

1 AN ACT relating to payment of outstanding liabilities funded through assessments
2 upon insurance premiums.

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

4 ➔Section 1. KRS 342.120 is amended to read as follows:

5 (1) There is created the Division of Workers' Compensation Funds in the Department
6 of Workers' Claims which shall be responsible for the administration of the special
7 fund and the coal workers' pneumoconiosis fund and the maintenance of records
8 regarding the payment of claims by these funds. The Division of Workers'
9 Compensation Funds shall have no responsibility for the coal workers'
10 pneumoconiosis fund once the assets and liabilities have been transferred to the
11 Kentucky Employers' Mutual Insurance Authority, which will administer the fund
12 pursuant to KRS 342.1243. The Division of Workers' Compensation Funds shall be
13 headed by a director appointed by the secretary of the Labor Cabinet, with the prior
14 written approval of the Governor pursuant to KRS 12.050. The director shall be
15 responsible for overseeing the administration of the funds and the maintenance of
16 records regarding the payment of claims by the funds.

17 (2) The special fund shall have no liability upon any claim in which the injury occurred,
18 or for cumulative trauma, the disability became manifest, or, for occupational
19 disease, if the date of injury or last exposure occurred, after December 12, 1996.

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

26 **(4) The General Assembly hereby finds and declares that the settlement of workers'**
27 **compensation claims involving special fund liabilities plays a positive role in the**

1 general welfare of the injured worker and his or her dependents. The General
2 Assembly further finds and declares that many special fund beneficiaries and
3 their dependents may make better use of their awarded income benefits when
4 paid in a lump-sum payment, rather than by periodic payments over the duration
5 of the award. The Division of Workers' Compensation Funds shall:

6 (a) Engage in a program to resolve its outstanding indemnity liabilities through
7 lump-sum settlements for as many claims as practicable, beginning with
8 those receiving the smallest weekly benefits, by January 1, 2021; and

9 (b) If an injured worker chooses to receive a lump-sum payment pursuant to
10 this subsection:

11 1. The injured worker may elect to be represented in the settlement
12 process by an attorney of his or her choice;

13 2. The legal fees of the injured worker shall be paid from the special
14 fund, in addition to the lump-sum payment; and

15 3. The legal fees shall not exceed more than one percent (1%) of the
16 lump-sum payment to the injured worker.

17 ➔Section 2. KRS 342.122 is amended to read as follows:

- 18 (1) (a) ~~For calendar year 1997 and for each calendar year thereafter, for~~ the purpose
19 of funding and prefunding the liabilities of the special fund and ~~financing~~
20 the administration and operation of the Kentucky Workers' Compensation
21 Funding Commission, and financing the expenditures for all programs in the
22 Labor Cabinet, except the Division of Wages and Hours in the Department of
23 Workplace Standards, as reflected in the enacted budget of the
24 Commonwealth and enacted by the General Assembly, the funding
25 commission shall impose a special fund assessment rate of not less than six
26 and twenty-nine one hundredths percent (6.29%) ~~nine percent (9%)~~ upon
27 the amount of workers' compensation premiums ~~received on and after~~

1 ~~January 1, 1997, through December 31, 1997,]~~ by every insurance carrier
2 writing workers' compensation insurance in the Commonwealth, by every self-
3 insured group operating under the provisions of KRS 342.350(4) and Chapter
4 304, and against the premium, as defined in KRS 342.0011, of every employer
5 carrying his or her own risk. **Funding for the financing of the expenditures**
6 **for all programs in the Labor Cabinet except the Division of Employment**
7 **Standards, Apprenticeship and Mediation in the Department of Workplace**
8 **Standards shall be capped at the amount budgeted for the 2018-2020 fiscal**
9 **biennium, less direct operational expenses of the Workers' Compensation**
10 **Funding Commission and the Division of Special Funds, exclusive of any**
11 **amount for capital projects, as reflected in the budget of the Commonwealth**
12 **enacted by the 2018 General Assembly and, the cap shall decrease by seven**
13 **percent (7%) each fiscal year of each subsequent biennium, beginning on**
14 **July 1, 2020. At the point where the Special Fund balance has reached a**
15 **balance sufficient to produce enough revenue to amortize the remaining**
16 **claims balance and to fund the operations of the Kentucky Workers'**
17 **Compensation Funding Commission solely for the purpose of finalization**
18 **of claims administration, the funding commission shall impose an**
19 **assessment rate of one percent (1%) upon the amount of workers'**
20 **compensation premiums by every insurance carrier writing workers'**
21 **compensation insurance for funding for the operation of the Labor Cabinet**
22 **provided for in this section.**

- 23 (b) The funding commission shall~~[, for calendar year 1998 and thereafter,]~~
24 establish for the special fund an assessment rate to be assessed against all
25 premium received during that calendar year which shall produce enough
26 revenue to amortize on a level basis the unfunded liability of the special fund
27 as of June 30 preceding January 1 of each year, for the period remaining **not to**

1 ~~exceed~~~~[until]~~ December 31, 2029. When the Special Fund balance has
2 reached a balance sufficient to produce enough revenue to amortize the
3 remaining claims balance and to fund the operations of the funding
4 commission solely for the purpose of finalization of claims administration,
5 the funding commission shall impose the assessment rate of one percent
6 (1%) upon the amount of workers' compensation premiums by every
7 insurance carrier writing workers' compensation insurance for funding for
8 the operation of the Labor Cabinet provided for in this section as set forth
9 in paragraph (a) of this subsection. The interest rate to be used in this

10 calculation shall reflect the funding commission's investment experience to
11 date and the current investment policies of the commission. This assessment
12 shall be imposed upon the amount of workers' compensation premiums
13 received by every insurance carrier writing workers' compensation insurance
14 in the Commonwealth, by every self-insured group operating under the
15 provisions of KRS 342.350(4) and Chapter 304, and against the premium, as
16 defined in KRS 342.0011, of every employer carrying its own risk. On or
17 before October 1 of each year, the commission shall notify each insurance
18 carrier writing workers' compensation insurance in the Commonwealth, every
19 group of self-insured employers, and each employer carrying its own risk, of
20 the rates which shall become effective on January 1 of each year, unless
21 modified by the General Assembly.

22 (c) All assessments imposed by this section shall be paid to the Kentucky
23 Workers' Compensation Funding Commission and shall be credited to the
24 benefit reserve fund within the Kentucky Workers' Compensation Funding
25 Commission.

26 (d) The assessments imposed in this chapter shall be in lieu of all other
27 assessments or taxes on workers' compensation premiums.

- 1 (2) (a) These assessments shall be paid quarterly not later than the thirtieth day of the
2 month following the end of the quarter in which the premium is received.
3 Receipt shall be considered timely through actual physical receipt or by
4 postmark of the United States Postal Service. Employers carrying their own
5 risk and employers defined in KRS 342.630(2) shall pay the annual
6 assessments in four (4) equal quarterly installments.
- 7 (b) Beginning on January 1, 2020, all assessments shall be electronically remitted
8 to the funding commission quarterly not later than the thirtieth day of the
9 month following the end of the quarter in which the premium is received.
10 Receipt shall be considered timely when filed and remitted using the
11 appropriate electronic pay system as prescribed by the funding commission.
12 Employers carrying their own risk and employers defined in KRS 342.630(2)
13 shall pay the annual assessments in four (4) equal quarterly installments.
- 14 (3) The assessments imposed by this section may be collected by the insurance carrier
15 from the insured. However, the insurance carrier shall not collect from the employer
16 any amount exceeding the assessments imposed pursuant to this section. If the
17 insurance carrier collects the assessment from an insured, the assessment shall be
18 collected at the same time and in the same proportion as the premium is collected.
19 The assessment for an insurance policy or other evidence of coverage providing a
20 deductible may be collected in accordance with this chapter on a premium amount
21 that equates to the premium that would have applied without the deductible. Each
22 statement from an insurance carrier presented to an insured reflecting premium and
23 assessment amounts shall clearly identify and distinguish the amount to be paid for
24 premium and the amount to be paid for assessments. No insurance carrier shall
25 collect from an insured an amount in excess of the assessment percentages imposed
26 by this chapter. The assessment for an insurance policy or other evidence of
27 coverage providing a deductible may be collected in accordance with this chapter on

1 a premium amount that equates to the premium that would have applied without the
2 deductible. The percentages imposed by this chapter for an insurance policy issued
3 by an insurance company shall be those percentages in effect on the annual effective
4 date of the policy, regardless of the date that the premium is actually received by the
5 insurance company.

6 (4) A self-insured group may elect to report its premiums and to have its assessments
7 computed in the same manner as insurance companies. This election may not be
8 rescinded for at least ten (10) years, nor may this election be made a second time for
9 at least another ten (10) years, except that the board of directors of the funding
10 commission may, at its discretion, waive the ten (10) year ban on a case-by-case
11 basis after formal petition has been made to the funding commission by a self-
12 insured group.

13 (5) The funding commission, as part of the collection and auditing of the special fund
14 assessments required by this section, shall annually require each insurance carrier
15 and each self-insured group to provide a list of employers which it has insured or
16 which are members and the amount collected from each employer. Additionally, the
17 funding commission shall require each entity paying a special fund assessment to
18 report the SIC code for each employer and the amount of premium collected from
19 each SIC code. An insurance carrier or self-insured group may require its insureds
20 or members to furnish the SIC code for each of their employees. However, the
21 failure of any employer to furnish said codes shall not relieve the insurance carrier
22 or self-insured group from the obligation to furnish same to the funding
23 commission. The Department of Workforce Investment, Education and Workforce
24 Development Cabinet, is hereby directed to make available the SIC codes assigned
25 in its records to specific employers to aid in the reporting and recording of the
26 special fund assessment data.

27 (6) Each self-insured employer, self-insured group, or insurance carrier shall provide

1 any information and submit any reports the Department of Revenue or the funding
2 commission may require to effectuate the provisions of this section. In addition, the
3 funding commission may enter reciprocal agreements with other governmental
4 agencies for the exchange of information necessary to effectuate the provisions of
5 this section.

6 (7) The special fund shall be required to maintain a central claim registry of all claims
7 to which it is named a party, giving each such claim a unique claim number and
8 thereafter recording the status of each claim on a current basis. The registry shall be
9 established by January 26, 1988, for all claims on which payments were made since
10 July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all
11 claim files in the possession of the special fund.

12 (8) The fund heretofore designated as the subsequent claim fund is abolished, and there
13 is substituted therefor the special fund as set out by this section, and all moneys and
14 properties owned by the subsequent claim fund are transferred to the special fund.

15 (9) Notwithstanding any other provisions of this section or this chapter to the contrary,
16 the total amount of funds collected pursuant to the assessment rates adopted by the
17 funding commission shall not be limited to the provisions of this section.

18 (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS
19 342.122 shall forever remain applicable to premiums received on policies with
20 effective dates prior to January 1, 1997, by every insurance carrier writing workers'
21 compensation insurance in the Commonwealth, by every self-insured group
22 operating under the provision of KRS 342.350(4) and Chapter 304, and against the
23 premium, as defined in KRS 342.0011, of every employer carrying its own risk.

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

25 (1) The Kentucky Workers' Compensation Funding Commission is created as an
26 agency of the Commonwealth for the public purpose of controlling, investing, and
27 managing the funds collected pursuant to KRS 342.122.

- 1 (2) The commission shall:
- 2 (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS
- 3 342.122 and its other funds separate and apart from all "state funds" or "public
- 4 funds," as defined in KRS Chapter 446;
- 5 (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power
- 6 over the funds collected pursuant to KRS 342.122, and may invest association
- 7 funds through one (1) or more banks, trust companies, or other financial
- 8 institutions with offices in Kentucky in good standing with the Department of
- 9 Financial Institutions, in investments described in KRS Chapter 386, except
- 10 that the funding commission may, at its discretion, invest in equity securities;
- 11 (c) Report to the General Assembly at each even-numbered-year regular session
- 12 the actuarial soundness and adequacy of the funding mechanism for the
- 13 special fund and other programs supported by the mechanism, including
- 14 detailed information on the investment of funds and yields thereon;
- 15 (d) Recommend to the General Assembly, not later than October 31 of the year
- 16 prior to each even-numbered-year regular legislative session, changes deemed
- 17 necessary in the level of the assessments imposed in this chapter;
- 18 (e) In conjunction with the Labor Cabinet, submit to the General Assembly, not
- 19 later than October 31 of the year prior to each even-numbered-year regular
- 20 legislative session, a proposed budget for the biennium beginning July 1
- 21 following the even-numbered-year regular session of the General Assembly;
- 22 (f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee
- 23 on Appropriations and Revenue an annual budget and detailed quarterly
- 24 financial reports;
- 25 (g) Conduct periodic audits, independently or in cooperation with the Labor
- 26 Cabinet or the Department of Revenue, of all entities subject to the
- 27 assessments imposed in this chapter; and

- 1 (h) Report monthly to the Interim Joint Committees on Appropriations and
2 Revenue and on Economic Development and Workforce Investment~~[Labor~~
3 ~~and Industry]~~ its monthly expenditures of restricted agency funds and the
4 nature of the expenditures; and
- 5 (i) Produce and submit a biennial financial audit and management review by
6 an independent accounting firm to the Interim Joint Committee on
7 Appropriations and Revenue no later than December 31 of odd-numbered
8 years.
- 9 (3) The commission shall have all of the powers necessary or convenient to carry out
10 and effectuate the purposes for which it was established, including, but not limited
11 to, the power:
- 12 (a) To sue and be sued, complain, or defend, in its name;
- 13 (b) To elect, appoint, or hire officers, agents, and employees, and define their
14 duties and fix their compensation within the limits of its budget approved by
15 the General Assembly. Notwithstanding any provision of KRS Chapter 18A to
16 the contrary, officers and employees of the funding commission may be
17 exempted from the classified service;
- 18 (c) To contract for investment counseling, legal, actuarial, auditing, and other
19 professional services in accordance with the provisions relating to personal
20 service contracts contained in KRS Chapter 45A;
- 21 (d) To appoint, hire, and contract with banks, trust companies, and other entities
22 to serve as depositories and custodians of its investment receipts and other
23 funds;
- 24 (e) To take any and all other actions consistent with the purposes of the
25 commission and the provisions of this chapter; and
- 26 (f) To make and promulgate administrative regulations.
- 27 (4) The Kentucky Workers' Compensation Funding Commission may utilize the

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

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

16 ➔Section 4. KRS 342.1224 is amended to read as follows:

17 (1) The commission shall be governed by a board of directors consisting of seven (7)
18 members **who shall be appointed by the Governor.** ~~[The seven (7) members shall~~
19 ~~include the secretary of the Labor Cabinet or a designee, the secretary of the Cabinet~~
20 ~~for Economic Development or a designee, the secretary of the Finance and~~
21 ~~Administration Cabinet or a designee, and four (4) members who shall be appointed~~
22 ~~by the Governor.]~~

23 (2) The **seven (7)**~~[four (4)]~~ appointed members shall include:

24 (a) One (1) member, selected from a list of three (3) submitted by the **American**
25 **Federation of Labor and Congress of Industrial Organizations**~~[secretary of~~
26 ~~the Labor Cabinet,]~~ who shall represent labor;

27 (b) **One (1) member, selected from a list of three (3) submitted by the Kentucky**

1 **Association of Manufacturers;**

2 **(c) One (1) member, selected from a list of three (3) submitted by the Kentucky**

3 **Justice Association;**

4 **(d)** One (1) member, selected from a list of three (3) submitted by the secretary
5 for **the Cabinet for** Economic Development, who shall represent employers;
6 provided, however, that these three (3) members shall represent employers
7 who purchase workers' compensation coverage for their employees from
8 insurance companies writing workers' compensation insurance in the
9 Commonwealth;

10 **(e)**~~[(e)]~~ One (1) member, selected from a list of three (3) submitted by the
11 insurance advisory organization having jurisdiction over Kentucky, who shall
12 represent insurance companies writing workers' compensation insurance in the
13 Commonwealth;~~and]~~

14 **(f)**~~[(d)]~~ One (1) member, selected from a list of three (3) submitted by the
15 associations representing self-insured employers in the Commonwealth.; **and**

16 **(g) One (1) member, selected from a list of four (4) submitted as follows:**

17 **1. Two (2) names submitted by the Kentucky Association of Counties;**

18 **and**

19 **2. Two (2) names submitted by the Kentucky League of Cities.**

20 (3) The members of the board of directors shall serve a term of four (4) years, except
21 that the initial terms of the members shall be staggered as follows **from the effective**
22 **date of this Act:**

23 (a) The initial member appointed by the Governor to represent labor shall serve a
24 term of one (1) year. Thereafter, such member shall serve a term of four (4)
25 years;

26 (b) The initial member appointed by the Governor to represent **from the list**
27 **provided by the Kentucky Association of Manufacturers**~~employers]~~ shall

1 serve a term of two (2) years. Thereafter, such member shall serve a term of
2 four (4) years;

3 (c) The initial member appointed by the Governor from the list provided by the
4 Kentucky Justice Association shall serve for a term of three (3) years.
5 Thereafter, such member shall serve a term of four (4) years;

6 (d) The initial member appointed by the Governor from the list provided by the
7 Secretary of the Cabinet for Economic Development ~~to represent insurance~~
8 ~~companies~~ shall serve a term of four (4) years. Thereafter, such member shall
9 serve a term of four (4) years; ~~and~~

10 (e) The initial member appointed by the Governor to represent insurance
11 companies shall serve a term of one (1) year. Thereafter, such member shall
12 serve a term of four (4) years;

13 (f) ~~(d)~~ The initial member appointed by the Governor to represent self-insured
14 employers shall serve a term of two (2) ~~three (3)~~ years. Thereafter, such
15 member shall serve a term of four (4) years; and

16 (g) The initial member appointed by the Governor to represent public
17 employers shall serve a term of three (3) years. Thereafter, such member
18 shall serve a term of four (4) years.

19 (4) The board of directors shall annually elect from among its members a chairman, a
20 vice chairman, and a secretary-treasurer. The board of directors may also elect or
21 appoint, and prescribe the duties of, other officers as the board of directors deems
22 necessary or advisable.

23 (5) The board of directors shall appoint an executive director to administer, manage,
24 and direct the affairs and business of the commission, and other staff persons to
25 carry out the affairs and business of the commission, subject in each instance to the
26 policies, control, and directions of the board of directors. The board of directors
27 shall fix the compensation of all such persons and shall pay such compensation out

1 of the funds of the commission.

2 (6) Notwithstanding any other law, the Governor, pursuant to an executive order, may
3 cause the employees of the commission to be eligible to participate in the Kentucky
4 Retirement System and the Kentucky Public Employees Deferred Compensation
5 System.

6 (7) A majority of the board of directors of the commission shall constitute a quorum for
7 the purposes of conducting its business and exercising its powers and for all other
8 purposes. The majority shall be determined by excluding any existing vacancies
9 from the total number of directors.

10 (8) The board of directors of the Kentucky Workers' Compensation Funding
11 Commission are hereby determined to be officers and agents of the Commonwealth
12 of Kentucky and, as such, shall enjoy the same immunities from suit for the
13 performance of their official acts as do other officers of the Commonwealth of
14 Kentucky.

15 (9) The secretaries of the Cabinet for Economic Development, the Finance &
16 Administration Cabinet, and the Labor Cabinet or their designees may serve as
17 non-voting, ex officio members of the funding commission.