of the covered  
7        employees with regard to these activities;
- 8        (c) A client shall not be liable for the acts, errors, or omissions of a  
9        professional employer organization, or of any covered employee of the client  
10       and a professional employer organization when the covered employee is  
11       acting under the express direction and control of the professional employer  
12       organization;
- 13       (d) A professional employer organization shall not be liable for the acts, errors,  
14       or omissions of a client or of any covered employee of the client when the  
15       covered employee is acting under the express direction and control of the  
16       client;
- 17       (e) Nothing in this subsection shall serve to limit any contractual liability or  
18       obligation specifically provided in the written professional employer  
19       agreement; and
- 20       (f) A covered employee is not, solely as a result of being a covered employee of  
21       a professional employer organization, an employee of the professional  
22       employer organization for the purposes of general liability insurance,  
23       fidelity bonds, surety bonds, employer's liability that is not covered by  
24       workers' compensation, or liquor liability insurance carried by the  
25       professional employer organization unless the covered employees are  
26       included by specific reference in the professional employer agreement and  
27       applicable prearranged employment contract, insurance contract, or bond.

1 (5) A professional employer organization under Sections 1 to 11 of this Act is not  
2 engaged in the sale of insurance or in acting as a third-party administrator by  
3 offering, marketing, selling, administering, or providing professional employer  
4 services which include services and employee benefit plans for covered  
5 employees.

6 (6) For purposes of the Commonwealth or any city, county, or other political  
7 subdivision thereof:

8 (a) Covered employees whose services are subject to sales tax shall be deemed  
9 the employees of the client for purposes of collecting and levying sales tax  
10 on the services performed by the covered employee. Nothing contained in  
11 Sections 1 to 11 of this Act shall relieve a client of any sales tax liability  
12 with respect to its goods or services;

13 (b) Any tax or assessment imposed upon professional employer services or any  
14 business license or other fee which is based upon gross receipts shall allow  
15 a deduction for the gross income or receipts of the business derived from  
16 performing professional employer services that are equal to that portion of  
17 the fee charged to a client that represents the actual cost of wages and  
18 salaries, benefits, workers' compensation, payroll taxes, withholding, or  
19 other assessments paid to or on behalf of a covered employee by the  
20 professional employer organization under a professional employer  
21 agreement;

22 (c) Any tax, assessment, or mandated expenditure on a per capita or per  
23 employee basis shall be assessed against the client for covered employees  
24 and against the professional employer organization for its employees who  
25 are not covered employees co-employed with a client. Benefits or monetary  
26 consideration that meet the requirements of mandates imposed on a client  
27 and that are received by covered employees through the professional



1           employer organization either through payroll or through benefit plans  
 2           sponsored by the professional employer organization shall be credited  
 3           against the client's obligation to fulfill the mandates; and  
 4           (d) In the case of a tax or assessment imposed or calculated upon the basis of  
 5           total payroll, the professional employer organization shall be eligible to  
 6           apply any small business allowance or exemption available to the client for  
 7           the covered employees for purpose of commuting the tax.

8           ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
 9 READ AS FOLLOWS:

10          (1) Any professional employer organization whose workers' compensation insurance  
 11          has been terminated within the past five (5) years in any jurisdiction due to a  
 12          determination that a professional employer organization arrangement was being  
 13          utilized to avoid premiums, taxes, or assessments otherwise payable by clients  
 14          shall be ineligible to register with the Department of Workers' Claims or to  
 15          remain registered, if previously registered.

16          (2) A client shall fulfill its statutory responsibility to secure benefits for covered  
 17          employees under this chapter by purchasing and maintaining a standard  
 18          workers' compensation policy approved by the commissioner of the Department  
 19          of Workers' Claims. A client may fulfill that responsibility by contracting with a  
 20          professional employer organization to secure coverage. In either event, it shall be  
 21          the responsibility of the client to maintain in its files, at all times, the certificate of  
 22          insurance, or a copy thereof, evidencing the existence of the required insurance.  
 23          The exposure and experience of the client shall be used in determining the  
 24          premium for the policy and shall include coverage for all covered employees.

25          (3) A temporary help service shall be deemed the employer of a temporary worker  
 26          and shall be subject to the provisions of this chapter.

27          ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO

1 READ AS FOLLOWS:

- 2 (1) A client and a registered professional employer organization shall each be  
3 deemed an employer under the laws of this Commonwealth for purposes of  
4 sponsoring retirement and welfare benefits plans for its covered employees.
- 5 (2) A fully insured welfare benefit plan offered to the covered employees of a  
6 professional employer organization shall be treated for the purposes of state law  
7 as a single employer welfare benefit plan.
- 8 (3) For purposes of sponsoring retirement and welfare benefit plans for its covered  
9 employees, a professional employer organization shall be considered the  
10 employer of all of its covered employees, and all covered employees of one (1) or  
11 more clients participating in a health benefit plan sponsored by a professional  
12 employer organization shall be considered employees of that professional  
13 employer organization.

14 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
15 READ AS FOLLOWS:

- 16 (1) For the purposes of KRS Chapter 341, covered employees of a registered  
17 professional employer organization shall be considered employees of the  
18 professional employer organization, which shall be responsible for the payment  
19 of contributions, penalties, and interest on wages paid by the professional  
20 employer organization to its covered employees during the term of the applicable  
21 professional employer agreement.
- 22 (2) The professional employer organization shall report and pay all required  
23 contributions to the unemployment insurance fund using the state employer  
24 identification number and the contribution rate of the professional employer  
25 organization.
- 26 (3) Upon the termination of a contract between a professional employer organization  
27 and a client or the failure of a professional employer organization to submit

1 reports or make tax payments as required by Sections 1 to 11 of this Act, the  
2 client shall be treated as a new employer without a previous experience record  
3 unless that client is otherwise eligible for an experience rating.

4 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO  
5 READ AS FOLLOWS:

6 (1) A person shall not knowingly:

7 (a) Offer or provide professional employer services or use the names  
8 professional employer organization, PEO, staff leasing, employee leasing,  
9 administrative employer, or other title representing professional employer  
10 services without first becoming registered under Sections 1 to 11 of this Act;  
11 or

12 (b) Provide false or fraudulent information to the Department of Workers'  
13 Claims in conjunction with any registration, renewal, or in any report  
14 required under Sections 1 to 11 of this Act.

15 (2) Action may be taken by the Department of Workers' Claims:

16 (a) Against any person for violation of subsection (1) of this section;

17 (b) Against a professional employer organization or the controlling person of a  
18 professional employer organization upon the conviction of a professional  
19 employer organization or the controlling person of a professional employer  
20 organization of a crime that relates to the operation of the professional  
21 employer organization or the ability of the registrant or the controlling  
22 person of the registrant to operate the professional employer organization;

23 (c) Against a professional employer organization or the controlling person of a  
24 professional employer organization for knowingly making a material  
25 misrepresentation to the Department of Workers' Claims or any other state  
26 agency; or

27 (d) Against a professional employer organization or the controlling person of a

1                   professional employer organization for a willful violation of Sections 1 to 11  
 2                   of this Act or any order or administrative regulation issued by the  
 3                   Department of Workers' Claims under the provisions of Sections 1 to 11 of  
 4                   this Act.

5                   (3) Upon finding that a professional employer organization or the controlling person  
 6                   of a professional employer organization has violated any provision of Sections 1  
 7                   to 11 this Act, the Department of Workers' Claims may:

8                   (a) Deny an application for a registration;

9                   (b) Revoke, restrict, or refuse a registration;

10                  (c) Impose a civil penalty not to exceed one thousand dollars (\$1,000) for each  
 11                  violation;

12                  (d) Place a registration on probation and subject to conditions specified by the  
 13                  Department of Workers' Claims; or

14                  (e) Issue a cease and desist order.

15                  ➔Section 12. KRS 342.0011 is amended to read as follows:

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

17                  (1) "Injury" means any work-related traumatic event or series of traumatic events,  
 18                  including cumulative trauma, arising out of and in the course of employment which  
 19                  is the proximate cause producing a harmful change in the human organism  
 20                  evidenced by objective medical findings. "Injury" does not include the effects of the  
 21                  natural aging process, and does not include any communicable disease unless the  
 22                  risk of contracting the disease is increased by the nature of the employment.  
 23                  "Injury" when used generally, unless the context indicates otherwise, shall include  
 24                  an occupational disease and damage to a prosthetic appliance, but shall not include  
 25                  a psychological, psychiatric, or stress-related change in the human organism, unless  
 26                  it is a direct result of a physical injury;

27                  (2) "Occupational disease" means a disease arising out of and in the course of the

- 1 employment;
- 2 (3) An occupational disease as defined in this chapter shall be deemed to arise out of  
3 the employment if there is apparent to the rational mind, upon consideration of all  
4 the circumstances, a causal connection between the conditions under which the  
5 work is performed and the occupational disease, and which can be seen to have  
6 followed as a natural incident to the work as a result of the exposure occasioned by  
7 the nature of the employment and which can be fairly traced to the employment as  
8 the proximate cause. The occupational disease shall be incidental to the character of  
9 the business and not independent of the relationship of employer and employee. An  
10 occupational disease need not have been foreseen or expected but, after its  
11 contraction, it must appear to be related to a risk connected with the employment  
12 and to have flowed from that source as a rational consequence;
- 13 (4) "Injurious exposure" shall mean that exposure to occupational hazard which would,  
14 independently of any other cause whatsoever, produce or cause the disease for  
15 which the claim is made;
- 16 (5) "Death" means death resulting from an injury or occupational disease;
- 17 (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the  
18 liability of employers under this chapter and includes a self-insurer;
- 19 (7) "Self-insurer" is an employer who has been authorized under the provisions of this  
20 chapter to carry his own liability on his employees covered by this chapter;
- 21 (8) "Department" means the Department of Workers' Claims in the Labor Cabinet;
- 22 (9) "Commissioner" means the commissioner of the Department of Workers' Claims  
23 under the direction and supervision of the secretary of the Labor Cabinet;
- 24 (10) "Board" means the Workers' Compensation Board;
- 25 (11) (a) "Temporary total disability" means the condition of an employee who has not  
26 reached maximum medical improvement from an injury and has not reached a  
27 level of improvement that would permit a return to employment;

- 1 (b) "Permanent partial disability" means the condition of an employee who, due to  
2 an injury, has a permanent disability rating but retains the ability to work; and
- 3 (c) "Permanent total disability" means the condition of an employee who, due to  
4 an injury, has a permanent disability rating and has a complete and permanent  
5 inability to perform any type of work as a result of an injury, except that total  
6 disability shall be irrebuttably presumed to exist for an injury that results in:
- 7 1. Total and permanent loss of sight in both eyes;
  - 8 2. Loss of both feet at or above the ankle;
  - 9 3. Loss of both hands at or above the wrist;
  - 10 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at  
11 or above the wrist;
  - 12 5. Permanent and complete paralysis of both arms, both legs, or one (1)  
13 arm and one (1) leg;
  - 14 6. Incurable insanity or imbecility; or
  - 15 7. Total loss of hearing;
- 16 (12) "Income benefits" means payments made under the provisions of this chapter to the  
17 disabled worker or his dependents in case of death, excluding medical and related  
18 benefits;
- 19 (13) "Medical and related benefits" means payments made for medical, hospital, burial,  
20 and other services as provided in this chapter, other than income benefits;
- 21 (14) "Compensation" means all payments made under the provisions of this chapter  
22 representing the sum of income benefits and medical and related benefits;
- 23 (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical  
24 rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- 25 (16) "Person" means any individual, partnership, limited partnership, limited liability  
26 company, firm, association, trust, joint venture, corporation, or legal representative  
27 thereof;

- 1 (17) "Wages" means, in addition to money payments for services rendered, the  
2 reasonable value of board, rent, housing, lodging, fuel, or similar advantages  
3 received from the employer, and gratuities received in the course of employment  
4 from persons other than the employer as evidenced by the employee's federal and  
5 state tax returns;
- 6 (18) "Agriculture" means the operation of farm premises, including the planting,  
7 cultivation, producing, growing, harvesting, and preparation for market of  
8 agricultural or horticultural commodities thereon, the raising of livestock for food  
9 products and for racing purposes, and poultry thereon, and any work performed as  
10 an incident to or in conjunction with the farm operations, including the sale of  
11 produce at on-site markets and the processing of produce for sale at on-site markets.  
12 It shall not include the commercial processing, packing, drying, storing, or canning  
13 of such commodities for market, or making cheese or butter or other dairy products  
14 for market;
- 15 (19) "Beneficiary" means any person who is entitled to income benefits or medical and  
16 related benefits under this chapter;
- 17 (20) "United States," when used in a geographic sense, means the several states, the  
18 District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the  
19 territories of the United States;
- 20 (21) "Alien" means a person who is not a citizen, a national, or a resident of the United  
21 States or Canada. Any person not a citizen or national of the United States who  
22 relinquishes or is about to relinquish his residence in the United States shall be  
23 regarded as an alien;
- 24 (22) "Insurance carrier" means every insurance carrier or insurance company authorized  
25 to do business in the Commonwealth writing workers' compensation insurance  
26 coverage and includes the Kentucky Employers Mutual Insurance Authority and  
27 every self-insured group operating under the provisions of this chapter;

1 (23) (a) "Severance or processing of coal" means all activities performed in the  
2 Commonwealth at underground, auger, and surface mining sites; all activities  
3 performed at tipple or processing plants that clean, break, size, or treat coal;  
4 and all activities performed at coal loading facilities for trucks, railroads, and  
5 barges. Severance or processing of coal shall not include acts performed by a  
6 final consumer if the acts are performed at the site of final consumption.

7 (b) "Engaged in severance or processing of coal" shall include all individuals,  
8 partnerships, limited partnerships, limited liability companies, corporations,  
9 joint ventures, associations, or any other business entity in the Commonwealth  
10 which has employees on its payroll who perform any of the acts stated in  
11 paragraph (a) of this subsection, regardless of whether the acts are performed  
12 as owner of the coal or on a contract or fee basis for the actual owner of the  
13 coal. A business entity engaged in the severance or processing of coal,  
14 including but not limited to administrative or selling functions, shall be  
15 considered wholly engaged in the severance or processing of coal for the  
16 purpose of this chapter. However, a business entity which is engaged in a  
17 separate business activity not related to coal, for which a separate premium  
18 charge is not made, shall be deemed to be engaged in the severance or  
19 processing of coal only to the extent that the number of employees engaged in  
20 the severance or processing of coal bears to the total number of employees.  
21 Any employee who is involved in the business of severing or processing of  
22 coal and business activities not related to coal shall be prorated based on the  
23 time involved in severance or processing of coal bears to his total time;

24 (24) "Premium" for every self-insured group means any and all assessments levied on its  
25 members by such group or contributed to it by the members thereof. For special  
26 fund assessment purposes, "premium" also includes any and all membership dues,  
27 fees, or other payments by members of the group to associations or other entities



1 used for underwriting, claims handling, loss control, premium audit, actuarial, or  
2 other services associated with the maintenance or operation of the self-insurance  
3 group;

4 (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for  
5 insurance companies means direct written premiums as reported in the annual  
6 statement to the Department of Insurance by insurance companies, except that  
7 "premiums received" includes premiums charged off or deferred, and, on  
8 insurance policies or other evidence of coverage with provisions for  
9 deductibles, the calculated cost for coverage, including experience  
10 modification and premium surcharge or discount, prior to any reduction for  
11 deductibles. The rates, factors, and methods used to calculate the cost for  
12 coverage under this paragraph for insurance policies or other evidence of  
13 coverage with provisions for deductibles shall be the same rates, factors, and  
14 methods normally used by the insurance company in Kentucky to calculate the  
15 cost for coverage for insurance policies or other evidence of coverage without  
16 provisions for deductibles, except that, for insurance policies or other  
17 evidence of coverage with provisions for deductibles effective on or after  
18 January 1, 1995, the calculated cost for coverage shall not include any  
19 schedule rating modification, debits, or credits. For policies with provisions  
20 for deductibles with effective dates on or after January 1, 1995, assessments  
21 shall be imposed on premiums received as calculated by the deductible  
22 program adjustment. The cost for coverage calculated under this paragraph by  
23 insurance companies that issue only deductible insurance policies in Kentucky  
24 shall be actuarially adequate to cover the entire liability of the employer for  
25 compensation under this chapter, including all expenses and allowances  
26 normally used to calculate the cost for coverage. For policies with provisions  
27 for deductibles with effective dates of May 6, 1993, through December 31,

1 1993, for which the insurance company did not report premiums and remit  
2 special fund assessments based on the calculated cost for coverage prior to the  
3 reduction for deductibles, "premiums received" includes the initial premium  
4 plus any reimbursements invoiced for losses, expenses, and fees charged  
5 under the deductibles. The special fund assessment rates in effect for  
6 reimbursements invoiced for losses, expenses, or fees charged under the  
7 deductibles shall be those percentages in effect on the effective date of the  
8 insurance policy. For policies covering ~~covered~~[~~leased~~] employees **having a**  
9 **co-employment relationship with a professional employer organization and**  
10 **a client** as defined in **KRS Chapter 336**[~~KRS 342.615~~], "premiums received"  
11 means premiums calculated using the experience modification factor of each  
12 ~~client~~[~~lessee~~] as defined in **KRS Chapter 336**[~~KRS 342.615~~] for each  
13 ~~covered~~[~~leased~~] employee for that portion of the payroll pertaining to the  
14 ~~covered~~[~~leased~~] employee.

15 (b) "Direct written premium" for insurance companies means the gross premium  
16 written less return premiums and premiums on policies not taken but  
17 including policy and membership fees.

18 (c) "Premium," for policies effective on or after January 1, 1994, for insurance  
19 companies means all consideration, whether designated as premium or  
20 otherwise, for workers' compensation insurance paid to an insurance company  
21 or its representative, including, on insurance policies with provisions for  
22 deductibles, the calculated cost for coverage, including experience  
23 modification and premium surcharge or discount, prior to any reduction for  
24 deductibles. The rates, factors, and methods used to calculate the cost for  
25 coverage under this paragraph for insurance policies or other evidence of  
26 coverage with provisions for deductibles shall be the same rates, factors, and  
27 methods normally used by the insurance company in Kentucky to calculate the

1 cost for coverage for insurance policies or other evidence of coverage without  
2 provisions for deductibles, except that, for insurance policies or other  
3 evidence of coverage with provisions for deductibles effective on or after  
4 January 1, 1995, the calculated cost for coverage shall not include any  
5 schedule rating modifications, debits, or credits. For policies with provisions  
6 for deductibles with effective dates on or after January 1, 1995, assessments  
7 shall be imposed as calculated by the deductible program adjustment. The cost  
8 for coverage calculated under this paragraph by insurance companies that  
9 issue only deductible insurance policies in Kentucky shall be actuarially  
10 adequate to cover the entire liability of the employer for compensation under  
11 this chapter, including all expenses and allowances normally used to calculate  
12 the cost for coverage. For policies with provisions for deductibles with  
13 effective dates of May 6, 1993, through December 31, 1993, for which the  
14 insurance company did not report premiums and remit special fund  
15 assessments based on the calculated cost for coverage prior to the reduction  
16 for deductibles, "premium" includes the initial consideration plus any  
17 reimbursements invoiced for losses, expenses, or fees charged under the  
18 deductibles.

19 (d) "Return premiums" for insurance companies means amounts returned to  
20 insureds due to endorsements, retrospective adjustments, cancellations,  
21 dividends, or errors.

22 (e) "Deductible program adjustment" means calculating premium and premiums  
23 received on a gross basis without regard to the following:

- 24 1. Schedule rating modifications, debits, or credits;
- 25 2. Deductible credits; or
- 26 3. Modifications to the cost of coverage from inception through and  
27 including any audit that are based on negotiated retrospective rating

1 arrangements, including but not limited to large risk alternative rating  
2 options;

3 (26) "Insurance policy" for an insurance company or self-insured group means the term  
4 of insurance coverage commencing from the date coverage is extended, whether a  
5 new policy or a renewal, through its expiration, not to exceed the anniversary date  
6 of the renewal for the following year;

7 (27) "Self-insurance year" for a self-insured group means the annual period of  
8 certification of the group created pursuant to KRS 342.350(4) and 304.50-010;

9 (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1)  
10 shall be the projected value of the employer's workers' compensation claims for the  
11 next calendar year as calculated by the commissioner using generally-accepted  
12 actuarial methods as follows:

13 (a) The base period shall be the earliest three (3) calendar years of the five (5)  
14 calendar years immediately preceding the calendar year for which the  
15 calculation is made. The commissioner shall identify each claim of the  
16 employer which has an injury date or date of last injurious exposure to the  
17 cause of an occupational disease during each one (1) of the three (3) calendar  
18 years to be used as the base, and shall assign a value to each claim. The value  
19 shall be the total of the indemnity benefits paid to date and projected to be  
20 paid, adjusted to current benefit levels, plus the medical benefits paid to date  
21 and projected to be paid for the life of the claim, plus the cost of medical and  
22 vocational rehabilitation paid to date and projected to be paid. Adjustment to  
23 current benefit levels shall be done by multiplying the weekly indemnity  
24 benefit for each claim by the number obtained by dividing the statewide  
25 average weekly wage which will be in effect for the year for which the  
26 premium is being calculated by the statewide average weekly wage in effect  
27 during the year in which the injury or date of the last exposure occurred. The

1 total value of the claims using the adjusted weekly benefit shall then be  
2 calculated by the commissioner. Values for claims in which awards have been  
3 made or settlements reached because of findings of permanent partial or  
4 permanent total disability shall be calculated using the mortality and interest  
5 discount assumptions used in the latest available statistical plan of the  
6 advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The  
7 sum of all calculated values shall be computed for all claims in the base  
8 period;

9 (b) The commissioner shall obtain the annual payroll for each of the three (3)  
10 years in the base period for each employer carrying his own risk from records  
11 of the department and from the records of the Department of Workforce  
12 Investment, Education and Workforce Development Cabinet. The  
13 commissioner shall multiply each of the three (3) years of payroll by the  
14 number obtained by dividing the statewide average weekly wage which will  
15 be in effect for the year in which the premium is being calculated by the  
16 statewide average weekly wage in effect in each of the years of the base  
17 period;

18 (c) The commissioner shall divide the total of the adjusted claim values for the  
19 three (3) year base period by the total adjusted payroll for the same three (3)  
20 year period. The value so calculated shall be multiplied by 1.25 and shall then  
21 be multiplied by the employer's most recent annualized payroll, calculated  
22 using records of the department and the Department of Workforce Investment  
23 data which shall be made available for this purpose on a quarterly basis as  
24 reported, to obtain the premium for the next calendar year for assessment  
25 purposes under KRS 342.122;

26 (d) For November 1, 1987, through December 31, 1988, premium for each  
27 employer carrying its own risk shall be an amount calculated by the board

1           pursuant to the provisions contained in this subsection and such premium  
2           shall be provided to each employer carrying its own risk and to the funding  
3           commission on or before January 1, 1988. Thereafter, the calculations set  
4           forth in this subsection shall be performed annually, at the time each employer  
5           applies or renews its application for certification to carry its own risk for the  
6           next twelve (12) month period and submits payroll and other data in support  
7           of the application. The employer and the funding commission shall be notified  
8           at the time of the certification or recertification of the premium calculated by  
9           the commissioner, which shall form the employer's basis for assessments  
10          pursuant to KRS 342.122 for the calendar year beginning on January 1  
11          following the date of certification or recertification;

12          (e) If an employer having fewer than five (5) years of doing business in this state  
13          applies to carry its own risk and is so certified, its premium for the purposes of  
14          KRS 342.122 shall be based on the lesser number of years of experience as  
15          may be available including the two (2) most recent years if necessary to create  
16          a three (3) year base period. If the employer has less than two (2) years of  
17          operation in this state available for the premium calculation, then its premium  
18          shall be the greater of the value obtained by the calculation called for in this  
19          subsection or the amount of security required by the commissioner pursuant to  
20          KRS 342.340(1);

21          (f) If an employer is certified to carry its own risk after having previously insured  
22          the risk, its premium shall be calculated using values obtained from claims  
23          incurred while insured for as many of the years of the base period as may be  
24          necessary to create a full three (3) year base. After the employer is certified to  
25          carry its own risk and has paid all amounts due for assessments upon  
26          premiums paid while insured, the employer shall be assessed only upon the  
27          premium calculated under this subsection;

- 1 (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated  
2 as set forth in this subsection; and
- 3 (h) Notwithstanding any other provision of this subsection, the premium of any  
4 employer authorized to carry its own risk for purposes of assessments due  
5 under this chapter shall be no less than thirty cents (\$0.30) per one hundred  
6 dollars (\$100) of the employer's most recent annualized payroll for employees  
7 covered by this chapter;
- 8 (29) "SIC code" as used in this chapter means the Standard Industrial Classification  
9 Code contained in the latest edition of the Standard Industrial Classification Manual  
10 published by the Federal Office of Management and Budget;
- 11 (30) "Investment interest" means any pecuniary or beneficial interest in a provider of  
12 medical services or treatment under this chapter, other than a provider in which that  
13 pecuniary or investment interest is obtained on terms equally available to the public  
14 through trading on a registered national securities exchange, such as the New York  
15 Stock Exchange or the American Stock Exchange, or on the National Association of  
16 Securities Dealers Automated Quotation System;
- 17 (31) "Managed health care system" means a health care system that employs gatekeeper  
18 providers, performs utilization review, and does medical bill audits;
- 19 (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists,  
20 podiatrists, and osteopathic and chiropractic practitioners acting within the scope of  
21 their license issued by the Commonwealth;
- 22 (33) "Objective medical findings" means information gained through direct observation  
23 and testing of the patient applying objective or standardized methods;
- 24 (34) "Work" means providing services to another in return for remuneration on a regular  
25 and sustained basis in a competitive economy;
- 26 (35) "Permanent impairment rating" means percentage of whole body impairment caused  
27 by the injury or occupational disease as determined by the "Guides to the Evaluation

1 of Permanent Impairment";

2 (36) "Permanent disability rating" means the permanent impairment rating selected by an  
3 administrative law judge times the factor set forth in the table that appears at KRS  
4 342.730(1)(b); and

5 (37) "Guides to the Evaluation of Permanent Impairment" means, except as provided in  
6 KRS 342.262:

7 (a) The fifth edition published by the American Medical Association; and

8 (b) For psychological impairments, Chapter 12 of the second edition published by  
9 the American Medical Association.

10 ➔Section 13. KRS 342.990 is amended to read as follows:

11 (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed  
12 in this section.

13 (2) When the commissioner receives information that he or she deems sufficient to  
14 determine that a violation of this chapter has occurred, he or she shall seek civil  
15 penalties pursuant to subsections (3) to (7) of this section, criminal penalties  
16 pursuant to subsections (8) and (9) of this section, or both.

17 (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously  
18 citing the appropriate party for the offense and stating the civil penalty to be paid.

19 (4) If, within fifteen (15) working days from the receipt of the citation, a cited party  
20 fails to notify the commissioner that he or she intends to contest the citation, then  
21 the citation shall be deemed final.

22 (5) If a cited party notifies the commissioner that he or she intends to challenge a  
23 citation issued under this section, the commissioner shall cause the matter to be  
24 heard as soon as practicable by an administrative law judge and in accordance with  
25 the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney  
26 representing the commissioner to prove the offense stated in the citation by a  
27 preponderance of the evidence. The parties shall stipulate to uncontested facts and



1 issues prior to the hearing before the administrative law judge. The administrative  
2 law judge shall issue a ruling within sixty (60) days following the hearing.

3 (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit  
4 Court in conformity with KRS 13B.140.

5 (7) The following civil penalties shall be applicable for violations of particular  
6 provisions of this chapter:

7 (a) Any employer, insurer, or payment obligor subject to this chapter who fails to  
8 make a report required by KRS 342.038 within fifteen (15) days from the date  
9 it was due, shall be fined not less than one hundred dollars (\$100) nor more  
10 than one thousand dollars (\$1,000) for each offense;

11 (b) Any employer, insurer, or payment obligor acting on behalf of an employer  
12 who fails to make timely payment of a statement for services under KRS  
13 342.020(4) without having reasonable grounds to delay payment may be fined  
14 not less than one hundred dollars (\$100) nor more than one thousand dollars  
15 (\$1,000) for each offense;

16 (c) Any person who violates KRS 342.020(12), 342.035(2), 342.040, 342.340,  
17 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars  
18 (\$100) nor more than one thousand dollars (\$1,000) for each offense. With  
19 respect to employers who fail to maintain workers' compensation insurance  
20 coverage on their employees, each employee of the employer and each day of  
21 violation shall constitute a separate offense. With respect to KRS 342.040, any  
22 employer's insurance carrier or other party responsible for the payment of  
23 workers' compensation benefits shall be fined for failure to notify the  
24 commissioner of a failure to make payments when due if a report indicating  
25 the reason payment of income benefits did not commence within twenty-one  
26 (21) days of the date the employer was notified of an alleged work-related  
27 injury or disease is not filed with the commissioner within twenty-one (21)

- 1 days of the date the employer received notice, and if the employee has not  
2 returned to work within that period of time. The date of notice indicated in the  
3 report filed with the department pursuant to KRS 342.038(1), shall raise a  
4 rebuttable presumption of the date on which the 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), 342.035(2), 342.040, 342.400,  
21          342.420, or 342.630, shall, for each offense, be fined not less than one  
22          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

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

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  
14 any 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 14. The following KRS section is repealed:

4 342.615 Registration of employee leasing companies -- Coverage requirements for  
5 lessees -- Status of temporary help service.

6 ➔Section 15. If any provisions of this Act or the application thereof to any person  
7 or circumstance is held invalid, the invalidity shall not affect other provisions or  
8 applications of the Act that can be given effect without the invalid provision or  
9 application, and to this end the provisions of this Act are severable.