

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 that arise out of an*
23 *employment relationship have been allocated between co-employers pursuant to a*
24 *professional employer agreement under Sections 1 to 11 of this Act, under which:*

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

1 agreement or Sections 1 to 11 of this Act;

2 (b) The client is entitled to enforce those rights, and obligated to provide and
3 perform those employer obligations, allocated to the client by the
4 professional employer agreement and Sections 1 to 11 of this Act; and

5 (c) The client is entitled to enforce any right and obligated to perform any
6 obligation of an employer not specifically obligated to the professional
7 employer organization by the professional employer agreement or Sections
8 1 to 11 of this Act;

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

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

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

16 Individuals who are officers, directors, shareholders, partners, and managers of
17 the client will be covered employees, except to the extent the professional
18 employer organization and the client have expressly agreed in the professional
19 employer agreement that those individuals would not be covered employees,
20 provided the individuals meet the criteria of this subsection and act as operational
21 managers or perform day-to-day operational services for the client. A covered
22 employee shall not be considered a party to the professional employer agreement;

23 (5) "Insurer" includes every person engaged as principal and as indemnitor, surety,
24 or contractor in the business of entering into contracts of insurance as defined in
25 KRS 304.1-040;

26 (6) "Person" means any individual, partnership, corporation, limited liability
27 company, association, or any other form of legally recognized entity;

1 (7) "Professional employer agreement" means a written contract by and between a
2 client and a professional employer organization that provides for the:

3 (a) Co-employment of covered employees;

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

7 (c) Assumption of responsibilities required under Sections 1 to 11 of this Act by
8 the client and the professional employer organization;

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

13 (b) The following shall not be considered to be a "professional employer
14 organization":

15 1. Persons providing temporary help services;

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

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

27 (9) "Professional employer organization group" means two (2) or more professional

1 employer organizations that are majority owned or commonly controlled by the
2 same entity, parent, or controlling person or persons;

3 (10) "Professional employer services" means the service of entering into a co-
4 employment relationship under Sections 1 to 11 of this Act in which all or a
5 majority of the employees providing services to a client or to a division or work
6 unit of a client are covered employees;

7 (11) "Registrant" means a professional employer organization registered under
8 Sections 1 to 11 of this Act; and

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

10 (a) Recruiting and hiring its own employees;

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

12 (c) Assigning those employees to perform work at or services for the other
13 organizations to support or supplement the other organizations' workforce,
14 or to provide assistance in special work situations, including but not limited
15 to employee absences, skill shortages, seasonal workloads, or performing
16 special assignments or projects; and

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

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

21 (1) Nothing in any professional employer agreement, or in Sections 1 to 11 of this
22 Act, shall:

23 (a) Affect, modify, or amend any collective bargaining agreement, or the rights
24 or obligations of any covered employee, client, or professional employer
25 organization, covered by the federal Railway Labor Act or the National
26 Labor Relations Act;

27 (b) Affect, modify, or amend any contractual relationship or restrictive

1 covenant between a covered employee and any client in effect at the time a
2 professional employer agreement becomes effective or any contractual
3 relationship or restrictive covenant that is entered into subsequently
4 between a client and a covered employee. A professional employer
5 organization shall have no responsibility in connection with, or arising out
6 of, any existing or new contractual relationship or restrictive covenant
7 between the covered employee and client unless the professional employer
8 organization has specifically agreed otherwise in writing;

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

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

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

1 and of the client's business. Covered employees and clients shall remain
2 subject to regulation by the regulatory agency responsible for licensing,
3 registration, or certification of the covered employees or clients; or

4 (f) Include language in a professional employer agreement or be construed in
5 Sections 1 to 11 of this Act to abrogate any constitutional, statutory, or
6 common law cause of action of persons not a party to the professional
7 employer agreement.

8 (2) For purposes of determining tax credits or other economic incentives provided by
9 the Commonwealth based on employment, covered employees shall be deemed
10 employees solely of the client. A client shall be entitled to the benefit of any tax
11 credit, economic incentive, or other benefit arising as the result of the
12 employment of a covered employee of the client. Notwithstanding that the
13 professional employer organization is the federal form W-2 wage and tax
14 statement reporting employer, the client shall continue to qualify for the tax
15 credit, economic incentive, or benefit. If the grant or amount of any incentive is
16 based on the number of employees, then each client shall be treated as employing
17 only those covered employees that are co-employed by each client. Covered
18 employees working for other clients of the professional employer organization
19 shall not be counted. Each professional employer organization shall provide,
20 upon request by a client or any state agency responsible for administration of any
21 tax credit, economic incentive, or benefit, information reasonably required to
22 support any request, claim, application, or any other action by a client seeking
23 the tax credit, economic incentive, or benefit, including wage information, and
24 locations and duties of covered employees.

25 (3) With respect to a bid, contract, purchase order, or agreement entered into with
26 the Commonwealth or any political subdivision of the Commonwealth, a client
27 company's status or certification as a small, minority-owned, disadvantaged, or

1 woman-owned business enterprise or as a historically underutilized business
2 shall not be affected because the client company has entered into an agreement
3 with or uses the services of a professional employer organization.

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

6 (1) A person engaged in providing professional employer services pursuant to a co-
7 employment relationship in which all or a majority of the employees of a client
8 are covered employees shall be registered under Sections 1 to 11 of this Act. A
9 person who is not registered under Sections 1 to 11 of this Act shall not offer or
10 provide professional employer services in this Commonwealth and shall not use
11 the names professional employer organization, PEO, staff leasing company,
12 employee leasing company, administrative employer, or any other name or title
13 representing professional employer services.

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

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

18 (b) The address of the principal place of business of the professional employer
19 organization and the address of each office it maintains in this
20 Commonwealth;

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

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

27 (e) A statement of ownership, which shall include the name and evidence of the

1 business experience of any person that, individually or acting in concert
2 with one (1) or more other persons, owns or controls, directly or indirectly,
3 twenty-five percent (25%) or more of the equity interest in the professional
4 employer organization; and

5 (f) 1. A financial statement setting forth the financial condition of the
6 professional employer organization or professional employer
7 organization group.

8 2. At the time of the initial application for a new registration, the
9 applicant shall submit the most recent audit of the applicant, which
10 shall not be older than thirteen (13) months. Thereafter, a
11 professional employer organization or professional employer
12 organization group shall file a succeeding audit on an annual basis
13 within one hundred eighty (180) days after the end of the fiscal year.

14 3. An applicant may apply for an extension with the Department of
15 Workers' Claims, but any extension request shall be accompanied by a
16 letter from the auditors stating the reasons for the delay and the
17 anticipated date for completion of the audit.

18 4. The financial statement shall be prepared in accordance with
19 generally accepted accounting principles and audited by an
20 independent certified public accountant licensed to practice in the
21 jurisdiction in which the accountant is located, and shall be without
22 qualification as to the going concern status of the professional
23 employer organization.

24 5. A professional employer organization group may submit combined or
25 consolidated audited financial statements to meet the requirements of
26 this paragraph.

27 6. A professional employer organization that has not had sufficient

1 operating history to have audited financial statements based on at
2 least twelve (12) months of operating history shall meet the
3 requirements in Section 6 of this Act and present financial statements
4 reviewed by a certified public accountant.

5 (3) Each professional employer organization operating within this Commonwealth
6 as of the effective date of this Act shall complete its initial registration no later
7 than one hundred eighty (180) days after the effective date of this Act. The initial
8 registration shall be valid until one hundred eighty (180) days from the end of the
9 professional employer organization's first fiscal year that is more than one (1)
10 fiscal year after the effective date of this Act.

11 (4) Each professional employer organization not operating within this
12 Commonwealth as of the effective date of this Act shall complete its initial
13 registration prior to initiating operations within this Commonwealth. If a
14 professional employer organization not operating within this Commonwealth
15 becomes aware that an existing client that is not based in this Commonwealth
16 had employees and operations in this Commonwealth, the professional employer
17 organization shall either decline to provide professional employer services for
18 those employees or notify the Department of Workers' Claims within five (5)
19 business days of its knowledge of this fact and file a limited registration
20 application or file a full business registration if there are more than fifty (50)
21 covered employees. The Department of Workers' Claims may issue an interim
22 operating permit for the period the registration applications are pending if the
23 professional employer organization is currently registered or licensed by another
24 state and the Department of Workers' Claims determines it to be in the best
25 interests of the potential covered employees.

26 (5) Within one hundred eighty (180) days after the end of the fiscal year, a registrant
27 shall renew its registration by notifying the Department of Workers' Claims of

1 any changes in the information provided in the registrant's most recent
2 registration or renewal. A registrant's existing registration shall remain in effect
3 during the pendency of a renewal application.

4 (6) Professional employer organizations in a professional employer organization
5 group may satisfy the reporting and financial requirements of Sections 1 to 11 of
6 this Act on a combined or consolidated basis provided that each member of the
7 professional employer organization group guarantees the financial capacity
8 obligations under Sections 1 to 11 of this Act of each other member of the
9 professional employer organization group. In the case of a professional employer
10 organization group that submits a combined or consolidated audited financial
11 statement that includes entities that are not professional employer organizations
12 or that are not in the professional employer organization group, the controlling
13 entity of the professional employer organization group under the consolidated or
14 combined statement shall guarantee the obligations of the professional employer
15 organizations in the professional employer organization group.

16 (7) (a) A professional employer organization is eligible for a limited registration
17 under Sections 1 to 11 of this Act if the professional employer organization:

18 1. Submits a properly executed request for limited registration on a form
19 provided by the Department of Workers' Claims;

20 2. Is domiciled outside this Commonwealth and is licensed or registered
21 as a professional employer organization in another state;

22 3. Does not maintain an office in this Commonwealth or directly solicit
23 clients located or domiciled within this Commonwealth; or

24 4. Does not have more than fifty (50) covered employees domiciled or
25 employed in this Commonwealth on any given day.

26 (b) A limited registration is valid for one (1) year and may be renewed.

27 (c) A professional employer organization seeking limited registration under

1 this subsection shall provide the Department of Workers' Claims with
2 information and documentation necessary to show that the professional
3 employer organization qualifies for a limited registration.

4 (d) Section 6 of this Act does not apply to applicants for limited registration.

5 (8) The Department of Workers' Claims shall maintain a list of professional
6 employer organizations registered pursuant to Sections 1 to 11 of this Act that is
7 readily available to the public by electronic or other means.

8 (9) The Department of Workers' Claims shall to the extent practical permit by
9 administrative regulation the acceptance of electronic filings, including
10 applications, documents, reports, and other filings required under Sections 1 to
11 11 of this Act. The Department of Workers' Claims may provide for the
12 acceptance of electronic filings and other assurance by an independent and
13 qualified assurance organization approved by the secretary that provides
14 satisfactory assurance of compliance acceptable to the Department of Workers'
15 Claims consistent with or in lieu of the requirements of this section and Section 6
16 of this Act, and other requirements of Sections 1 to 11 of this Act. The secretary
17 shall permit a professional employer organization to authorize an approved
18 assurance organization to act on behalf of the professional employer
19 organization in complying with the registration requirements of Sections 1 to 11
20 of this Act, including electronic filings of information and payment of
21 registration fees. Use of an approved assurance organization shall be optional for
22 a registrant. Nothing in this subsection shall limit or change the Department of
23 Workers' Claims' authority to register or terminate registration of a professional
24 employer organization or to investigate or enforce any provision of Sections 1 to
25 11 of this Act.

26 (10) All records, reports, and other information obtained from a professional
27 employer organization under Sections 1 to 11 of this Act, except to the extent

1 necessary for the proper administration of Sections 1 to 11 of this Act by the
2 Department of Workers' Claims, shall be confidential and shall not be published
3 or open to public inspection other than to public employees in the performance of
4 their public duties.

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

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

10 (1) Upon filing an initial registration statement pursuant to Sections 1 to 11 of this
11 Act, a professional employer organization shall pay an initial registration fee not
12 to exceed five hundred dollars (\$500) to the Department of Workers' Claims.

13 (2) Upon each annual renewal of a registration statement filed under Sections 1 to
14 11 of this Act, a professional employer organization shall pay a renewal fee not to
15 exceed two hundred fifty dollars (\$250) to the Department of Workers' Claims.

16 (3) Each professional employer organization seeking limited registration under
17 Section 4 of this Act shall pay a fee in the amount not to exceed two hundred fifty
18 dollars (\$250) to the Department of Worker's Claim upon initial application for
19 the limited registration and upon each annual renewal of limited registration.

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

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

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

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

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

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

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

16 (b) The professional employer organization shall be entitled to exercise only
17 those rights, and shall be obligated to perform only those duties and
18 responsibilities, specifically required by Sections 1 to 11 of this Act or set
19 forth in the professional employer agreement. The rights, duties, and
20 obligations of the professional employer organization as co-employer with
21 respect to any covered employee shall be limited to those arising out of the
22 professional employer agreement and Sections 1 to 11 of this Act during the
23 term of co-employment by the professional employer organization of the
24 covered employee; and

25 (c) Unless otherwise expressly agreed by the professional employer
26 organization and the client in a professional employer agreement, the client
27 retains the exclusive right to direct and control the covered employees as

1 necessary to conduct the client's business, to discharge any of the client's
2 fiduciary responsibilities, or to comply with any licensure requirements
3 applicable to the client of the covered employees.

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

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

10 (b) Provide that the professional employer organization shall have
11 responsibility to pay wages to covered employees; to withhold, collect, report
12 and remit payroll and unemployment taxes; and, to the extent the
13 professional employer organization has assumed responsibility in the
14 professional employer agreement, to make payments for employee benefits
15 for covered employees as a result of the outsourcing of payroll duty to the
16 professional employer organization by the client. As used in this paragraph,
17 "wages" does not include any obligation between a client and a covered
18 employee for payments beyond or in addition to the covered employee's
19 salary, draw, or regular rate of pay such as bonuses, commissions,
20 severance pay, deferred compensation, profit sharing, or vacation, sick, or
21 other paid time off, unless the professional employer organization has
22 expressly agreed to assume liability for payments in the professional
23 employer agreement;

24 (c) Provide that the professional employer organization shall have a right to
25 hire, discipline, and terminate a covered employee as may be necessary to
26 fulfill the professional employer organization's responsibilities under
27 Section 1 to 11 of this Act and the professional employer agreement. The

1 client shall have a right to hire, discipline, and terminate a covered
2 employee; and

3 (d) Provide that the responsibility to obtain and maintain workers'
4 compensation coverage for covered employees from an insurer licensed to
5 do business in this Commonwealth and otherwise in compliance with all
6 applicable requirements shall be specifically allocated to either the client or
7 the professional employer organization in the professional employment
8 agreement.

9 (3) A professional employer organization shall provide written notice to each covered
10 employee affected by a professional employer agreement entered into by a
11 professional employer organization. The notice shall set forth the general nature
12 of the co-employment relationship between and among the professional employer
13 organization, the client, and the covered employees. Nothing in this subsection
14 shall create a presumption of liability against a professional employer
15 organization for the acts, errors, or omissions of the covered employees.
16 Notwithstanding any provision to the contrary, the statute of limitations for a
17 claim of a covered employee against a professional employer organization shall
18 not begin to run until the covered employee knew or should have known about
19 the professional employer organization agreement and the identity of the
20 professional employer organization, but in no event shall the statute of
21 limitations be more than one (1) year from the date the original lawsuit was
22 timely filed by the covered employee. Nothing in this subsection shall limit the
23 existing statute of limitations for any causes of action contained in the original
24 lawsuit for the covered employee.

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

27 (a) A client shall be solely responsible for workplace safety and for the quality

1 and adequacy of the goods and services produced or sold in the client's
2 business. Nothing in Sections 1 to 11 of this Act shall limit an injured
3 workers' ability to recover increased compensation under KRS 342.165
4 from the co-employer;

5 (b) A client shall be solely responsible for directing, supervising, training,
6 retaining, and controlling the work of the covered employees with respect to
7 the business activities of the client and solely responsible for the acts,
8 errors, or omissions of the covered employees with regard to these activities.
9 Nothing in this subsection shall create a presumption of liability against a
10 professional employer organization for the acts, errors, or omissions of the
11 covered employees. Notwithstanding any provision to the contrary, the
12 statute of limitations for a claim of an injured party who is not a covered
13 employee against a professional organization shall not begin to run until
14 the injured party who is not a covered employee knew or should have
15 known about the professional employer organization agreement and the
16 identity of the professional employer organization, but in no event shall the
17 statute of limitations be more than one (1) year from the date the original
18 lawsuit was timely filed by the injured party who is not a covered employee.
19 Nothing in this paragraph shall limit the existing statute of limitations for
20 any causes of action contained in the original lawsuit for the injured party
21 who is not a covered employee.

22 (c) A client shall not be liable for the acts, errors, or omissions of a
23 professional employer organization, or of any covered employee of the client
24 and a professional employer organization when the covered employee is
25 acting under the express direction and control of the professional employer
26 organization;

27 (d) A professional employer organization shall not be liable for the acts, errors,

1 or omissions of a client or of any covered employee of the client when the
2 covered employee is acting under the express direction and control of the
3 client;

4 (e) Nothing in this subsection shall serve to limit any contractual liability or
5 obligation specifically provided in the written professional employer
6 agreement; and

7 (f) A covered employee is not, solely as a result of being a covered employee of
8 a professional employer organization, an employee of the professional
9 employer organization for the purposes of general liability insurance,
10 fidelity bonds, surety bonds, employer's liability which is not covered by
11 workers' compensation, or liquor liability insurance carried by the
12 professional employer organization unless the covered employees are
13 included by specific reference in the professional employer agreement and
14 applicable prearranged employment contract, insurance contract, or bond.

15 (5) A professional employer organization under Sections 1 to 11 of this Act is not
16 engaged in the sale of insurance or in acting as a third-party administrator by
17 providing professional employer services which include services and employee
18 benefit plans for covered employees.

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

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

26 (b) Any tax or assessment imposed upon professional employer services or any
27 business license or other fee which is based upon gross receipts shall allow

1 a deduction for the gross income or receipts of the business derived from
2 performing professional employer services that is equal to that portion of
3 the fee charged to a client that represents the actual cost of wages and
4 salaries, benefits, workers' compensation, payroll taxes, withholding, or
5 other assessments paid to or on behalf of a covered employee by the
6 professional employer organization under a professional employer
7 agreement;

8 (c) Any tax or assessment or mandated expenditure on a per capita or per
9 employee basis shall be assessed against the client for covered employees
10 and against the professional employer organization for its employees who
11 are not covered employees co-employed with a client. Benefits or monetary
12 consideration that meet the requirements of mandates imposed on a client
13 and that are received by covered employees through the professional
14 employer organization either through payroll or through benefit plans
15 sponsored by the professional employer organization shall be credited
16 against the client's obligation to fulfill the mandates; and

17 (d) In the case of a tax or assessment imposed or calculated upon the basis of
18 total payroll, the professional employer organization shall be eligible to
19 apply any small business allowance or exemption available to the client for
20 the covered employees for purpose of commuting the tax.

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

23 (1) Any professional employer organization whose workers' compensation insurance
24 has been terminated within the past five (5) years in any jurisdiction due to a
25 determination that a professional employer organization arrangement was being
26 utilized to avoid premiums, taxes, or assessments otherwise payable by clients
27 shall be ineligible to register with the Department of Workers' Claims or to

1 remain registered, if previously registered.

2 (2) A client shall fulfill its statutory responsibility to secure benefits for covered
3 employees under this chapter by purchasing and maintaining a standard
4 workers' compensation policy approved by the commissioner of the Department
5 of Workers' Claims. A client may fulfill that responsibility by contracting with a
6 professional employer organization to secure coverage. Where a client contracts
7 with a professional employer organization to secure coverage for a portion of its
8 employees, a client shall obtain and maintain workers' compensation coverage in
9 compliance with KRS Chapter 342 for all employees not covered in the co-
10 employment relationship. In either event, it shall be the responsibility of the client
11 to maintain in its files, at all times, the certificate of insurance, or a copy thereof,
12 evidencing the existence of the required insurance. The exposure and experience
13 of the client shall be used in determining the premium for the policy and shall
14 include coverage for all covered employees.

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

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

19 (1) A client and a registered professional employer organization shall each be
20 deemed an employer under the laws of this Commonwealth for purposes of
21 sponsoring retirement and welfare benefit plans for its covered employees.

22 (2) A fully insured welfare benefit plan offered to the covered employees of a
23 professional employer organization shall be treated for the purposes of state law
24 as a single employer welfare benefit plan.

25 (3) For purposes of sponsoring retirement and welfare benefit plans for its covered
26 employees, a professional employer organization shall be considered the
27 employer of all of its covered employees, and all covered employees of one (1) or

1 more clients participating in a health benefit plan sponsored by a professional
 2 employer organization shall be considered employees of that professional
 3 employer organization.

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

6 For the purposes of KRS Chapter 341:

7 (1) Covered employees of a registered professional employer organization shall be
 8 considered employees of the professional employer organization, which shall be
 9 responsible for the payment of contributions, penalties, and interest on wages
 10 paid by the professional employer organization to its covered employees during
 11 the term of the applicable professional employer agreement;

12 (2) The professional employer organization shall report and pay all required
 13 contributions to the unemployment insurance fund using the state employer
 14 identification number and the contribution rate of the professional employer
 15 organization; and

16 (3) Upon the termination of a contract between a professional employer organization
 17 and a client or the failure of a professional employer organization to submit
 18 reports or make tax payments as required by Sections 1 to 11 of this Act, the
 19 client shall be treated as a new employer without a previous experience record
 20 unless that client is otherwise eligible for an experience rating.

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

23 (1) A person shall not knowingly:

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

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or

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

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

(a) Any person for violation of subsection (1) of this section;

(b) A professional employer organization or the controlling person of a professional employer organization upon the conviction of a professional employer organization or the controlling person of a professional employer organization of a crime that relates to the operation of the professional employer organization or the ability of the registrant or the controlling person of the registrant to operate the professional employer organization;

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

(d) A professional employer organization or the controlling person of a professional employer organization for a willful violation of Sections 1 to 11 of this Act or any order or administrative regulation issued by the Department of Workers' Claims under Sections 1 to 11 of this Act.

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

(a) Deny an application for a registration;

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

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

- 1 *(d) Place a registration on probation and subject to conditions specified by the*
2 *Department of Workers' Claims; or*
3 *(e) Issue a cease and desist order.*

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

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

- 6 (1) "Injury" means any work-related traumatic event or series of traumatic events,
7 including cumulative trauma, arising out of and in the course of employment which
8 is the proximate cause producing a harmful change in the human organism
9 evidenced by objective medical findings. "Injury" does not include the effects of the
10 natural aging process, and does not include any communicable disease unless the
11 risk of contracting the disease is increased by the nature of the employment.
12 "Injury" when used generally, unless the context indicates otherwise, shall include
13 an occupational disease and damage to a prosthetic appliance, but shall not include
14 a psychological, psychiatric, or stress-related change in the human organism, unless
15 it is a direct result of a physical injury;
- 16 (2) "Occupational disease" means a disease arising out of and in the course of the
17 employment;
- 18 (3) An occupational disease as defined in this chapter shall be deemed to arise out of
19 the employment if there is apparent to the rational mind, upon consideration of all
20 the circumstances, a causal connection between the conditions under which the
21 work is performed and the occupational disease, and which can be seen to have
22 followed as a natural incident to the work as a result of the exposure occasioned by
23 the nature of the employment and which can be fairly traced to the employment as
24 the proximate cause. The occupational disease shall be incidental to the character of
25 the business and not independent of the relationship of employer and employee. An
26 occupational disease need not have been foreseen or expected but, after its
27 contraction, it must appear to be related to a risk connected with the employment

- 1 and to have flowed from that source as a rational consequence;
- 2 (4) "Injurious exposure" shall mean that exposure to occupational hazard which would,
3 independently of any other cause whatsoever, produce or cause the disease for
4 which the claim is made;
- 5 (5) "Death" means death resulting from an injury or occupational disease;
- 6 (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the
7 liability of employers under this chapter and includes a self-insurer;
- 8 (7) "Self-insurer" is an employer who has been authorized under the provisions of this
9 chapter to carry his own liability on his employees covered by this chapter;
- 10 (8) "Department" means the Department of Workers' Claims in the Labor Cabinet;
- 11 (9) "Commissioner" means the commissioner of the Department of Workers' Claims
12 under the direction and supervision of the secretary of the Labor Cabinet;
- 13 (10) "Board" means the Workers' Compensation Board;
- 14 (11) (a) "Temporary total disability" means the condition of an employee who has not
15 reached maximum medical improvement from an injury and has not reached a
16 level of improvement that would permit a return to employment;
- 17 (b) "Permanent partial disability" means the condition of an employee who, due to
18 an injury, has a permanent disability rating but retains the ability to work; and
- 19 (c) "Permanent total disability" means the condition of an employee who, due to
20 an injury, has a permanent disability rating and has a complete and permanent
21 inability to perform any type of work as a result of an injury, except that total
22 disability shall be irrebuttably presumed to exist for an injury that results in:
- 23 1. Total and permanent loss of sight in both eyes;
- 24 2. Loss of both feet at or above the ankle;
- 25 3. Loss of both hands at or above the wrist;
- 26 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at
27 or above the wrist;

- 1 5. Permanent and complete paralysis of both arms, both legs, or one (1)
2 arm and one (1) leg;
- 3 6. Incurable insanity or imbecility; or
- 4 7. Total loss of hearing;
- 5 (12) "Income benefits" means payments made under the provisions of this chapter to the
6 disabled worker or his dependents in case of death, excluding medical and related
7 benefits;
- 8 (13) "Medical and related benefits" means payments made for medical, hospital, burial,
9 and other services as provided in this chapter, other than income benefits;
- 10 (14) "Compensation" means all payments made under the provisions of this chapter
11 representing the sum of income benefits and medical and related benefits;
- 12 (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical
13 rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- 14 (16) "Person" means any individual, partnership, limited partnership, limited liability
15 company, firm, association, trust, joint venture, corporation, or legal representative
16 thereof;
- 17 (17) "Wages" means, in addition to money payments for services rendered, the
18 reasonable value of board, rent, housing, lodging, fuel, or similar advantages
19 received from the employer, and gratuities received in the course of employment
20 from persons other than the employer as evidenced by the employee's federal and
21 state tax returns;
- 22 (18) "Agriculture" means the operation of farm premises, including the planting,
23 cultivation, producing, growing, harvesting, and preparation for market of
24 agricultural or horticultural commodities thereon, the raising of livestock for food
25 products and for racing purposes, and poultry thereon, and any work performed as
26 an incident to or in conjunction with the farm operations, including the sale of
27 produce at on-site markets and the processing of produce for sale at on-site markets.

1 It shall not include the commercial processing, packing, drying, storing, or canning
2 of such commodities for market, or making cheese or butter or other dairy products
3 for market;

4 (19) "Beneficiary" means any person who is entitled to income benefits or medical and
5 related benefits under this chapter;

6 (20) "United States," when used in a geographic sense, means the several states, the
7 District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the
8 territories of the United States;

9 (21) "Alien" means a person who is not a citizen, a national, or a resident of the United
10 States or Canada. Any person not a citizen or national of the United States who
11 relinquishes or is about to relinquish his residence in the United States shall be
12 regarded as an alien;

13 (22) "Insurance carrier" means every insurance carrier or insurance company authorized
14 to do business in the Commonwealth writing workers' compensation insurance
15 coverage and includes the Kentucky Employers Mutual Insurance Authority and
16 every self-insured group operating under the provisions of this chapter;

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

23 (b) "Engaged in severance or processing of coal" shall include all individuals,
24 partnerships, limited partnerships, limited liability companies, corporations,
25 joint ventures, associations, or any other business entity in the Commonwealth
26 which has employees on its payroll who perform any of the acts stated in
27 paragraph (a) of this subsection, regardless of whether the acts are performed

1 as owner of the coal or on a contract or fee basis for the actual owner of the
2 coal. A business entity engaged in the severance or processing of coal,
3 including but not limited to administrative or selling functions, shall be
4 considered wholly engaged in the severance or processing of coal for the
5 purpose of this chapter. However, a business entity which is engaged in a
6 separate business activity not related to coal, for which a separate premium
7 charge is not made, shall be deemed to be engaged in the severance or
8 processing of coal only to the extent that the number of employees engaged in
9 the severance or processing of coal bears to the total number of employees.
10 Any employee who is involved in the business of severing or processing of
11 coal and business activities not related to coal shall be prorated based on the
12 time involved in severance or processing of coal bears to his total time;

13 (24) "Premium" for every self-insured group means any and all assessments levied on its
14 members by such group or contributed to it by the members thereof. For special
15 fund assessment purposes, "premium" also includes any and all membership dues,
16 fees, or other payments by members of the group to associations or other entities
17 used for underwriting, claims handling, loss control, premium audit, actuarial, or
18 other services associated with the maintenance or operation of the self-insurance
19 group;

20 (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for
21 insurance companies means direct written premiums as reported in the annual
22 statement to the Department of Insurance by insurance companies, except that
23 "premiums received" includes premiums charged off or deferred, and, on
24 insurance policies or other evidence of coverage with provisions for
25 deductibles, the calculated cost for coverage, including experience
26 modification and premium surcharge or discount, prior to any reduction for
27 deductibles. The rates, factors, and methods used to calculate the cost for

1 coverage under this paragraph for insurance policies or other evidence of
2 coverage with provisions for deductibles shall be the same rates, factors, and
3 methods normally used by the insurance company in Kentucky to calculate the
4 cost for coverage for insurance policies or other evidence of coverage without
5 provisions for deductibles, except that, for insurance policies or other
6 evidence of coverage with provisions for deductibles effective on or after
7 January 1, 1995, the calculated cost for coverage shall not include any
8 schedule rating modification, debits, or credits. For policies with provisions
9 for deductibles with effective dates on or after January 1, 1995, assessments
10 shall be imposed on premiums received as calculated by the deductible
11 program adjustment. The cost for coverage calculated under this paragraph by
12 insurance companies that issue only deductible insurance policies in Kentucky
13 shall be actuarially adequate to cover the entire liability of the employer for
14 compensation under this chapter, including all expenses and allowances
15 normally used to calculate the cost for coverage. For policies with provisions
16 for deductibles with effective dates of May 6, 1993, through December 31,
17 1993, for which the insurance company did not report premiums and remit
18 special fund assessments based on the calculated cost for coverage prior to the
19 reduction for deductibles, "premiums received" includes the initial premium
20 plus any reimbursements invoiced for losses, expenses, and fees charged
21 under the deductibles. The special fund assessment rates in effect for
22 reimbursements invoiced for losses, expenses, or fees charged under the
23 deductibles shall be those percentages in effect on the effective date of the
24 insurance policy. For policies covering covered~~leased~~ employees having a
25 co-employment relationship with a professional employer organization and
26 a client as defined in KRS Chapter 336~~[KRS 342.615]~~, "premiums received"
27 means premiums calculated using the experience modification factor of each

1 client~~[lessee]~~ as defined in **KRS Chapter 336**~~[KRS 342.615]~~ for each
2 covered~~[leased]~~ employee for that portion of the payroll pertaining to the
3 covered~~[leased]~~ employee.

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

7 (c) "Premium," for policies effective on or after January 1, 1994, for insurance
8 companies means all consideration, whether designated as premium or
9 otherwise, for workers' compensation insurance paid to an insurance company
10 or its representative, including, on insurance policies with provisions for
11 deductibles, the calculated cost for coverage, including experience
12 modification and premium surcharge or discount, prior to any reduction for
13 deductibles. The rates, factors, and methods used to calculate the cost for
14 coverage under this paragraph for insurance policies or other evidence of
15 coverage with provisions for deductibles shall be the same rates, factors, and
16 methods normally used by the insurance company in Kentucky to calculate the
17 cost for coverage for insurance policies or other evidence of coverage without
18 provisions for deductibles, except that, for insurance policies or other
19 evidence of coverage with provisions for deductibles effective on or after
20 January 1, 1995, the calculated cost for coverage shall not include any
21 schedule rating modifications, debits, or credits. For policies with provisions
22 for deductibles with effective dates on or after January 1, 1995, assessments
23 shall be imposed as calculated by the deductible program adjustment. The cost
24 for coverage calculated under this paragraph by insurance companies that
25 issue only deductible insurance policies in Kentucky shall be actuarially
26 adequate to cover the entire liability of the employer for compensation under
27 this chapter, including all expenses and allowances normally used to calculate

1 the cost for coverage. For policies with provisions for deductibles with
2 effective dates of May 6, 1993, through December 31, 1993, for which the
3 insurance company did not report premiums and remit special fund
4 assessments based on the calculated cost for coverage prior to the reduction
5 for deductibles, "premium" includes the initial consideration plus any
6 reimbursements invoiced for losses, expenses, or fees charged under the
7 deductibles.

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

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

- 13 1. Schedule rating modifications, debits, or credits;
- 14 2. Deductible credits; or
- 15 3. Modifications to the cost of coverage from inception through and
16 including any audit that are based on negotiated retrospective rating
17 arrangements, including but not limited to large risk alternative rating
18 options;

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

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

25 (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1)
26 shall be the projected value of the employer's workers' compensation claims for the
27 next calendar year as calculated by the commissioner using generally-accepted

1 actuarial methods as follows:

- 2 (a) The base period shall be the earliest three (3) calendar years of the five (5)
3 calendar years immediately preceding the calendar year for which the
4 calculation is made. The commissioner shall identify each claim of the
5 employer which has an injury date or date of last injurious exposure to the
6 cause of an occupational disease during each one (1) of the three (3) calendar
7 years to be used as the base, and shall assign a value to each claim. The value
8 shall be the total of the indemnity benefits paid to date and projected to be
9 paid, adjusted to current benefit levels, plus the medical benefits paid to date
10 and projected to be paid for the life of the claim, plus the cost of medical and
11 vocational rehabilitation paid to date and projected to be paid. Adjustment to
12 current benefit levels shall be done by multiplying the weekly indemnity
13 benefit for each claim by the number obtained by dividing the statewide
14 average weekly wage which will be in effect for the year for which the
15 premium is being calculated by the statewide average weekly wage in effect
16 during the year in which the injury or date of the last exposure occurred. The
17 total value of the claims using the adjusted weekly benefit shall then be
18 calculated by the commissioner. Values for claims in which awards have been
19 made or settlements reached because of findings of permanent partial or
20 permanent total disability shall be calculated using the mortality and interest
21 discount assumptions used in the latest available statistical plan of the
22 advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The
23 sum of all calculated values shall be computed for all claims in the base
24 period;
- 25 (b) The commissioner shall obtain the annual payroll for each of the three (3)
26 years in the base period for each employer carrying his own risk from records
27 of the department and from the records of the Department of Workforce

1 Investment, Education and Workforce Development Cabinet. The
2 commissioner shall multiply each of the three (3) years of payroll by the
3 number obtained by dividing the statewide average weekly wage which will
4 be in effect for the year in which the premium is being calculated by the
5 statewide average weekly wage in effect in each of the years of the base
6 period;

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

15 (d) For November 1, 1987, through December 31, 1988, premium for each
16 employer carrying its own risk shall be an amount calculated by the board
17 pursuant to the provisions contained in this subsection and such premium
18 shall be provided to each employer carrying its own risk and to the funding
19 commission on or before January 1, 1988. Thereafter, the calculations set
20 forth in this subsection shall be performed annually, at the time each employer
21 applies or renews its application for certification to carry its own risk for the
22 next twelve (12) month period and submits payroll and other data in support
23 of the application. The employer and the funding commission shall be notified
24 at the time of the certification or recertification of the premium calculated by
25 the commissioner, which shall form the employer's basis for assessments
26 pursuant to KRS 342.122 for the calendar year beginning on January 1
27 following the date of certification or recertification;

- 1 (e) If an employer having fewer than five (5) years of doing business in this state
2 applies to carry its own risk and is so certified, its premium for the purposes of
3 KRS 342.122 shall be based on the lesser number of years of experience as
4 may be available including the two (2) most recent years if necessary to create
5 a three (3) year base period. If the employer has less than two (2) years of
6 operation in this state available for the premium calculation, then its premium
7 shall be the greater of the value obtained by the calculation called for in this
8 subsection or the amount of security required by the commissioner pursuant to
9 KRS 342.340(1);
- 10 (f) If an employer is certified to carry its own risk after having previously insured
11 the risk, its premium shall be calculated using values obtained from claims
12 incurred while insured for as many of the years of the base period as may be
13 necessary to create a full three (3) year base. After the employer is certified to
14 carry its own risk and has paid all amounts due for assessments upon
15 premiums paid while insured, the employer shall be assessed only upon the
16 premium calculated under this subsection;
- 17 (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated
18 as set forth in this subsection; and
- 19 (h) Notwithstanding any other provision of this subsection, the premium of any
20 employer authorized to carry its own risk for purposes of assessments due
21 under this chapter shall be no less than thirty cents (\$0.30) per one hundred
22 dollars (\$100) of the employer's most recent annualized payroll for employees
23 covered by this chapter;
- 24 (29) "SIC code" as used in this chapter means the Standard Industrial Classification
25 Code contained in the latest edition of the Standard Industrial Classification Manual
26 published by the Federal Office of Management and Budget;
- 27 (30) "Investment interest" means any pecuniary or beneficial interest in a provider of

1 medical services or treatment under this chapter, other than a provider in which that
2 pecuniary or investment interest is obtained on terms equally available to the public
3 through trading on a registered national securities exchange, such as the New York
4 Stock Exchange or the American Stock Exchange, or on the National Association of
5 Securities Dealers Automated Quotation System;

6 (31) "Managed health care system" means a health care system that employs gatekeeper
7 providers, performs utilization review, and does medical bill audits;

8 (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists,
9 podiatrists, and osteopathic and chiropractic practitioners acting within the scope of
10 their license issued by the Commonwealth;

11 (33) "Objective medical findings" means information gained through direct observation
12 and testing of the patient applying objective or standardized methods;

13 (34) "Work" means providing services to another in return for remuneration on a regular
14 and sustained basis in a competitive economy;

15 (35) "Permanent impairment rating" means percentage of whole body impairment caused
16 by the injury or occupational disease as determined by the "Guides to the Evaluation
17 of Permanent Impairment";

18 (36) "Permanent disability rating" means the permanent impairment rating selected by an
19 administrative law judge times the factor set forth in the table that appears at KRS
20 342.730(1)(b); and

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

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

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

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

27 (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed

1 in this section.

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

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

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

11 (5) If a cited party notifies the commissioner that he or she intends to challenge a
12 citation issued under this section, the commissioner shall cause the matter to be
13 heard as soon as practicable by an administrative law judge and in accordance with
14 the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney
15 representing the commissioner to prove the offense stated in the citation by a
16 preponderance of the evidence. The parties shall stipulate to uncontested facts and
17 issues prior to the hearing before the administrative law judge. The administrative
18 law judge shall issue a ruling within sixty (60) days following the hearing.

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

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

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

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

1 who fails to make timely payment of a statement for services under KRS
2 342.020(4) without having reasonable grounds to delay payment may be fined
3 not less than one hundred dollars (\$100) nor more than one thousand dollars
4 (\$1,000) for each offense;

5 (c) Any person who violates KRS 342.020(12), 342.035(2), 342.040, 342.340,
6 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars
7 (\$100) nor more than one thousand dollars (\$1,000) for each offense. With
8 respect to employers who fail to maintain workers' compensation insurance
9 coverage on their employees, each employee of the employer and each day of
10 violation shall constitute a separate offense. With respect to KRS 342.040, any
11 employer's insurance carrier or other party responsible for the payment of
12 workers' compensation benefits shall be fined for failure to notify the
13 commissioner of a failure to make payments when due if a report indicating
14 the reason payment of income benefits did not commence within twenty-one
15 (21) days of the date the employer was notified of an alleged work-related
16 injury or disease is not filed with the commissioner within twenty-one (21)
17 days of the date the employer received notice, and if the employee has not
18 returned to work within that period of time. The date of notice indicated in the
19 report filed with the department pursuant to KRS 342.038(1), shall raise a
20 rebuttable presumption of the date on which the employer received notice;

21 (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
22 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two
23 hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each
24 offense. With respect to KRS 342.395, each required notice of rejection form
25 executed by an employee or potential employee of an employer shall
26 constitute a separate offense;

27 (e) Any person who fails to comply with the data reporting provisions of

- 1 administrative regulations promulgated by the commissioner pursuant to KRS
2 342.039, or with utilization review and medical bill audit administrative
3 regulations promulgated pursuant to KRS 342.035(5), shall be fined not less
4 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
5 for each violation;
- 6 (f) Except as provided in paragraph (g) of this subsection, a person who violates
7 any of the provisions of KRS 342.335(1) or (2) where the claim,
8 compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less
9 than or equal to three hundred dollars (\$300) shall be fined per occurrence not
10 more than one thousand dollars (\$1,000) per individual nor five thousand
11 dollars (\$5,000) per corporation, or twice the amount of gain received as a
12 result of the violation, whichever is greater;
- 13 (g) Any person who violates any of the provisions of KRS 342.335(1) or (2)
14 where the claim, compensation, benefit, or money referred to in KRS
15 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per
16 occurrence not more than five thousand dollars (\$5,000) per individual nor ten
17 thousand dollars (\$10,000) per corporation, or twice the amount of gain
18 received as a result of the violation, whichever is greater;
- 19 (h) Any person who violates the employee leasing provision of this chapter shall
20 be fined not less than five hundred dollars (\$500) nor more than five thousand
21 dollars (\$5,000) for each violation;
- 22 (i) Any violation of the provisions of this chapter relating to self-insureds shall
23 constitute grounds for decertification of such self-insured, a fine of not less
24 than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000)
25 per occurrence, or both; and
- 26 (j) Actions to collect the civil penalties imposed under this subsection shall be
27 instituted in the Franklin District Court and the Franklin Circuit Court.

- 1 (8) The commissioner shall initiate enforcement of a criminal penalty by causing a
2 complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to
3 act on the violation within twenty (20) days following the filing of the complaint,
4 the commissioner shall certify the inaction by the local prosecutor to the Attorney
5 General who shall initiate proceedings to prosecute the violation. The provisions of
6 KRS 15.715 shall not apply to this section.
- 7 (9) The following criminal penalties shall be applicable for violations of particular
8 provisions of this chapter:
- 9 (a) Any person who violates KRS 342.020(12), 342.035(2), 342.040, 342.400,
10 342.420, or 342.630, shall, for each offense, be fined not less than one
11 hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or
12 imprisoned for not less than thirty (30) days nor more than one hundred eighty
13 (180) days, or both;
- 14 (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335,
15 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than
16 two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or
17 imprisoned for not less than thirty (30) days nor more than one hundred and
18 eighty (180) days, or both; and
- 19 (c) ~~[Any corporation, partnership, sole proprietorship, or other form of business~~
20 ~~entity and any officer, general partner, agent, or representative of the~~
21 ~~foregoing who knowingly utilizes or participates in any employee leasing~~
22 ~~arrangement or mechanism as defined in KRS 342.615 for the purpose of~~
23 ~~depriving one (1) or more insurers of premium otherwise properly payable or~~
24 ~~for the purpose of depriving the Commonwealth of any tax or assessment due~~
25 ~~and owing and based upon said premium shall upon conviction thereof be~~
26 ~~subject to a fine of not less than five hundred dollars (\$500) nor more than~~
27 ~~five thousand dollars (\$5,000), or imprisonment for not more than one~~

1 ~~hundred eighty (180) days, or both, for each offense; and~~

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

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

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

19 ➔Section 14. The following KRS section is repealed:

20 342.615 Registration of employee leasing companies -- Coverage requirements for
21 lessees -- Status of temporary help service.

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