

CHAPTER 102**(SB 121)**

AN ACT relating to corporations.

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

Section 1. KRS 271B.1-200 is amended to read as follows:

- (1) A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (2) This chapter must require or permit filing the document in the office of the Secretary of State.
- (3) The document shall contain the information required by this chapter. It may contain other information as well.
- (4) The document shall be typewritten,~~[-or]~~ printed, *or electronically transmitted. If the document is electronically transmitted, the document shall be in a format that can be retrieved or reproduced in typewritten or printed form.*
- (5) The document shall be in the English language. A corporate name may be in a language other than English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations, if not in English, shall be accompanied by a reasonably authenticated English translation.
- (6) The document shall be executed:
 - (a) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;
 - (b) If directors have not been selected or the corporation has not been formed, by an incorporator; or
 - (c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
- (7) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:
 - (a) A~~[The]~~ corporate seal *of the corporation*;
 - (b) An attestation,~~[-by the secretary or an assistant secretary];~~
 - ~~(c) —An]~~ acknowledgment, *or* verification~~[-, or proof];~~ or
 - (c)~~[(d)]~~ A statement regarding the preparer of the document which complies with KRS 382.335.
- (8) If the Secretary of State has prescribed a mandatory form for the document under KRS 271B.1-210, the document shall be in or on the prescribed form.
- (9) The document shall be delivered to the office of the Secretary of State for filing. *Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of State. If the document is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one (1) exact or conformed copy to be delivered with the document, except as provided in KRS 271B.5-030 and KRS 271B.15-090*~~[and shall be accompanied by two (2) exact or conformed copies, the correct filing fee,~~

~~the organization tax and any penalty required by this chapter or other law to be collected by the office of the Secretary of State}.~~

- (10) One (1)~~{of such}~~ exact or conformed *paper, but not electronic, copy of the document*~~{copies}~~ shall then be filed with and recorded by the county clerk of the county in which the registered office of the corporation is situated.
- (11) *When the document is delivered to the office of the Secretary of State for filing, the correct filing fee, the organization tax, and any penalty required by this chapter or other law to be collected by the office of the Secretary of State with the document shall be paid or provision for payment shall be made in a manner permitted by the Secretary of State. The Secretary of State may accept payment of the correct amount due by credit card, charge card, or similar method. However, if the amount due is tendered by any method other than cash, the liability shall not be finally discharged until the Secretary of State receives final payment or credit of collectible funds.*

Section 2. KRS 271B.1-230 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section and subsection (3) of KRS 271B.1-240, a document accepted for filing shall be effective:
- (a) At the *date and* time of filing~~{on the date it is filed}~~, as evidenced by *such means as the Secretary of State may use for the purpose of recording the date and time of filing*~~{State's date and time endorsement on the original document}~~; or
- (b) At the time specified in the document as its effective time on the date it is filed.
- (2) A document may specify a delayed effective time and date, and if it does so the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, the document shall be effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.
- (3) A document filed in accordance with subsections (1) and (2) of this section shall be effective regardless of a failure to file the document with the county clerk pursuant to subsection (10) of KRS 271B.1-200.

Section 3. KRS 271B.1-240 is amended to read as follows:

- (1) A domestic or foreign corporation may correct a document filed by a Secretary of State if~~{the document}~~:
- (a) *The document* contains an *inaccuracy*~~{incorrect statement}~~~~};~~~~{or}~~
- (b) *The document* was defectively executed, attested, sealed, verified, or acknowledged;
or
- (c) *Electronic transmission of the document to the Secretary of State was defective.*
- (2) A document is corrected:
- (a) By preparing articles of correction that:
1. Describe the document (including its filing date) or attach a copy of it to the articles;
 2. Specify the *inaccuracy or defect to be corrected*~~{incorrect statement and the reason it is incorrect or the manner in which the execution was defective}~~; and

3. Correct the *inaccuracy or defect*~~[incorrect statement or defective execution]~~; and
- (b) By delivering the articles to the Secretary of State for filing.

- (3) Articles of correction shall be effective on the effective date of the document they correct except as to persons relying on the uncorrected document adversely affected by the correction. As to those persons, articles of correction shall be effective when filed.

Section 4. KRS 271B.1-250 is amended to read as follows:

- (1) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of KRS 271B.1-200, the Secretary of State shall file it.
- (2) The Secretary of State files a document by *recording it as filed on*~~[stamping or otherwise endorsing "Filed," together with his name and official title and]~~ the date and time of receipt~~[, on both the original and the document copies and on the receipt for the filing fee]~~. After filing a document, except as provided in KRS 271B.5-030 and 271B.15-090, the Secretary of State shall deliver~~[the document copies, with the filing fee receipt (or acknowledgment of receipt if no fee is required) attached,]~~ to the domestic or foreign corporation or its representative *a copy of the document with an acknowledgment of the date and time of filing*.
- (3) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.
- (4) The Secretary of State's duty to file documents under this section shall be ministerial. His filing or refusal to file a document shall not:
- Affect the validity or invalidity of the document in whole or part;
 - Relate to the correctness or incorrectness of information contained in the document; or
 - Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Section 5. KRS 271B.1-270 is amended to read as follows:

A certificate *from the Secretary of State delivered with*~~[attached to]~~ a copy of the document filed by the Secretary of State~~[, bearing his signature (which may be in facsimile) and the seal of this state,]~~ shall be conclusive evidence that the original document is on file with the Secretary of State.

Section 6. KRS 271B.1-400 is amended to read as follows:

In this chapter:

- "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.
- "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.
- "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlining, shall be considered conspicuous.

- (4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.
- (5) "Deliver" or *"delivery"* means *any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission*~~[includes mail]~~.
- (6) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrance of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.
- (7) "Effective date of notice" is defined in KRS 271B.1-410.
- (8) *"Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.*
- (9) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.
- ~~(10)~~~~(9)~~ "Entity" includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government.
- ~~(11)~~~~(10)~~ "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.
- ~~(12)~~~~(11)~~ "Governmental subdivision" includes authority, county, district, and municipality.
- ~~(13)~~~~(12)~~ "Includes" denotes a partial definition.
- ~~(14)~~~~(13)~~ "Individual" includes the estate of an incompetent or deceased individual.
- ~~(15)~~~~(14)~~ "Means" denotes an exhaustive definition.
- ~~(16)~~~~(15)~~ "Notice" is defined in KRS 271B.1-410.
- ~~(17)~~~~(16)~~ "Person" includes individual and entity.
- ~~(18)~~~~(17)~~ "Principal office" means the office (in or out of this state) so designated in writing to the Secretary of State where the principal executive offices of a domestic or foreign corporation are located.
- ~~(19)~~~~(18)~~ "Proceeding" includes civil suit and criminal, administrative, and investigatory action.
- ~~(20)~~~~(19)~~ "Record date" means the date established under Subtitles 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date, unless another time for doing so is specified when the record date is fixed.
- ~~(21)~~~~(20)~~ "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (3) of KRS 271B.8-400 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

- (22)~~(21)~~ "Share" means the unit into which the proprietary interests in a corporation are divided.
- (23)~~(22)~~ "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (24) "**Sign**" or "**signature**" includes any manual, facsimile, or conformed or electronic signature.
- (25)~~(23)~~ "State" when referring to a part of the United States, includes a state and Commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.
- (26)~~(24)~~ "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- (27)~~(25)~~ "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.
- (28)~~(26)~~ "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

Section 7. KRS 271B.1-410 is amended to read as follows:

- (1) Notice under this chapter shall be in writing unless oral notice is reasonable under the circumstances. **Notice by electronic transmission is written notice.**
- (2) Notice may be communicated in person; by ~~telephone, telegraph, teletype, or other form of wire or wireless communication; or by~~ mail or **other method of delivery; or by telephone, voice mail, or other electronic means**~~[private carrier]~~. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.
- (3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective:
 - (a) **Upon deposit in the United States mail**~~[when mailed]~~, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; **or**
 - (b) **When electronically transmitted to the shareholder in a manner authorized and in accordance with the shareholder's instructions, if any.**
- (4) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.
- (5) Except as provided in subsections (3) and (4) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:

- (a) When received;
 - (b) Five (5) days after its deposit in the United States mail, ~~as evidenced by the postmark,~~ if mailed postpaid and correctly addressed;
 - (c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
- (6) Oral notice shall be effective when communicated if communicated in a comprehensible manner.
- (7) If this chapter prescribes notice requirements for particular circumstances, those requirements, shall govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements shall govern.

Section 8. KRS 271B.6-020 is amended to read as follows:

- (1) If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights (within the limits set forth in KRS 271B.6-010 of:
 - (a) Any class of shares before the issuance of any shares of that class; or
 - (b) One (1) or more series within a class before the issuance of any shares of that series.
- (2) Each series of a class shall be given a distinguishing designation.
- (3) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.
- (4) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:
 - (a) The name of the corporation;
 - (b) The text of the amendment determining the terms of the class or series of shares;
 - (c) The date it was adopted; and
 - (d) A statement that the amendment was duly adopted by the board of directors.
- (5) ***The board of directors may adopt articles of amendment without shareholder action to make any of the following changes to a class or series created under this section:***
 - (a) ***Increase the number of shares of a series but not above the total number of authorized and unissued shares of the class;***
 - (b) ***Decrease the number of shares of a series but not below the number of shares of the series then issued and outstanding;***
 - (c) ***Amend the designation, preferences, limitations, or relative rights of the shares of a class or series if no shares of the class or series are then issued or outstanding; or***
 - (d) ***Eliminate the designation of, and all references to, a series from the articles of incorporation if no shares of the series are then issued and outstanding.***

- (6) *If an amendment reduces the number of shares of a series, or eliminates a series, the shares previously subject to issuance in the series shall return to the status they had before the creation of the series.*
- (7) *Articles of amendment adopted pursuant to subsection (5) of this section shall be delivered to the Secretary of State for filing and shall state:*
 - (a) *The name of the corporation;*
 - (b) *The designation of the class or series subject to the amendment;*
 - (c) *The text of the amendment changing the class or series;*
 - (d) *The date the amendment was adopted; and*
 - (e) *A statement that the amendment was duly adopted by the board of directors.*

Section 9. KRS 271B.6-210 is amended to read as follows:

- (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
- (2) The board of directors may authorize shares to be issued for consideration consisting only of an equivalent in money paid or labor done, or property actually received and applied to the purposes for which such corporation was created, and neither labor nor property shall be received in payment of consideration for the issuance of shares at a greater value than the market price at the time such labor was done or property delivered, and all fictitious increase of shares shall be void.
- (3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.
- (4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares in accordance with this section, the shares issued therefor ~~are~~^{shall be} ~~considered~~ fully paid and nonassessable.
- (5) *The board of directors, or a committee of the board of directors, may authorize one (1) or more officers of the corporation to approve the issuance, sale, or contract for sale of shares or to determine the designation and relative rights, preferences, and limitations of a class or series of shares, all within limits specifically prescribed by the board of directors or the committee.*
- (6) The consideration received for the issuance of shares having a par value, to the extent in excess of the par value of such shares, shall be deemed to include consideration paid for the issuance of shares as share dividends, from time to time, with respect to any outstanding shares of that class or series, as provided in subsection (1) of KRS 271B.6-230. The consideration received for the issuance of shares without par value shall be deemed to include consideration paid for the issuance of shares as share dividends, from time to time, with respect to any outstanding shares of that class or series, as provided in subsection (1) of KRS 271B.6-230. The amount of capital surplus of a corporation immediately prior to January 1, 1989, shall also be deemed to be consideration paid for the issuance of shares, from time to time, as a share dividend within the meaning of this subsection.

~~(7)(6)~~ To the extent consolidated net income of the corporation or consideration theretofore received by the corporation for the issuance of shares is relied upon for the issuance of a share dividend, as provided in subsection (1) of KRS 271B.6-230, the board of directors shall designate some or all of such consolidated net income or existing consideration as the consideration paid for the issuance of such shares as a share dividend, and such designated amount shall thereafter not be included in the amount available under subsection (1) of KRS 271B.6-230 as consideration for the issuance of shares as share dividends.

Section 10. KRS 271B.6-210 is amended to read as follows:

- (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
- (2) The board of directors may authorize shares to be issued for consideration consisting *of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation* ~~[only of an equivalent in money paid or labor done, or property actually received and applied to the purposes for which such corporation was created, and neither labor nor property shall be received in payment of consideration for the issuance of shares at a greater value than the market price at the time such labor was done or property delivered, and all fictitious increase of shares shall be void].~~
- (3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.
- (4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares in accordance with this section, the shares issued therefor *are* ~~[shall be considered]~~ fully paid and nonassessable. *When, and to the extent, consideration for the issuance of shares consists of a promissory note or contract for services or other benefits, the shares shall be fully paid and nonassessable at the time the note is issued or the contract is entered into.*
- (5) *The board of directors, or a committee of the board of directors, may authorize one (1) or more officers of the corporation to approve the issuance, sale, or contract for sale of shares or to determine the designation and relative rights, preferences, and limitations of a class or series of shares, all within limits specifically prescribed by the board of directors or the committee* ~~[The consideration received for the issuance of shares having a par value, to the extent in excess of the par value of such shares, shall be deemed to include consideration paid for the issuance of shares as share dividends, from time to time, with respect to any outstanding shares of that class or series, as provided in subsection (1) of KRS 271B.6-230. The consideration received for the issuance of shares without par value shall be deemed to include consideration paid for the issuance of shares as share dividends, from time to time, with respect to any outstanding shares of that class or series, as provided in subsection (1) of KRS 271B.6-230. The amount of capital surplus of a corporation immediately prior to January 1, 1989, shall also be deemed to be consideration paid for the issuance of shares, from time to time, as a share dividend within the meaning of this subsection.~~

~~(6) To the extent consolidated net income of the corporation or consideration theretofore received by the corporation for the issuance of shares is relied upon for the issuance of a share dividend, as provided in subsection (1) of KRS 271B.6-230, the board of directors shall designate some or all of such consolidated net income or existing consideration as the consideration paid for the issuance of such shares as a share dividend, and such designated amount shall thereafter not be included in the amount available under subsection (1) of KRS 271B.6-230 as consideration for the issuance of shares as share dividends].~~

Section 11. KRS 271B.6-230 is amended to read as follows:

- (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata ***and without consideration*** to the corporation's shareholders or to the shareholders of one (1) or more classes or series ~~to the extent:~~
 - ~~(a) The aggregate consideration received by the corporation for the issuance of all shares of such class or series then outstanding includes consideration for the issuance of such shares pro rata, as provided in subsection (1) of KRS 271B.6-210; and/or~~
 - ~~(b) The consolidated net income of the corporation, measured either for the current fiscal year or for all prior fiscal years, less the amount of distributions in the form of dividends theretofore paid to shareholders, is not less than the consideration determined by the board of directors for the issuance of such shares pro rata].~~

An issuance of shares under this subsection shall be considered a share dividend.

- (2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:
 - (a) The articles of incorporation so authorize;
 - (b) A majority of the votes entitled to be cast by the class or series to be issued approve the issue; or
 - (c) There are no outstanding shares of the class or series to be issued.
- (3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it shall be the date the board of directors authorizes the share dividend.

Section 12. KRS 271B.6-240 is amended to read as follows:

- (1) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the terms and conditions upon which and the consideration for which the shares are to be issued.
- (2) ***(a) The board of directors may, by a resolution adopted by the board, authorize one (1) or more officers of the corporation to do one (1) or more of the following:***
 - 1. Designate officers and employees of the corporation or of any of its subsidiaries to receive rights, options, or warrants to be issued by the corporation;***
 - 2. Determine the number of rights, options, or warrants to be issued to each recipient; and***
 - 3. Determine the time or times at or during which rights, options, or warrants may be exercised.***

- (b) *Any resolution adopted pursuant to paragraph (a) of this subsection shall specify the total number of rights, options, or warrants the officer or officers may award.*
- (c) *The board of directors shall not authorize an officer to designate himself or herself as a recipient of any rights, options, or warrants.*

Section 13. KRS 271B.6-270 is amended to read as follows:

- (1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction shall not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.
- (2) A restriction on the transfer or registration of transfer of shares shall be valid and enforceable against the holder, or a transferee of the holder, if the restriction is authorized by this section, and the holder or transferee has actual knowledge of the restriction or its existence is noted conspicuously on the front or back of the certificate, or is contained in the information statement required by subsection (2) of KRS 271B.6-260. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.
- (3) A restriction on the transfer or registration of transfer of shares shall be authorized:
 - (a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;
 - (b) To preserve exemptions under federal or state securities law;~~{or}~~
 - (c) *In connection with shares issued by the corporation to its officers, directors, employees, or independent contractors, including as equity based compensation under the Internal Revenue Code; or*
 - (d) For any other reasonable purpose.
- (4) A restriction on the transfer or registration of transfer of shares may without limitation:
 - (a) Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
 - (b) Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire *or transfer* the restricted shares;
 - (c) *Obligate a shareholder to transfer the restricted shares to the corporation or other persons for an agreed price or a price based on a valuation formula, including an obligation to transfer the shares for an amount equal to the original consideration paid for the shares;*
 - (d) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or
 - ~~(e){(d)}~~ Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.
- (5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Section 14. KRS 271B.7-040 is amended to read as follows:

- (1) Except as provided in the articles of incorporation, action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice, except as provided in subsection (8){(7)} of this section, if the action is taken by all the shareholders entitled to vote on the action.
- (2) If the articles of incorporation so provide, any action except the election of directors pursuant to KRS 271B.7-280 required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice, except as provided in subsection (8){(7)} of this section, if the action is taken by shareholders entitled to vote on the action representing not less than eighty percent (80%) (or such higher percentage required by this chapter or the articles of incorporation) of the votes entitled to be cast.
- (3) The action taken under this section shall be evidenced by one (1) or more written consents describing the action taken, signed by the shareholders taking the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (4) Action taken under this section shall be effective when consents representing the votes necessary to take the action under this section are delivered to the corporation, or upon delivery of the consents representing the necessary votes, as of a different date if specified in the consent.
- (5) Any shareholder giving a consent may revoke the consent by a writing received by the corporation prior to the time that consents representing the votes required to take the action under this section have been delivered to the corporation but may not do so thereafter.
- (6) A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.
- (7) Prompt notice of the taking of any action by shareholders without a meeting under this section by less than unanimous written consent shall be given to those shareholders entitled to vote on the action who have not consented in writing.
- (8) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by consent of the voting shareholders under this section, the corporation shall give its nonvoting shareholders and voting shareholders whose consent is not solicited, written notice of the proposed action at least ten (10) days before the action is taken. The notice shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

Section 15. KRS 271B.7-040 is amended to read as follows:

- (1) Except as provided in the articles of incorporation, action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice, except as provided in subsection (8){(7)} of this section, if the action is taken by all the shareholders entitled to vote on the action.
- (2) If the articles of incorporation so provide, any action except the election of directors **by cumulative voting** pursuant to KRS 271B.7-280 required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice, except as provided in subsection (8){(7)} of this section, if the action is taken by shareholders entitled to vote on the action representing not less than eighty percent (80%)

(or such higher percentage required by this chapter or the articles of incorporation) of the votes entitled to be cast.

- (3) The action taken under this section shall be evidenced by one (1) or more written consents describing the action taken, signed by the shareholders taking the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (4) Action taken under this section shall be effective when consents representing the votes necessary to take the action under this section are delivered to the corporation, or upon delivery of the consents representing the necessary votes, as of a different date if specified in the consent.
- (5) Any shareholder giving a consent may revoke the consent by a writing received by the corporation prior to the time that consents representing the votes required to take the action under this section have been delivered to the corporation but may not do so thereafter.
- (6) A consent signed under this section shall have the effect of a meeting vote and may be described as such in any document.
- (7) Prompt notice of the taking of any action by shareholders without a meeting under this section by less than unanimous written consent shall be given to those shareholders entitled to vote on the action who have not consented in writing.
- (8) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by consent of the voting shareholders under this section, the corporation shall give its nonvoting shareholders and voting shareholders whose consent is not solicited, written notice of the proposed action at least ten (10) days before the action is taken. The notice shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

Section 16. KRS 271B.7-220 is amended to read as follows:

- (1) A shareholder may vote his *or her* shares in person or by proxy.
- (2) A shareholder, *or his or her agent or attorney-in-fact*, may appoint a proxy to vote or otherwise act for *the shareholder*~~[him]~~ by signing an appointment form *or by an electronic transmission. An electronic transmission shall contain, or be accompanied by, information from which one can determine that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the electronic transmission*~~[, either personally or by his attorney in fact. For purposes of this section and KRS 271B.7-240, a telegram or cablegram appearing to have been transmitted by the proper person, or a photographic, photostatic, or equivalent reproduction of a writing appointing a proxy shall be deemed to be a sufficient, signed appointment form].~~
- (3) An appointment of a proxy shall be effective when *a signed*~~[the]~~ appointment form *or an electronic transmission of the appointment* is received by the secretary or other officer or agent authorized to tabulate votes. An appointment shall be valid for eleven (11) months unless a longer period is expressly provided in the appointment form.
- (4) An appointment of a proxy shall be revocable~~[by the shareholder]~~ unless the appointment form *or electronic transmission*~~[conspicuously]~~ states that it is irrevocable and the

appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (a) A pledgee;
 - (b) A person who purchased or agreed to purchase the shares;
 - (c) A creditor of the corporation who extended it credit under terms requiring the appointment;
 - (d) An employee of the corporation whose employment contract requires the appointment;
or
 - (e) A party to a voting agreement created under KRS 271B.7-310.
- (5) The death or incapacity of the shareholder appointing a proxy shall not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.
- (6) An appointment made irrevocable under subsection (4) of this section shall be revocable when the interest with which it is coupled is extinguished. The revocation of an appointment under this subsection shall not be effective until the secretary of the corporation has received written notice of the revocation.
- (7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.
- (8) Subject to KRS 271B.7-240 and to any express limitation on the proxy's authority *stated in*~~in~~~~appearing on the face of~~ the appointment form *or electronic transmission*, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Section 17. KRS 271B.7-240 is amended to read as follows:

- (1) If the name signed on *or submitted with* a vote, consent, waiver, or proxy appointment corresponds to the name *or electronic signature* of a shareholder, the corporation if acting in good faith shall be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder. For purposes of this section, a telegram or cablegram appearing to have been transmitted by the proper person, or a photographic, photostatic, or equivalent reproduction of a writing appointing a proxy may be accepted by the corporation if acting in good faith, as a sufficient, signed appointment form.
- (2) If the name signed on *or submitted with* a vote, consent, waiver, or proxy appointment does not correspond to the name *or electronic signature* of its shareholder, the corporation if acting in good faith shall nevertheless be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:
 - (a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
 - (b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of

fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

- (c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
 - (d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
 - (e) Two (2) or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the co-owners and the person signing appears to be acting on behalf of all the co-owners.
- (3) The corporation shall be entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder *or, in the case of an electronic record, to affix the shareholder's electronic signature to the electronic record.*
- (4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section *or subsection (2) of Section 16 of this Act* shall not be liable in damages to the shareholder for the consequences of the acceptance or rejection.
- (5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section *or subsection (2) of Section 16 of this Act* shall be valid, unless a court of competent jurisdiction determines otherwise.
- (6) Shares standing in the name of another corporation, domestic or foreign, may be voted by either the president of such corporation or by proxy appointed by him, unless the board of directors of such other corporation authorizes another person to vote such shares.
- (7) Shares held by an administrator, executor, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.
- (8) Where shares are held jointly by three (3) or more fiduciaries acting under an instrument becoming effective after June 30, 1946, the will of the majority of such fiduciaries shall control the manner of voting or the giving of a proxy, unless the instrument or order appointing the fiduciaries otherwise directs. Where, in any case, fiduciaries are equally divided upon the manner of voting shares jointly held by them, any court of competent jurisdiction may, upon petition filed by any of the fiduciaries, or by any beneficiary, appoint an additional person to act with the fiduciaries in determining the manner in which the shares shall be voted upon the particular questions as to which the fiduciaries are divided.
- (9) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

- (10) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the share so transferred.

Section 18. KRS 271B.7-280 is amended to read as follows:

- (1) *Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. A "plurality" means that the individuals with the largest number of votes are elected as directors up to the maximum number of directors to be chosen at the election.*
- (2) *Shareholders do not have the right to cumulate their votes for directors unless the articles of incorporation so provide*~~[At each election for directors each shareholder entitled to vote at such election shall have the right to cast, in person or by proxy, as many votes in the aggregate as he shall be entitled to vote under the corporation's articles of incorporation, multiplied by the number of directors to be elected at such election; and each shareholder may cast the whole number of votes for one (1) candidate, or distribute such votes among two (2) or more candidates. Such directors shall not be elected in any other manner].~~
- (3) *A statement included in the articles of incorporation that "all, or a designated group of, shareholders are entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.*

Section 19. KRS 271B.8-080 is amended to read as follows:

- (1) The shareholders may remove one (1) or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only for cause.
- (2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him *or her*.
- (3) *If cumulative voting is authorized, a director shall not be removed if the number of votes sufficient to elect him or her under cumulative voting is voted against his or her removal. If cumulative voting is not authorized, a director shall be removed only if the number of votes cast to remove him or her exceeds the number of votes cast not to remove him or her*~~[A director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal].~~
- (4) A director shall be removed by the shareholders only at a meeting called for the purpose of removing him *or her* and the meeting notice shall state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

Section 20. KRS 271B.8-250 is amended to read as follows:

- (1) Unless *this chapter*, the articles of incorporation, or *the* bylaws provide otherwise, a board of directors may create one (1) or more committees and appoint *one (1) or more* members of the board of directors to serve on *any such committee*~~[them. Each committee shall have two (2) or more members, who serve at the pleasure of the board of directors].~~
- (2) *Unless this chapter provides otherwise*, the creation of a committee and appointment of members to it shall be approved by the greater of:

- (a) A majority of all the directors in office when the action is taken; or
 - (b) The number of directors required by the articles of incorporation or bylaws to take action under KRS 271B.8-240.
- (3) KRS 271B.8-200 to 271B.8-240~~[, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors,]~~ shall apply **both** to committees **of the board** and **to** their members as well.
- (4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the **powers**~~[authority]~~ of the board of directors under KRS 271B.8-010.
- (5) A committee shall not, however:
- (a) Authorize **or approve** distributions, **except according to a formula or method, or within limits, prescribed by the board of directors;**
 - (b) Approve or propose to shareholders action that this chapter requires be approved by shareholders;
 - (c) Fill vacancies on the board of directors or, **subject to the provisions of subsection (7) of this section,** on any of its committees; **or**
 - ~~(d) Amend articles of incorporation pursuant to KRS 271B.10-020;~~
 - ~~(e) Adopt, amend, or repeal bylaws;~~
 - ~~(f) Approve a plan of merger not requiring shareholder approval;~~
 - ~~(g) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or~~
 - ~~(h) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors].~~
- (6) The creation of, delegation of authority to, or action by a committee shall not alone constitute compliance by a director with the standards of conduct described in KRS 271B.8-300.
- (7) ***The board of directors may appoint one (1) or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation, the bylaws, or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting may unanimously appoint another director to act in place of the absent or disqualified member.***

SECTION 21. A NEW SECTION OF KRS CHAPTER 271B IS CREATED TO READ AS FOLLOWS:

- (1) ***If the board of directors is authorized to determine the place of an annual or special meeting of shareholders, the board of directors, in its sole discretion, may determine that***

the meeting shall not be held at any place but shall instead be held solely by means of remote communication under subsection (2) of this section.

- (2) *If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may by means of remote communication:*
- (a) *Participate in a meeting of shareholders; and*
 - (b) *Be deemed present in person and vote at a meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, if:*
 - 1. *The corporation implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder;*
 - 2. *The corporation implements reasonable measures to provide shareholders and proxyholders referred to in subparagraph 1. of this paragraph a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings; and*
 - 3. *The corporation records any vote or other action taken at the meeting by a shareholder or proxyholder by means of remote communication. The corporation shall maintain as a record the recorded vote or other action taken.*

Section 22. Sections 10, 11, 15, 18, and 19 of this Act shall take effect November 15, 2002, if a constitutional amendment proposing to amend Sections 190, 191, 192, 193, 194, 195, 198, 200, 202, 203, 205, 207, and 208 of the Constitution of Kentucky relating to corporations is enacted by the General Assembly and approved by the voters in the November, 2002 general elections. Otherwise, Sections 10, 11, 15, 18, and 19 of this Act shall be void.

Approved March 28, 2002