

1 AN ACT relating to workers' compensation.

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

3 ➔Section 1. KRS 342.0011 is amended to read as follows:

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

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

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

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

1 an incident to or in conjunction with the farm operations, including the sale of  
2 produce at on-site markets and the processing of produce for sale at on-site markets.

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

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

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

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

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

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

25 (b) "Engaged in severance or processing of coal" shall include all individuals,  
26 partnerships, limited partnerships, limited liability companies, corporations,  
27 joint ventures, associations, or any other business entity in the Commonwealth

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

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

22       (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for  
23          insurance companies means direct written premiums as reported in the annual  
24          statement to the Department of Insurance by insurance companies, except that  
25          "premiums received" includes premiums charged off or deferred, and, on  
26          insurance policies or other evidence of coverage with provisions for  
27          deductibles, the calculated cost for coverage, including experience

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

1 client as defined in KRS Chapter 336, "premiums received" means premiums  
2 calculated using the experience modification factor of each client as defined  
3 in KRS Chapter 336 for each covered employee for that portion of the payroll  
4 pertaining to the covered employee.

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

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

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

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

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

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

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

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

26          (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1)  
27          shall be the projected value of the employer's workers' compensation claims for the

1 next calendar year as calculated by the commissioner using generally-accepted  
2 actuarial methods as follows:

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

26 (b) The commissioner shall obtain the annual payroll for each of the three (3)  
27 years in the base period for each employer carrying his own risk from records

1 of the department and from the records of the Department of Workforce  
2 Development, Education and Labor Cabinet. The commissioner shall multiply  
3 each of the three (3) years of payroll by the number obtained by dividing the  
4 statewide average weekly wage which will be in effect for the year in which  
5 the premium is being calculated by the statewide average weekly wage in  
6 effect in each of the years of the base 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  
12 Development data which shall be made available for this purpose on a  
13 quarterly basis as reported, to obtain the premium for the next calendar year  
14 for assessment 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  
3 of 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  
5 of 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 the license or other credentials required by his or her specialty of practice in the  
11 United States jurisdiction in which he or she is authorized to practice~~their license~~  
12 ~~issued by the Commonwealth~~;

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

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

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

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

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

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

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

1       ➔Section 2. KRS 342.033 is amended to read as follows:

2       **(1) As used in this section, "physician" means physicians and surgeons,**  
3       **psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic**  
4       **practitioners acting within the scope of the license or other credentials required**  
5       **by his or her specialty of practice in the United States jurisdiction in which he or**  
6       **she is authorized to practice, and any retired physician previously authorized to**  
7       **practice in the Commonwealth of Kentucky, who surrendered his or her license**  
8       **while in good standing with their respective licensing board and was not subject**  
9       **to an ongoing investigation for improper practices.**

10       **(2)** In a claim for benefits, no party may introduce direct testimony from more than two  
11       (2) physicians without prior consent from the administrative law judge. The motion  
12       requesting additional testimony shall clearly demonstrate the need for such  
13       additional testimony. A party may introduce direct testimony from a physician  
14       through a written medical report. The report shall become a part of the evidentiary  
15       record, subject to the right of an adverse party to object to the admissibility of the  
16       report and to cross-examine the reporting physician. The commissioner shall  
17       promulgate administrative regulations prescribing the format and content of written  
18       medical reports.

19       ➔Section 3. KRS 342.140 is amended to read as follows:

20       The average weekly wage of the injured employee at the time of the injury or last  
21       injurious exposure shall be determined as follows:

- 22       (1) If at the time of the injury which resulted in death or disability or the last date of  
23       injurious exposure preceding death or disability from an occupational disease:
- 24       (a) The wages were fixed by the week, the amount so fixed shall be the average  
25       weekly wage;
  - 26       (b) The wages were fixed by the month, the average weekly wage shall be the  
27       monthly wage so fixed multiplied by twelve (12) and divided by fifty-two

1 (52);

2 (c) The wages were fixed by the year, the average weekly wage shall be the  
3 yearly wage so fixed divided by fifty-two (52);

4 (d) The wages were fixed by the day, hour, or by the output of the employee, the  
5 average weekly wage shall be the wage most favorable to the employee  
6 computed by dividing by thirteen (13) the wages (not including overtime or  
7 premium pay) of said employee earned in the employ of the employer in the  
8 first, second, third, or fourth period of thirteen (13) consecutive calendar  
9 weeks in the fifty-two (52) weeks immediately preceding the injury;

10 (e) *The wages were determined by the day, hour, or by the output of the*  
11 *employee, and the employee received unemployment benefits pursuant to*  
12 *KRS Chapter 341 during the first, second, third, or fourth period of thirteen*  
13 *(13) consecutive calendar weeks in the fifty-two (52) weeks immediately*  
14 *preceding the injury, the unemployment benefits received shall be added to*  
15 *the wages earned during the thirteen (13) week period and divided by*  
16 *thirteen (13), the average weekly wage shall be the result most favorable to*  
17 *the employee;*

18 (f) The employee had been in the employ of the employer less than thirteen (13)  
19 calendar weeks immediately preceding the injury, his or her average weekly  
20 wage shall be computed under paragraph (d), taking the wages (not including  
21 overtime or premium pay) for that purpose to be the amount he or she would  
22 have earned had he or she been so employed by the employer the full thirteen  
23 (13) calendar weeks immediately preceding the injury and had worked, when  
24 work was available to other employees in a similar occupation; and

25 (g)~~(f)~~ The hourly wage has not been fixed or cannot be ascertained, the wage  
26 for the purpose of calculating compensation shall be taken to be the usual  
27 wage for similar services where the services are rendered by paid employees.

- 1 (2) In occupations which are exclusively seasonal and therefore cannot be carried on  
2 throughout the year, the average weekly wage shall be taken to be one-fiftieth  
3 (1/50) of the total wages which the employee has earned from all occupations  
4 during the twelve (12) calendar months immediately preceding the injury.
- 5 (3) In the case of volunteer firemen, police, and emergency management agency  
6 members or trainees, the income benefits shall be based on the average weekly  
7 wage in their regular employment.
- 8 (4) If the employee was a minor, apprentice, or trainee when injured, and it is  
9 established that under normal conditions his or her wages should be expected to  
10 increase during the period of disability, that fact may be considered in computing  
11 his or her average weekly wage.
- 12 (5) When the employee is working under concurrent contracts with two (2) or more  
13 employers and the defendant employer has knowledge of the employment prior to  
14 the injury, his or her wages from all the employers shall be considered as if earned  
15 from the employer liable for compensation.
- 16 (6) The term "wages" as used in this section and KRS 342.143 means, in addition to  
17 money payments for services rendered, the reasonable value of board, rent, housing,  
18 lodging, and fuel or similar advantage received from the employer, and gratuities  
19 received in the course of employment from others than the employer to the extent  
20 the gratuities are reported for income tax purposes.
- 21 (7) The commissioner shall, from time to time, based upon the best available  
22 information, determine by administrative regulation industries which ordinarily do  
23 not have a full working day for five (5) days in every week. In those industries,  
24 compensation shall be computed at the average weekly wage earned by the  
25 employee at the time of injury reckoning wages as earned while working full time.  
26 "At full time" as used in this subsection means a full working day for five (5)  
27 working days in every week regardless of whether the injured employee actually

1 worked all or part of the time.