

1 AN ACT relating to the coal workers' pneumoconiosis fund.

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

3 ➔Section 1. KRS 342.1242 is amended to read as follows:

4 (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have
5 one-half (1/2) of the liability for income benefits, including retraining benefits,
6 payable for claims brought under KRS 342.732 for last exposure incurred on or
7 after December 12, 1996, which are filed on or before June 30, 2017. Income
8 benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made
9 contemporaneous with the payments made by the employer, except that the
10 employer shall make all payments due under a final award or approved settlement
11 for any claims filed after June 30, 2017.

12 (2) For claims brought under KRS 342.732 for last exposure incurred on or after
13 December 12, 1996 which are filed on or before June 30, 2017, the employer shall
14 defend any claim brought under KRS 342.732 and upon conclusion shall seek
15 participation in payment of the final award or settlement by the Kentucky coal
16 workers' pneumoconiosis fund by making written request upon the director in the
17 manner prescribed by administrative regulation to be promulgated by the
18 commissioner of the Department of Workers' Claims.

19 (3) (a) For the purpose of funding the liabilities of the Kentucky coal workers'
20 pneumoconiosis fund and financing the administration and operation of the
21 Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the
22 Commonwealth enacted by the General Assembly, a Kentucky coal workers'
23 pneumoconiosis fund assessment at the rate of three percent (3%) is hereby
24 imposed upon the amount of workers' compensation premiums received on
25 and after January 1, 1997, through December 31, 1997, by every insurance
26 carrier writing workers' compensation insurance in the Commonwealth and by
27 every self-insured group operating under the provisions of KRS 342.350(4)

1 and Chapter 304, from employers engaged in the severance or processing of
2 coal. Likewise, on and after January 1, 1997, through December 31, 1997, an
3 assessment at the rate of three percent (3%) of premium shall be paid by every
4 employer engaged in the severance or processing of coal who is carrying his
5 or her own risk.

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

12 (c) As of June 30, 2018, and each year thereafter until the liabilities of the fund
13 are fully funded, the Funding Commission and the Kentucky Employers'
14 Mutual Insurance Authority shall determine the assets of the fund and the
15 claim liability incurred by the fund for all previous years and shall establish
16 the rates under the provisions of paragraphs (a) and (b) of this subsection
17 necessary as of January 1 of the next year to fund claim liabilities through
18 December 31 of the next year of operations. The assessment rate authorized
19 by this section for premiums received and tons of coal severed shall be set so
20 as to receive fifty percent (50%) of the needed revenue from each assessment.
21 Notice of any rate changes shall be provided no later than October 1 of the
22 year preceding the rate change.

23 (4) All assessments imposed by this section shall be paid to the Kentucky Workers'
24 Compensation Funding Commission and shall be transferred to the Kentucky
25 Employers' Mutual Insurance Authority, which is administering the coal workers'
26 pneumoconiosis fund. In addition, the powers and responsibilities of the Kentucky
27 Workers' Compensation Funding Commission including its fiduciary duties and

1 responsibilities relating to assessments collected for the special fund pursuant to
2 KRS 342.122, 342.1221, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231
3 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis
4 fund created pursuant to this section. Each entity subject to assessments for the
5 Kentucky coal workers' pneumoconiosis fund shall provide any and all information
6 requested by the Kentucky Workers' Compensation Funding Commission necessary
7 to carry out its powers and responsibilities relating thereto.

8 (5) These assessments shall be paid quarterly not later than the thirtieth day of the
9 month following the end of the quarter in which the premium is received or the coal
10 is processed or severed. Receipt shall be considered timely through actual physical
11 receipt or by postmark by the United States Postal Service. Employers carrying their
12 own risk and employers defined in KRS 342.630(2) shall pay the annual
13 assessments in four (4) equal quarterly installments. Penalty and interest penalties
14 imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers'
15 Compensation Funding Commission to waive part or all of the penalty shall apply
16 to assessments for the Kentucky coal workers' pneumoconiosis fund in the same
17 manner and amount as they are imposed on assessments for the special fund under
18 KRS 342.122.

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

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

27 (8) (a) Assessments issued pursuant to this section shall cease to be imposed once the

1 liabilities of the fund are fully funded. After the liabilities are fully funded,
2 any excess assessments shall be refunded to the employers on a pro rata basis
3 as determined from the cumulative amounts of assessments received from
4 workers' compensation premiums paid by employers, whether insured, self-
5 insured, or carrying their own risk, on or after January 1, 2017.

6 (b) The Kentucky Employers' Mutual Insurance Authority shall disburse, on a pro
7 rata basis, the excess assessments to each employer which is engaged in the
8 severance or processing of coal and which is in good standing with the
9 Secretary of State and authorized to do business in the Commonwealth as
10 evidenced by a certificate of existence, certificate of authorization, or other
11 such certificate issued by the Secretary of State their pro rata shares of excess
12 assessments.

13 (c) Upon a determination by the Kentucky Workers' Compensation Funding
14 Commission and the Kentucky Employers' Mutual Insurance Authority that
15 final audits and any resulting litigation are closed ~~or~~ and the liabilities of
16 the fund are fully funded, the Kentucky Employers' Mutual Insurance
17 Authority shall send a notice to each employer via first-class United States
18 mail advising each employer that in order to assert a claim to the employer's
19 pro rata share of any excess assessments the employer must submit a
20 certification under oath to the Kentucky Employers' Mutual Insurance
21 Authority stating that the employer is engaged in the severance or processing
22 of coal in the Commonwealth and that the employer is in good standing with
23 the Secretary of State and authorized to do business in the Commonwealth.
24 The employer shall also certify whether or not it has applied for an
25 adjudication of bankruptcy, reorganization, arrangement, or other relief under
26 the United States Bankruptcy Code.

27 (d) The employer shall submit to the Kentucky Employers' Mutual Insurance

1 Authority the employer's certificate obtained from the Secretary of State along
2 with the certification under oath specified in this subsection.

3 (e) The Kentucky Employers' Mutual Insurance Authority shall specify in the
4 notice the date of mailing of the notice to the employer and shall send the
5 notice to the employer at the address of the statutory agent designated by the
6 employer with the Secretary of State or, if the employer has not designated a
7 statutory agent with the Secretary of State, at the address of the employer on
8 file with the Kentucky Employers' Mutual Insurance Authority or, if the
9 address of the employer is not on file with the Kentucky Employers' Mutual
10 Insurance Authority, at the address of the employer on file with the Kentucky
11 Workers' Compensation Funding Commission.

12 (f) The employer's certification must be received by the Kentucky Employers'
13 Mutual Insurance Authority within thirty (30) days of mailing of the notice
14 from the Kentucky Employers' Mutual Insurance Authority to the employer.

15 (g) Within thirty (30) days of receipt of a timely submitted certification from an
16 employer, the Kentucky Employers' Mutual Insurance Authority shall
17 distribute to the employer the employer's pro rata share of the excess funds. If
18 the employer is in bankruptcy at the time the certification is provided to the
19 Kentucky Employers' Mutual Insurance Authority, any funds that would be
20 distributed to the employer shall ~~only~~ be distributed to former employees to
21 whom past due wages are owed, subject to the approval of the bankruptcy
22 judge. *If there are remaining funds in the employer-in-bankruptcy's pro*
23 *rata share after payment to the former employees to whom past due wages*
24 *are owed, the employer-in-bankruptcy's pro rata share shall be distributed*
25 *as directed by the bankruptcy court, and if not directed by the bankruptcy*
26 *court, to the Kentucky coal employers self-insurance guaranty fund.* If an
27 employer has an outstanding balance due for taxes or other obligations to the

1 Commonwealth, for a bond payment, or to a county, city, school system or
2 school district, fire district, or any special taxing authority, no funds shall be
3 distributed to the employer unless those outstanding balances have been paid
4 in full at the time of the distribution of the funds by Kentucky Employers'
5 Mutual Insurance Authority. Any funds that would be distributed to the
6 employer shall first be distributed to the Commonwealth, for a bond
7 payment, or to a county, city, school system or school district, fire district, or
8 any special taxing authority, and then any remaining funds may be
9 distributed as otherwise prescribed in this section.

10 (h) If, at any time after the Kentucky Employers' Mutual Insurance Authority's
11 distribution of funds to an employer, it is determined that the certification
12 submitted by the employer to the Kentucky Employers' Mutual Insurance
13 Authority was materially false at the time of the certification, the Attorney
14 General is authorized to file an action against the employer to recover the
15 funds distributed to the employer by the Kentucky Employers' Mutual
16 Insurance Authority along with interest at the rate of twelve percent (12%)
17 from the date of distribution of the funds to the employer and a penalty of ten
18 percent (10%) of the amount of the funds distributed to the employer, plus
19 reasonable attorney's fees, litigation expenses, and court costs.

20 (i) For those employers who do not timely submit a certification to the Kentucky
21 Employers' Mutual Insurance Authority as specified in this subsection, their
22 pro rata shares shall be transferred to the Kentucky coal employers self-
23 insurance guaranty fund for the purpose of paying workers' compensation
24 benefits to employees of insolvent self-insured employers engaged in the
25 severance and processing of coal, and those employers' claims to a distribution
26 of funds pursuant to this subsection shall be forever barred.

27 (j) The Kentucky Workers' Compensation Funding Commission shall provide all

1 available information regarding the employers to the Kentucky Employers'
2 Mutual Insurance Authority upon the request of the Kentucky Employers'
3 Mutual Insurance Authority.

4 (9) The Kentucky Employers' Mutual Insurance Authority shall reimburse the funding
5 commission for any expenses incurred with regard to the collection of assessments
6 for the coal workers' pneumoconiosis fund and other incurred expenses related to
7 the coal workers' pneumoconiosis fund.

8 ➔Section 2. KRS 342.1243 is amended to read as follows:

9 (1) Notwithstanding any provisions of this chapter or any other provisions to the
10 contrary, the Kentucky coal workers' pneumoconiosis fund shall have no liability
11 for income benefits for coal workers' pneumoconiosis claims filed or reopened on or
12 after July 1, 2017.

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

22 (3) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation
23 Funding Commission shall impose an assessment at an annual rate of fourteen
24 percent (14%) upon the amount of workers' compensation premiums received on or
25 after January 1, 2017, through December 31, 2017, by every insurance carrier
26 writing workers' compensation insurance in the Commonwealth and by every self-
27 insured group operating under the provisions of KRS 342.350(4) and KRS Chapter

- 1 304, from employers engaged in the severance or processing of coal. Likewise, on
2 or after January 1, 2017, through December 31, 2017, an assessment at the rate of
3 fourteen percent (14%) of premium shall be paid by every employer engaged in the
4 severance or processing of coal who is carrying his or her own risk.
- 5 (4) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation
6 Funding Commission shall impose an assessment at an annual rate of fourteen
7 percent (14%) upon the amount of workers' compensation premiums received on or
8 after January 1, 2018, through December 31, 2018, by every insurance carrier
9 writing workers' compensation insurance in the Commonwealth and by every self-
10 insured group operating under the provisions of KRS 342.350(4) and Chapter 304,
11 from employers engaged in the severance or processing of coal. Likewise, on or
12 after January 1, 2018, through December 31, 2018, an assessment at the rate of
13 fourteen percent (14%) of premium shall be paid by every employer engaged in the
14 severance or processing of coal who is carrying his or her own risk.
- 15 (5) Notwithstanding the provisions of KRS 342.1242, in addition to the assessments in
16 subsection (3) and (4) of this section, for the calendar years of 2017 and 2018, an
17 assessment at the rate of fifteen cents (\$0.15) per ton shall be imposed upon the
18 total annual amount of tons of coal severed by every entity engaged in the severance
19 of coal as required pursuant to KRS Chapter 143.
- 20 (6) The assessments imposed by this section shall supersede any assessment imposed
21 pursuant to KRS 342.1242 for the calendar years of 2017 and 2018. Any amount
22 paid and collected that exceeds the assessment imposed by this section in calendar
23 year 2017 shall be reimbursed to the employer or credited to the employer's account
24 subject to the preference of the employer.
- 25 (7) Assessments pursuant to this section and KRS 342.1242 that are collected by the
26 Kentucky Worker's Compensation Funding Commission shall be transferred to the
27 Kentucky Employers' Mutual Insurance Authority.

1 (8) When the Kentucky Workers' Compensation Funding Commission and the
2 Kentucky Employers' Mutual Insurance Authority have determined final audits are
3 closed and the liability of the fund is fully funded, then the authority for imposing
4 assessment rates pursuant to this section and KRS 342.1242 shall cease to exist.
5 ~~[Any remaining assessments received following the exhaustion of liabilities shall be~~
6 ~~refunded pro rata to all employers who have paid an assessment in the year that~~
7 ~~liabilities are fully funded.]~~When all distributions pursuant to KRS 342.1242(8)
8 have been completed, the Kentucky coal workers' pneumoconiosis fund shall be
9 abolished. *Any funds collected, following the abolition of the Kentucky coal*
10 *workers' pneumoconiosis fund, from subrogation or otherwise, after the final*
11 *distribution shall be transferred to the Kentucky coal employers self-insurance*
12 *guaranty fund.*~~[The Kentucky Employers' Mutual Insurance Authority may~~
13 ~~thereafter apply all funds received through subrogation or otherwise to expenses~~
14 ~~incurred in the administration and distribution of funds.]~~