

CHAPTER 51**(SB 152)**

AN ACT relating to business entities.

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

➔Section 1. KRS 271B.5-025 is repealed and reenacted to read as follows

A corporation that changes the mailing address of its principal office shall deliver to the Secretary of State for filing, on a form supplied by the Secretary of State, a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The mailing address of its principal office prior to the change; and
- (3) The new mailing address of its principal office.

➔Section 2. KRS 271B.12-030 is repealed and reenacted to read as follows:

A corporation may be converted to a limited liability company as provided in KRS 275.376.

➔Section 3. KRS 273.1842 is repealed and reenacted to read as follows:

A corporation that changes the mailing address of its principal office shall deliver to the Secretary of State for filing, on a form supplied by the Secretary of State, a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The mailing address of its principal office prior to the change; and
- (3) The new mailing address of its principal office.

➔Section 4. KRS 275.247 is repealed and reenacted to read as follows:

- (1) Except as may be otherwise provided in a written operating agreement, a limited liability company may sell, lease, exchange, or otherwise dispose of all or substantially all of its property with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by a majority-in-interest of the members.
- (2) Unless otherwise provided in the articles of organization or a written operating agreement, no member shall have the right to dissent from a sale, lease, exchange, or other disposition by a limited liability company of all or substantially all of its property outside the ordinary course of business.

➔Section 5. KRS 275.500 is repealed and reenacted to read as follows:

- (1) A limited liability company may acquire all or part of the outstanding shares of one (1) or more classes or series of a domestic or foreign corporation if the corporation, limited liability company, and a majority of their owners approve the exchange and, if the corporation is a foreign corporation, the share exchange is permitted under the laws of the state or country under which the foreign corporation is incorporated.
- (2) The plan of share exchange shall set forth:
 - (a) The name of the corporation whose shares will be acquired and the name of the acquiring limited liability company;
 - (b) The terms and conditions of the exchange; and
 - (c) The manner and basis of exchanging the shares to be acquired for limited liability company interests, obligations, or other securities of the acquiring limited liability company or for cash or other property, in whole or part.
- (3) The plan of share exchange may set forth other provisions relating to the exchange.
- (4) This section shall not limit the power of a limited liability company to acquire all or part of the shares of one (1) or more classes or series of a corporation through a voluntary exchange or otherwise.

- (5) Unless otherwise provided in the articles of organization, a written operating agreement, or a written plan of share exchange, no member of a limited liability company shall have the right to dissent from a share exchange.

➔Section 6. KRS 275.505 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in a written operating agreement, the plan of share exchange described in KRS 275.500 shall be considered for adoption by the members of the limited liability company.
- (2) Each business entity that is a party to the share exchange shall approve the plan of share exchange in the manner and by the vote required by the laws applicable to the business entity.

➔Section 7. KRS 275.510 is repealed and reenacted to read as follows:

- (1) After a plan of share exchange has been approved in accordance with KRS 275.505, the acquiring limited liability company shall deliver to the Secretary of State, for filing, the articles of share exchange setting forth:
- (a) The plan of share exchange; and
 - (b) A statement that the plan of share exchange was duly authorized and approved by each of the constituent business entities in accordance with the laws applicable to each business entity.
- (2) A share exchange shall take effect upon the effective date of the articles of share exchange.

➔Section 8. KRS 275.515 is repealed and reenacted to read as follows:

When a share exchange takes effect, the shares of each acquired corporation shall be exchanged as provided in the plan, and the former holders of the shares shall be entitled only to the exchange rights provided in the articles of share exchange.

➔Section 9. KRS 275.520 is repealed and reenacted to read as follows:

- (1) A nonprofit limited liability company shall not have or issue membership interests in the limited liability company, and no distribution shall be paid, and no part of the income or profit of the limited liability company shall be distributed to its members or managers.
- (2) A nonprofit limited liability company may pay compensation in a reasonable amount to its members or managers for services rendered and may confer benefits upon its members in conformity with its purposes, and these payments or benefits shall not be deemed to be a distribution of income or profit.

➔Section 10. KRS 275.525 is repealed and reenacted to read as follows:

No loan shall be made by a nonprofit limited liability company to its members or managers, and any member or manager who assents to or participates in the making of a loan violating this prohibition shall be liable to the limited liability company for the amount of the loan until its repayment.

➔Section 11. KRS 275.530 is repealed and reenacted to read as follows:

The assets of a nonprofit limited liability company in the process of dissolution shall be applied and distributed as follows:

- (1) All liabilities and obligations of the nonprofit limited liability company shall be paid and discharged or adequate provisions made for them;
- (2) Assets received and held by the nonprofit limited liability company upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the condition's requirements;
- (3) Assets received and held by the nonprofit limited liability company subject to limitations permitting their use only for a nonprofit purpose, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one (1) or more domestic or foreign nonprofit corporations, limited liability companies, societies, or organizations engaged in activities substantially similar to those of the dissolving nonprofit limited liability company, pursuant to a plan of distribution; and
- (4) Any remaining assets may be distributed to those nonprofit corporations, limited liability companies, societies, or organizations as may be specified in a plan of dissolution, including those that are members of the nonprofit limited liability companies.

➔Section 12. KRS 275.535 is repealed and reenacted to read as follows:

- (1) In proceedings to liquidate the assets and affairs of a nonprofit limited liability company, the court shall have the power to issue injunctions and to appoint a receiver or receivers while the action is pending. The receivers shall have those powers and duties as the court from time to time may direct, to take action to preserve the corporate assets wherever situated, and to carry on the affairs of the nonprofit limited liability company until a full hearing can be held.
- (2) After holding a hearing, upon notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the nonprofit limited liability company. The liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the nonprofit limited liability company wherever situated, either at public or private sale. The order appointing the liquidating receiver or receivers shall state their powers and duties. The powers and duties may be increased or diminished at any time during the proceedings.
- (3) The assets of the nonprofit limited liability company or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:
 - (a) All costs and expenses of the court proceedings and all liabilities and obligations of the nonprofit limited liability company shall be paid, satisfied, and discharged, or adequate provision for them shall be made;
 - (b) Assets held by the nonprofit limited liability company upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with the condition's requirements;
 - (c) Assets received and held by the nonprofit limited liability company subject to limitations permitting their use only for a nonprofit purpose, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one (1) or more domestic or foreign nonprofit limited liability companies, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating nonprofit limited liability company, as the court may direct; and
 - (d) Any remaining assets may be distributed to those persons, societies, organizations, or domestic or foreign limited liability companies, whether for profit or nonprofit, specified in the plan of distribution adopted or, if no plan of distribution has been adopted, as the court may direct.
- (4) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the nonprofit limited liability company or the proceeds of any sale or disposition of the assets.
- (5) A receiver of a nonprofit limited liability company appointed under the provisions of this section shall have authority to sue and defend in all courts in the receiver's own name as receiver of the nonprofit limited liability company. The court appointing the receiver shall have exclusive jurisdiction of the nonprofit limited liability company and its property, wherever situated.

➔Section 13. KRS 275.540 is repealed and reenacted to read as follows:

A nonprofit limited liability company may be involuntarily dissolved by a decree of the Circuit Court in an action filed by the Attorney General when it is established that:

- (1) The nonprofit limited liability company is guilty of abuse or misuse of its powers, privileges, or franchises, or the nonprofit limited liability company has become detrimental to the interest and welfare of this Commonwealth or its citizens; or
- (2) The nonprofit limited liability company procured its articles of organization through fraud.

➔Section 14. KRS 275.454 is repealed and reenacted to read as follows:

Any action brought by the Attorney General for the involuntary dissolution of a nonprofit limited liability company may be commenced in Franklin Circuit Court or in the Circuit Court of the county in which the registered office of the nonprofit limited liability company is situated.

➔Section 15. KRS 275.177 is repealed and reenacted to read as follows:

If a written operating agreement contains a provision to the effect that any amendment to the operating agreement of the limited liability company shall be in writing and adopted in accordance with the provisions of the operating agreement, then the provision shall be enforceable in accordance with its terms, and any agreement as to the conduct of the business and affairs of the limited liability company which is not in writing and adopted in accordance with the provisions of the operating agreement shall not be considered part of the operating agreement and shall be void and unenforceable.

➔Section 16. KRS 275.376 is repealed and reenacted to read as follows:

- (1) A corporation may be converted to a limited liability company pursuant to this section.
- (2) The terms and conditions of the conversion of a corporation to a limited liability company shall be set forth in a written plan of conversion and approved by the board of directors and by the shareholders of the corporation.
- (3) The plan of conversion shall set forth:
 - (a) The name of the corporation planning to convert;
 - (b) The terms and conditions of the conversion, including the articles of organization and the written operating agreement, if any, of the limited liability company into which the corporation will convert; and
 - (c) The manner and basis of converting the shares of the corporation into membership interests, obligations, or other securities of the limited liability company or into cash or other property in whole or part.
- (4) The plan of conversion may set forth any other provision relating to the conversion.
- (5) For a plan of conversion to be approved:
 - (a) The board of directors shall recommend the plan of conversion to the shareholders, unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with a plan; and
 - (b) The shareholders entitled to vote shall approve the plan.
- (6) The board of directors may condition its submission of the proposed conversion on any basis.
- (7) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of conversion and contain or be accompanied by a copy or summary of the plan.
- (8) Unless KRS Chapter 271B, the articles of incorporation, or the board of directors acting pursuant to subsection (6) of this section, require a greater vote or vote by voting groups, the plan of conversion to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.
- (9) Separate voting by voting groups shall be required on a plan of conversion if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under KRS 271B.10-040.
- (10) After a conversion is authorized, and at any time before articles of organization are filed, the planned conversion may be abandoned subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner determined by the board of directors.
- (11) After the conversion is approved, the corporation shall file articles of organization with the office of the Secretary of State that satisfy the requirements of KRS 275.025 and also include:
 - (a) A statement that the corporation was converted to a limited liability company;
 - (b) Its former name;
 - (c) A statement that any assumed name held by the corporation has been canceled; and
 - (d) The designation, number of outstanding shares, and number of votes to be cast by each voting group entitled to vote separately on the plan of conversion and either the total number of undisputed votes cast

for the plan separately by each voting group or a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

- (12) The conversion shall take effect when the articles of organization are filed with the office of the Secretary of State or, subject to KRS 275.060, at a later date specified in the articles of organization.

➔Section 17. KRS 275.377 is repealed and reenacted to read as follows:

- (1) A corporation that has been converted pursuant to this chapter shall be for all purposes the same entity that existed before the conversion.
- (2) When a conversion takes effect:
- (a) All property and contract rights owned by, and all rights, privileges, and immunities of the converting corporation shall remain vested in the converted limited liability company without assignment, reversion, or impairment;
- (b) All obligations of the converting corporation shall continue as obligations of the converted limited liability company;
- (c) An action or proceeding pending against the converting corporation may be continued as if the conversion had not occurred, and the name of the converted limited liability company may be substituted in any pending action or proceeding for the name of the converting corporation; and
- (d) The written operating agreement of the converted limited liability company shall be binding upon each person who becomes a member of the limited liability company.

➔Section 18. KRS 275.372 is repealed and reenacted to read as follows:

- (1) A limited liability company may convert into a limited partnership as provided in KRS 362.2-1102(4).
- (2) The terms and conditions of the conversion of a limited liability company into a limited partnership shall be approved by all of the members notwithstanding any provision to the contrary in the operating agreement.

➔Section 19. KRS 386.382 is repealed and reenacted to read as follows:

- (1) Except as authorized by subsections (2) and (3) of this section, the name of a business trust or foreign business trust qualified to transact business in this Commonwealth shall be distinguishable from any name of record with the Secretary of State.
- (2) A business trust or foreign business trust may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (1) of this section. The Secretary of State shall authorize use of the name applied for if:
- (a) The other business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or
- (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (3) A business trust or foreign business trust may use the name, including the fictitious name, of another business entity that is used in this Commonwealth if the other business entity is organized or authorized to transact business in this Commonwealth, and the business trust or foreign business trust:
- (a) Has merged with the other business entity;
- (b) Has been formed by reorganization of the other business entity; or
- (c) Has acquired all or substantially all of the assets, including the business name, of the other business entity.
- (4) This chapter shall not control the use of assumed names.

- (5) The filing of a declaration of trust or an application to transact authority in the Commonwealth under the particular name of a business trust or foreign business trust shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 20. KRS 386.384 is repealed and reenacted to read as follows:

- (1) Each domestic business trust and each foreign business trust authorized to transact business in the Commonwealth shall continuously maintain in this Commonwealth:
- (a) A registered office that may be the same as any of its places of business; and
 - (b) A registered agent who shall be either:
 1. An individual who is a resident of this Commonwealth and whose business office is identical with the registered office;
 2. A domestic corporation, limited liability company, or not-for-profit corporation whose business office is identical with the registered office; or
 3. A foreign corporation, limited liability company, or not-for-profit corporation authorized to transact business in this Commonwealth whose business office is identical with the registered office.
- (2) Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served shall not be effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.

➔Section 21. KRS 386.386 is repealed and reenacted to read as follows:

- (1) A business trust, or a foreign business trust authorized to transact business in the Commonwealth, may change its registered office or registered agent, or both, upon filing in the office of the Secretary of State a statement of change on a form supplied by the Secretary of State that sets forth:
- (a) The name of the business trust or foreign business trust;
 - (b) The street address of its current registered office;
 - (c) If the current registered office is to be changed, the street address of the new registered office;
 - (d) The name of its current registered agent;
 - (e) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent; and
 - (f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.
- (2) If a registered agent changes the street address of the registered agent's business office to another place within this Commonwealth, the registered agent shall change the street address of the registered office of any business trust or foreign business trust of which the registered agent is a registered agent by notifying the business trust or foreign business trust in writing of the change, and delivering to the Secretary of State, for filing, a statement that complies with the requirements of subsection (1) of this section and recites that the business trust or foreign business trust has been notified of the change.
- (3) The change of address of the registered office or registered agent shall be effective on delivery of the statement to the Secretary of State. The appointment of a new registered agent shall be effective on delivery of the statement to the Secretary of State and on receipt by the Secretary of State of evidence that the new registered agent has accepted appointment pursuant to KRS 386.384.

➔Section 22. KRS 386.388 is repealed and reenacted to read as follows:

- (1) A registered agent may resign as registered agent by signing and delivering to the Secretary of State for filing the executed original and two (2) exact or conformed copies of a statement of resignation. The statement may also include a statement that the registered office is also discontinued.
- (2) After filing the statement, the Secretary of State shall mail one (1) copy to the registered office, if not discontinued, and the other copy to the business trust at its principal office.

- (3) The agency appointment shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

➔Section 23. KRS 386.441 is repealed and reenacted to read as follows:

- (1) A domestic or foreign business trust's registered agent shall be the business trust's agent for service of process, notice, or demand required or permitted by law to be served on the business trust.
- (2) If a domestic or foreign business trust has no registered agent in this Commonwealth, or the registered agent cannot with reasonable diligence be served, the business trust may be served by registered or certified mail, return receipt requested, addressed to the business trust at its principal office. Service shall be perfected under this subsection at the earliest of:
- (a) The date the business trust receives the mail;
 - (b) The date shown on the return receipt, if signed on behalf of the business trust; or
 - (c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- (3) This section shall not prescribe the only means, or necessarily the required means, of serving a domestic or foreign business trust.

➔Section 24. KRS 386.392 is repealed and reenacted to read as follows:

- (1) Each domestic business trust, and each foreign business trust authorized to transact business in this Commonwealth, shall deliver to the Secretary of State, for filing, an annual report that sets forth:
- (a) The name of the business trust and the state or country under whose law it is organized;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its trustees.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the business trust.
- (3) With respect to a business trust organized or a foreign business trust first qualifying to transact business on or after June 26, 2007, the first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic business trust was organized or a foreign business trust was authorized to transact business. A business trust organized or a foreign business trust qualified to transact business on or before June 26, 2007, shall file its first annual report between January 1 and June 30, 2008. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.
- (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign business trust in writing and return the report to it for correction.
- (5) A domestic or foreign business trust may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.
- (6) The filing fee for an annual report or an amended annual report is fifteen dollars (\$15).

➔Section 25. KRS 386.432 is repealed and reenacted to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a business trust if:
- (a) The business trust does not deliver its annual report to the Secretary of State within sixty (60) days after the annual report is due;
 - (b) The business trust is without a registered agent or registered office in Kentucky for at least sixty (60) days; or

- (c) The business trust does not notify the Secretary of State within sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued.
- (2) (a) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for dissolving a business trust, the Secretary of State shall serve the business trust with written notice of the determination.
- (b) If the business trust does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which notice was mailed, the Secretary of State shall administratively dissolve the business trust by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the business trust by mailing the notice by first class mail to the business trust at its registered office.
- (3) (a) A business trust administratively dissolved under subsection (2) of this section may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:
 - 1. State the name of the business trust and the effective date of its administrative dissolution;
 - 2. State that the ground or grounds for dissolution either did not exist or have been eliminated;
 - 3. Contain a certificate from the Kentucky Department of Revenue stating that all taxes owed by the business trust have been paid; and
 - 4. Be accompanied by the reinstatement penalty and the current fee on filing each delinquent report.
- (b) If the Secretary of State determines that the application contains the information required by paragraph (a) of this subsection and that the information is correct, the Secretary of State shall:
 - 1. Cancel the certificate of dissolution and prepare a certificate of existence that states the determination and the effective date of existence; and
 - 2. Serve a copy on the business trust.
- (c) When the reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the business trust shall resume carrying on business as if the administrative dissolution had never occurred.
- (4) (a) If the Secretary of State denies a business trust's application for reinstatement following administrative dissolution, the Secretary of State shall serve the business trust with a written notice that explains the reason or reasons for denial by mailing notice by first-class mail to the business trust at its registered office or, if none, to the last principal office identified on the most recent annual report.
- (b) The business trust may appeal the denial of reinstatement to the Circuit Court of the county where the business trust's principal office, or, if there is none in Kentucky, its registered office in Kentucky, is located within thirty (30) days after service of the notice of denial by doing the following:
 - 1. Filing a petition with the court to set aside the dissolution; and
 - 2. Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the business trust's application for reinstatement, and the Secretary of State's notice of denial.
- (c) The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.
- (d) The court's final decision may be appealed as are other civil proceedings.

➔Section 26. KRS 386.4420 is repealed and reenacted to read as follows:

- (1) Subject to the Constitution of this Commonwealth:
 - (a) Except as provided in subsection (2) of this section, the laws of the state or other jurisdiction under which a foreign business trust is organized shall govern its organization and internal affairs, including the liability of its trustees and beneficial owners for the debts and obligations of the business trust and the inspection by a trustee or a beneficial owner of the books and records of the business trust; and

(b) A foreign business trust shall not be denied registration by reason of any difference between the laws of another jurisdiction under which a foreign business trust is organized and the laws of this Commonwealth.

(2) A certificate of authority obtained pursuant to this chapter shall not authorize a foreign business trust to exercise any powers or engage in any business that a domestic business trust is forbidden to exercise or engage in by the laws of this Commonwealth.

➔Section 27. KRS 386.4422 is repealed and reenacted to read as follows:

(1) A foreign business trust shall not transact business in this Commonwealth until it obtains a certificate of authority from the Secretary of State.

(2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining, defending, or settling any action, suit, or proceeding;

(b) Holding meetings of its members or managers or carrying on other activities concerning its internal affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the business trust's securities, or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail, through employees or agents, or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one (1) in the course of repeated transactions of a like nature; or

(k) Transacting business in interstate commerce.

(3) The list of activities in subsection (2) of this section shall not be considered exhaustive. This section shall not apply in determining the contracts or activities that may subject a foreign business trust to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

(4) The term "transacting business" as used in this section shall have no effect on personal jurisdiction under KRS 454.210.

➔Section 28. KRS 386.4424 is repealed and reenacted to read as follows:

(1) A foreign business trust transacting business in this Commonwealth without a certificate of authority shall not maintain an action, suit, or proceeding in any court in this Commonwealth until it obtains a certificate of authority.

(2) The successor to a business trust that transacted business in this Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this Commonwealth until the foreign business trust or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign business trust, its successor, or assignee, until it determines whether the foreign business trust or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the business trust or its successor obtains the certificate of authority.

- (4) A foreign business trust shall be liable for a civil penalty of two dollars (\$2) for each day, but not to exceed a total of five hundred dollars (\$500) for each year, it transacts business in this Commonwealth without a certificate of authority. The Attorney General may collect all penalties due under this subsection.
- (5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign business trust to obtain a certificate of authority shall not impair the validity of any contract or act of the foreign business trust or prevent it from defending any proceeding in this Commonwealth.

➔Section 29. KRS 386.4426 is repealed and reenacted to read as follows:

- (1) A foreign business trust may apply for a certificate of authority to transact business in this Commonwealth by delivering an application to the Secretary of State for filing. The application shall set forth:
 - (a) The name of the foreign business trust, or if its name is unavailable for use in this Commonwealth, a name that satisfies the requirements of KRS 386.382;
 - (b) The name of the state or country under whose law it is organized;
 - (c) Its date of organization and, if the business trust has a specific date of dissolution, the latest date upon which it is to dissolve;
 - (d) The street address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign business trust;
 - (e) The address of its registered office in this Commonwealth and the name of its registered agent at that office;
 - (f) The names and usual business addresses of its current trustees; and
 - (g) A statement that, as of the date of filing, the foreign business trust validly exists as a business trust under the laws of the jurisdiction of its organization.
- (2) A written statement of the initial registered agent consenting to serve in that capacity shall accompany the application for a certificate of authority.

➔Section 30. KRS 386.4428 is repealed and reenacted to read as follows:

- (1) A foreign business trust authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Secretary of State if it changes:
 - (a) Its name;
 - (b) The latest date on which it is to dissolve; or
 - (c) The state or country of its organization.
- (2) The requirements of KRS 386.4426 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.

➔Section 31. KRS 386.4430 is repealed and reenacted to read as follows:

- (1) A certificate of authority shall authorize the foreign business trust to which it is issued to transact business in this Commonwealth subject to the right of the Commonwealth to revoke the certificate as provided in this chapter.
- (2) A foreign business trust with a valid certificate of authority shall have the same but no greater rights as, and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic business trust.
- (3) This chapter shall not authorize this Commonwealth to regulate the organization or internal affairs of a foreign business trust authorized to transact business in this Commonwealth.

➔Section 32. KRS 386.4432 is repealed and reenacted to read as follows:

- (1) If the name of a foreign business trust does not satisfy the requirements of KRS 386.382, the foreign business trust, to obtain or maintain a certificate of authority to transact business in this Commonwealth, may use a

fictitious name to transact business in this Commonwealth if its real name is unavailable and it delivers to the Secretary of State for filing a certificate by a trustee that the business trust has adopted the fictitious name.

- (2) Except as authorized by subsections (3) and (4) of this section, the name, including a fictitious name, of a foreign business trust shall be distinguishable from the name of any other business entity upon the records of the Secretary of State.
- (3) A foreign business trust may apply to the Secretary of State for authorization to use in this Commonwealth the name of another business entity, organized or authorized to transact business in this Commonwealth, that is not distinguishable upon the Secretary's records from the name applied for. The Secretary of State shall authorize use of the name applied for if:
 - (a) The business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying business trust; or
 - (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (4) A foreign business trust may use in this Commonwealth the name, including the fictitious name, of another business entity that is used in this Commonwealth if the business entity is organized or authorized to transact business in this Commonwealth and the foreign business trust:
 - (a) Has merged with the other business entity;
 - (b) Has been formed by reorganization of the business entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other business entity.
- (5) If a foreign business trust authorized to transact business in this Commonwealth changes its name to one that does not satisfy the requirements of this section, it shall not transact business in this Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and obtains an amended certificate of authorization under KRS 386.4428.

➔Section 33. KRS 386.4434 is repealed and reenacted to read as follows:

Each foreign business trust authorized to transact business in this Commonwealth shall continuously maintain in this Commonwealth:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
 - (a) An individual who resides in this Commonwealth and whose business office is identical with the registered office;
 - (b) A domestic corporation, not-for-profit corporation, or limited liability company whose business office is identical with the registered office; or
 - (c) A foreign corporation, not-for-profit corporation, or limited liability company authorized to transact business in this Commonwealth whose business office is identical with the registered office.
- (3) The registered agent shall execute and deliver to the Secretary of State a document accepting the agency appointment, and the appointment of the agent shall not be effective until delivered to the Secretary of State.

➔Section 34. KRS 386.4436 is repealed and reenacted to read as follows:

- (1) A foreign business trust authorized to transact business in this Commonwealth may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:
 - (a) Its name;
 - (b) The street address of its current registered office;
 - (c) If the current registered office is to be changed, the street address of its new registered office;
 - (d) The name of its current registered agent;

- (e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
- (f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

- (2) If a registered agent changes the street address of its business office, the agent shall change the street address of the registered office of any foreign business trust for which the agent is the registered agent by notifying the business trust in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the business trust has been notified of the change.

➔Section 35. KRS 386.4438 is repealed and reenacted to read as follows:

- (1) The registered agent of a foreign business trust may resign its agency appointment by signing and delivering to the Secretary of State, for filing, the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.
- (2) After filing the statement, the Secretary of State shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office, if not discontinued. The Secretary of State shall mail the other copy to the foreign business trust at its principal office address shown in its most recent annual report.
- (3) The agency appointment shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed. A foreign business trust that fails to maintain a registered agent in this Commonwealth shall be subject to revocation of its certificate of authority under KRS 386.4444.

➔Section 36. KRS 386.4440 is repealed and reenacted to read as follows:

- (1) The registered agent of a foreign business trust authorized to transact business in this Commonwealth shall be the company's agent for service of process, notice, or demand required or permitted by law to be served on the foreign business trust.
- (2) A foreign business trust may be served by registered or certified mail, return receipt requested, addressed to the appropriate representative of the foreign business trust at its principal office shown in its application for a certificate of authority or in its most recent annual report, if the foreign business trust:
 - (a) Has no registered agent or its registered agent cannot with reasonable diligence be served;
 - (b) Has withdrawn from transacting business in this Commonwealth under KRS 386.4442; or
 - (c) Has had its certificate of authority revoked under KRS 386.4446.
- (3) Service is perfected under subsection (2) of this section at the earliest of:
 - (a) The date the foreign business trust receives service by mail;
 - (b) The date shown on the return receipt, if signed on behalf of the foreign business trust; or
 - (c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- (4) This section shall not prescribe the only means, or necessarily the required means, of serving a foreign business trust.

➔Section 37. KRS 386.4442 is repealed and reenacted to read as follows:

- (1) A foreign business trust authorized to transact business in this Commonwealth shall not withdraw from this Commonwealth until it obtains a certificate of withdrawal from the Secretary of State.
- (2) A foreign business trust authorized to transact business in this Commonwealth may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application shall set forth:
 - (a) The name of the foreign business trust and the name of the state or country under whose law it is organized;
 - (b) A statement that it is not transacting business in this Commonwealth and that it surrenders its authority to transact business in this Commonwealth;

- (c) A statement that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this Commonwealth;
 - (d) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subsection (2)(c) or (3) of this section; and
 - (e) A commitment to notify the Secretary of State in the future of any change in its mailing address.
- (3) After the withdrawal of the business trust is effective, service of process on the Secretary of State under this section shall be service on the foreign business trust. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign business trust at the mailing address set forth under subsection (2) of this section.

➔Section 38. KRS 386.4444 is repealed and reenacted to read as follows:

The Secretary of State may commence a proceeding under KRS 386.4446 to revoke the certificate of authority of a foreign business trust authorized to transact business in this Commonwealth if:

- (1) The foreign business trust does not file its annual report to the Secretary of State within sixty (60) days after it is due;
- (2) The foreign business trust is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;
- (3) The foreign business trust does not inform the Secretary of State under KRS 386.4434 and 386.4436 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance;
- (4) A trustee of the business trust or person organizing the foreign business trust signed a document the trustee or person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or
- (5) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of business trust records in the state or country under whose law the foreign business trust is organized stating that it has been dissolved or disappeared as the result of a merger or other event.

➔Section 39. KRS 386.4446 is repealed and reenacted to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 386.4444 for revocation of a certificate of authority, the Secretary of State shall serve the foreign business trust with written notice of its determination by mailing the notice by first-class mail to the foreign business trust at its principal place of business address as shown on the records of the Secretary of State.
- (2) If the foreign business trust does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the mailing of the notice, the Secretary of State shall revoke the foreign business trust's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy to the foreign business trust by mailing notice by first-class mail to the foreign business trust at its principal place of business address as shown on the records of the Secretary of State.
- (3) The authority of a foreign business trust to transact business in this Commonwealth shall cease on the date shown on the certificate of revocation.
- (4) The Secretary of State's revocation of a foreign business trust's certificate of authority shall have the effect of appointing the Secretary of State as the foreign business trust's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign business trust was authorized to transact business in this Commonwealth. Service of process on the Secretary of State under this subsection shall be service on the foreign business trust. Upon receipt of process, the Secretary of State shall mail a copy of the process to the appropriate representative of the foreign business trust at its principal office as shown in its most recent annual report or in any subsequent communication received from the foreign business trust stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

- (5) Revocation of a foreign business trust's certificate of authority shall not terminate the authority of the registered agent of the foreign business trust.

➔Section 40. KRS 386.4448 is repealed and reenacted to read as follows:

- (1) A foreign business trust may appeal the Secretary of State's revocation of its certificate of authority to the Franklin Circuit Court within thirty (30) days after the service of certificate of revocation. The foreign business trust may petition the court to set aside the revocation by attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.
- (2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.
- (3) The court's final decision may be appealed as in other civil proceedings.

➔Section 41. KRS 14.105 is repealed and reenacted to read as follows:

- (1) The Secretary of State may accept electronic signatures to meet the filing requirements for a:
- (a) Corporation as required in KRS Chapter 271B;
 - (b) Nonprofit corporation as required in KRS Chapter 273;
 - (c) Professional service corporation as required in KRS Chapter 274;
 - (d) Limited liability company as required in KRS Chapter 275;
 - (e) Partnership as required in KRS Chapter 362;
 - (f) Partnership as required in Subchapter 1 of KRS Chapter 362;
 - (g) Limited partnership as required in Subchapter 2 of KRS Chapter 362;
 - (h) Cooperative corporations and associations as required in KRS Chapter 272;
 - (i) Business trust as required in KRS Chapter 386;
 - (j) Rural electric and rural telephone cooperative corporation as required in KRS Chapter 279; and
 - (k) Assumed name filing under KRS Chapter 365.
- (2) The electronic signature shall satisfy the requirements set forth in KRS 369.101 to 369.120.

➔Section 42. KRS 141.010 is repealed and reenacted to read as follows:

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

- (1) "Commissioner" means the commissioner of the Department of Revenue;
- (2) "Department" means the Department of Revenue;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate, and as modified by KRS 141.0101, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) "Modified gross income" means the greater of:
 - (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:

1. Include interest income derived from obligations of sister states and political subdivisions thereof; and
 2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
- (b) Adjusted gross income as defined in subsection (10) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- (9) "Gross income," in the case of taxpayers other than corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income," in the case of taxpayers other than corporations, means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;
 - (i) 1. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
 - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.

2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars (\$41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;
- (j)
 1.
 - a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and
 - b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.
 2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;
- (k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;
- (l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;
- (m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;
- (n) Exclude any capital gains income attributable to property taken by eminent domain;
- (o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
- (p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
- (q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
- (r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
- (s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;

- (t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries; and
 - (u) For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205;
- (11) "Net income," in the case of taxpayers other than corporations, means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
- (a) Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;
 - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
 - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
 - (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;

- (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
 - (i) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
 - (j) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
 - (k) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
 - (l) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
 - (m) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of the tax imposed by KRS 141.040; and
 - (n) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
 - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
 - (g) Any deduction prohibited by KRS 141.205; and
 - (h) Any dividends-paid deduction of any captive real estate investment trust;
- (14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;

- (b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;
 - (c) "Taxable net income," in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and
 - (d) "Taxable net income," in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
 - (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the commissioner, "taxable year" means the period for which the return is made;
 - (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
 - (18) "Nonresident" means any individual not a resident of this state;
 - (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
 - (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
 - (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
 - (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
 - (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
 - (24) (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and
 - (b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:
 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
 2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
 3. A foreign limited liability company as defined in KRS 275.015;
 4. A limited liability company as defined in KRS 275.015;
 5. A professional limited liability company as defined in KRS 275.015;
 6. A foreign limited partnership as defined in KRS 362.2-102(9);
 7. A limited partnership as defined in KRS 362.2-102(14);
 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);
 9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;

10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
13. Other similar entities created with limited liability for their partners, members, or shareholders.

For purposes of this paragraph, "corporation" shall not include any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c) of the Internal Revenue Code or its publicly traded partnership affiliates. As used in this paragraph, "publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;

(25) "Doing business in this state" includes but is not limited to:

- (a) Being organized under the laws of this state;
- (b) Having a commercial domicile in this state;
- (c) Owning or leasing property in this state;
- (d) Having one (1) or more individuals performing services in this state;
- (e) Maintaining an interest in a pass-through entity doing business in this state;
- (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or
- (g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

- (26) "Pass-through entity" means any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;
- (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal Revenue Code;
- (28) "Limited liability pass-through entity" means any pass-through entity that affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity; and
- (29) "Captive real estate investment trust" means a real estate investment trust as defined in Section 856 of the Internal Revenue Code that meets the following requirements:
 - (a)
 1. The shares or other ownership interests of the real estate investment trust are not regularly traded on an established securities market; or
 2. The real estate investment trust does not have enough shareholders or owners to be required to register with the Securities and Exchange Commission; and
 - (b)
 1. The maximum amount of stock or other ownership interest that is owned or constructively owned by a corporation equals or exceeds:
 - a. Twenty-five percent (25%), if the corporation does not occupy property owned, constructively owned, or controlled by the real estate investment trust; or
 - b. Ten percent (10%), if the corporation occupies property owned, constructively owned, or controlled by the real estate investment trust.

The total ownership interest of a corporation shall be determined by aggregating all interests owned or constructively owned by a corporation;

2. For the purposes of this paragraph:
 - a. "Corporation" means a corporation taxable under KRS 141.040, and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to the provisions of KRS 141.200; and
 - b. "Owned or constructively owned" means owning shares or having an ownership interest in the real estate investment trust, or owning an interest in an entity that owns shares or has an ownership interest in the real estate investment trust. Constructive ownership shall be determined by looking across multiple layers of a multilayer pass-through structure; and
- (c) The real estate investment trust is not owned by another real estate investment trust.

➔Section 43. KRS 154.22-010 is repealed and reenacted to read as follows::

The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the context clearly indicates a different meaning, shall have the following meanings:

- (1) "Activation date" means a date selected by an approved company in the tax incentive agreement at any time within a two (2) year period after the date of final approval of the tax incentive agreement by the authority;
- (2) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation, if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
 2. Two (2) or more corporations, if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
 - (e) A grantor and a fiduciary of any trust;
 - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
 - (g) A fiduciary of a trust and a beneficiary of that trust;
 - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

- (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (k) A corporation, a partnership, and a limited partnership, if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
 - (l) A corporation and a limited liability company, if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (m) A partnership, limited partnership, and a limited liability company, if the same persons own:
 - 1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (n) An S corporation and another S corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
 - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;
- (3) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (4) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-080;
- (5) "Approved costs" means:
- (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 - (b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
 - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;
 - (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 - (e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
 - (f) All other costs of a nature comparable to those described above;
- (6) "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-080;

- (7) "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010;
- (8) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce Investment in the Education and Workforce Development Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
- (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) (a) "Economic development project" means and includes:
1. The acquisition of ownership in any real estate in a qualified county by the authority, the approved manufacturing or agribusiness company, or its affiliate;
 2. The present ownership of real estate in a qualified county by the approved manufacturing or agribusiness company or its affiliate;
 3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved manufacturing or agribusiness company pursuant to a ground lease having a term of sixty (60) years or more;
 4. The new construction of an electric generation facility; and
 5. The legal possession of facilities by an approved company or its affiliate pursuant to a lease having a term equal to or greater than fifteen (15) years with a third-party entity, negotiated at arm's length, if the facility will be used by the approved company to conduct the approved activity for which the inducement has been granted. An economic development project qualifying under this subparagraph shall only be eligible for credits against equipment and costs related to installation of equipment and for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080 only to the extent of twenty thousand dollars (\$20,000) per job created by and maintained at the economic development project. Notwithstanding KRS 154.22-050(8) and 154.22-060, an economic development project qualifying under this subparagraph shall be eligible only for the aggregate assessments pursuant to KRS 154.22-070 withheld by the approved company each year and shall not be eligible for credit against Kentucky income tax and limited liability entity tax.
- (b) For purposes of paragraph (a)1. and 2. of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to paragraph (a)1., 2., and 3. of this subsection or this paragraph, the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes, electric generation, or for agribusiness purposes. Pursuant to paragraph (a)3. and 5. of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080;

- (11) "Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal;
- (12) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing, electric generation, or in agribusiness;
- (13) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (14) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (15) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (16) "Inducements" means the assessment and the tax credits allowed by KRS 154.22-060;
- (17) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals;
- (18) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;
- (19) "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-080;
- (20) "Revenues" shall not be considered state funds;
- (21) "State agency" shall have the meaning assigned to the term in KRS 56.440(8);
- (22) "Tax incentive agreement" means the agreement entered into, pursuant to KRS 154.22-050, between the authority and an approved company with respect to an economic development project;
- (23) "Kentucky gross receipts" means "Kentucky gross receipts" as defined in KRS 141.0401; and
- (24) "Kentucky gross profits" means "Kentucky gross profits" as defined in KRS 141.0401.

➔Section 44. KRS 154.23-010 is repealed and reenacted to read as follows:

As used in KRS 154.23-005 to 154.23-079, unless the context clearly indicates otherwise:

- (1) "Affiliate" has the same meaning as in KRS 154.22-010;
- (2) "Approved company" means an eligible company that locates an economic development project in a qualified zone, as provided for in KRS 154.23-030;
- (3) "Approved costs" means:
 - (a) For an approved company that establishes a new manufacturing facility or expands an existing manufacturing facility, the following obligations incurred in its economic development project, including rent under leases subject to subsection (8)(b)4. of this section:
 - 1. The cost of labor, contractors, subcontractors, builders, and material workers in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 - 2. The cost of acquiring real estate or rights in land and any cost incidental thereto, including recording fees;
 - 3. The cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project that is not paid by the contractor or contractors or otherwise provided for;
 - 4. The cost of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as

- for the performance of all duties required by or consequent to the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
 6. All other costs of a nature comparable to those described above; or
- (b) For an approved company that establishes a new service or technology business or expands existing service or technology operations, up to a maximum of fifty percent (50%) of the total start-up costs during the term of the service and technology agreement, plus up to a maximum of fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;
- (4) "Assessment" means the job development assessment fee authorized by KRS 154.23-055;
 - (5) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;
 - (6) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce Investment within the Education and Workforce Development Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
 - (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;
 - (7) "Commonwealth" means the Commonwealth of Kentucky;
 - (8) "Economic development project" or "project" means:
 - (a) A new or expanded service or technology activity conducted at a new or expanded site by:
 1. An approved company; or
 2. An approved company and its affiliate or affiliates; or
 - (b) Any of the following activities of an approved company engaged in manufacturing:
 1. The acquisition of or present ownership in any real estate in a qualified zone for the purposes described in KRS 154.23-005 to 154.23-079, which ownership shall include only fee simple ownership of real estate and possession of real estate according to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976;
 2. The acquisition or present ownership of improvements or facilities on land that is possessed or is to be possessed by the approved company in a ground lease having a term of sixty (60) years or more; provided, however, that this project shall not include lease payments made under a ground lease for purposes of calculating the tax credits offered under KRS 154.23-005 to 154.23-079;
 3. The construction, installation, equipping, and rehabilitation of improvements, fixtures, equipment, and facilities necessary or desirable for improvement of the real estate owned, used, or occupied by the approved company for manufacturing purposes. Construction activities include surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; or similar activities as the authority may determine necessary for construction; and
 4. The leasing of real estate and the buildings and fixtures thereon acquired, constructed, and installed with funds from grants under KRS 154.23-060;

- (9) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other legal entity engaged in manufacturing, or service or technology; however, any company whose primary purpose is retail sales shall not be an eligible company;
- (10) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (11) "Final approval" means action taken by the authority that authorizes the eligible company to receive inducements in connection with a project under KRS 154.23-005 to 154.23-079;
- (12) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (13) "Inducements" means the assessment and the income tax credits allowed to an approved company under KRS 154.23-050 and 154.23-055;
- (14) "Local government" means a city, county, or urban-county government;
- (15) "Manufacturing" means to make, assemble, process, produce, or perform any other activity that changes the form or conditions of raw materials and other property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, the extraction of minerals or coal, or processing of these resources;
- (16) "Person" means an individual, sole proprietorship, partnership, limited partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation any instrumentality, division, political subdivision, district, court, agency, or department thereof;
- (17) "Preliminary approval" means action taken by the authority that conditions final approval of an eligible company and its economic development project upon satisfaction by the eligible company of the applicable requirements under KRS 154.23-005 to 154.23-079;
- (18) "Qualified employee" means an individual subject to Kentucky income tax who has resided in the qualified zone where the project exists for at least twelve (12) consecutive months preceding full-time employment by an approved company;
- (19) "Qualified statewide employee" means an individual subject to Kentucky income tax who has resided in any census tract or county in the Commonwealth that meets the criteria in KRS 154.23-015, regardless of whether the tract or county is in a qualified zone, for at least twelve (12) consecutive months preceding full-time employment by an approved company;
- (20) "Qualified zone" means any census tract or county certified as such by the authority in KRS 154.23-015 and 154.23-020;
- (21) "Rent" means:
- (a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arm's length for the use of a building by the approved company to conduct the approved project for which the inducement has been granted; or
 - (b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved project for which the inducement has been granted as determined by the authority using criteria that are customary in the real estate industry for the type of building being used. The fair rental value shall include an analysis of the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for the land being utilized; and
 - (c) Rent shall include the customary cost of occupancy, including but not limited to property taxes, heating and air conditioning, electricity, water, sewer, and insurance;
- (22) "Service and technology agreement" means any agreement entered into under KRS 154.23-040 on behalf of the authority, an approved company engaged in service or technology, and third-party lessors, if applicable, with respect to an economic development project;
- (23) (a) "Service or technology" means either:

1. Any activity involving the performance of work, except work classified by the divisions, including successor divisions, of agriculture, forestry and fishing, mining, utilities, construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication; or
 2. Regional or headquarters operations of an entity engaged in an activity listed in subparagraph 1. of this paragraph.
- (b) Notwithstanding paragraph (a) of this subsection, "service or technology" shall not include any activity involving the performance of work by an individual who is providing direct service to the public pursuant to a license issued by the state or an association that licenses in lieu of the state;
- (24) "Start-up costs" means the acquisition cost associated with the project and related to furnishing and equipping a building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and the relocation of out-of-state equipment, as verified and approved by the authority in accordance with KRS 154.23-040;
- (25) "Tax incentive agreement" means that agreement entered into pursuant to KRS 154.23-035 between the authority and an approved company with respect to an economic development project;
- (26) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (27) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

➔Section 45. KRS 176.150 is repealed and reenacted to read as follows:

- (1) No applicant shall be given a certificate of eligibility unless his financial statement and the investigation made by the department show that he possesses net current assets or working capital sufficient in the judgment of the department to render it probable that he can satisfactorily execute his contracts and meet obligations therein incurred. All applications for certificates shall expressly authorize the department to obtain all information which it deems pertinent with respect to the financial status, assets, and liabilities of the applicant from any persons having business transactions with the applicant, and shall expressly authorize all those persons to furnish any information requested from them by the department.
- (2) No applicant shall be given a certificate of eligibility until the applicant provides the secretary of the Transportation Cabinet with his sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the applicant will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.
- (3) Certificates of eligibility shall be issued without reference to the residence of applicants and the administrative regulations regarding the issuance of certificates shall apply equally to residents and nonresidents. A certificate of eligibility shall not be denied to any applicant upon the sole issue of nationality or residence.
- (4) When the applicant is a foreign corporation, limited liability company, or limited partnership, the application shall be accompanied by a certificate from the Secretary of State of the jurisdiction in which it is organized certifying that it is validly existing and in good standing and a certificate from the Kentucky Secretary of State certifying that it is authorized to transact business in the Commonwealth of Kentucky.

➔Section 46. KRS 271B.1-200 is repealed and reenacted 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, 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 corporate seal of the corporation;
 - (b) An attestation, acknowledgment, or verification; or
 - (c) 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 271B.15-090.
- (10) One (1) exact or conformed paper, but not electronic, copy of the document 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.
- (12) Whenever a provision of KRS Chapter 271B permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:
 - (a) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;
 - (b) The facts may include but are not limited to:
 1. Any of the following that is available in a nationally recognized news or information medium either in print or electronically:
 - a. Statistical or market indices;
 - b. Market prices of any security or group of securities;
 - c. Interest rates;
 - d. Currency exchange rates; or
 - e. Similar economic or financial data;
 2. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or
 3. The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;

- (c) As used in this subsection:
 - 1. "Filed document" means a document filed with the Secretary of State under any provision of KRS Chapter 271B except Subtitle 15 or KRS 271B.16-220; and
 - 2. "Plan" means a plan of nonprofit conversion as provided for in KRS 273.382, conversion into an LLC as provided for in KRS 275.376, merger, or of share exchange;
- (d) The following provisions of a plan or filed document shall not be made dependent on facts outside the plan or filed document:
 - 1. The name and address of any person required in a filed document;
 - 2. The registered office of any entity required in a filed document;
 - 3. The registered agent of any entity required in a filed document;
 - 4. The number of authorized shares and designation of each class or series of shares;
 - 5. The effective date of a filed document; or
 - 6. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and
- (e) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph (b)1. of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

➔Section 47. KRS 271B.1-210 is repealed and reenacted to read as follows:

- (1) The Secretary of State may prescribe and furnish on request forms for:
 - (a) An application for a certificate of existence;
 - (b) A foreign corporation's application for a certificate of authority to transact business in this state;
 - (c) A foreign corporation's application for a certificate of withdrawal;
 - (d) A change of registered office or registered agent;
 - (e) The annual report;
 - (f) An amendment to the annual report;
 - (g) A change of principal address form; and
 - (h) An amended application for certificate of authority.

If the Secretary of State so requires, use of these forms shall be mandatory.

- (2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but their use shall not be mandatory.

➔Section 48. KRS 271B.1-220 is repealed and reenacted to read as follows:

- (1) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:
 - (a) Articles of incorporation \$ 40
 - (b) Application for use of indistinguishable name \$ 20
 - (c) Application or renewal of application for reserved name \$ 15
 - (d) Cancellation of application for reserved name.....\$ 10

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| (e) | Notice of transfer of reserved name | \$ 15 |
| (f) | Application for registered name | \$ 36 |
| (g) | Application for renewal of registered name | \$ 36 |
| (h) | Corporation's statement of change of registered agent
or registered office, or both | \$ 10 |
| (i) | Corporation's statement of change of principal office address | \$ 10 |
| (j) | Agent's statement of change of registered office for
each affected corporation | \$ 10 |
| | not to exceed a total of | \$1,000 |
| (k) | Amendment of articles of incorporation | \$ 40 |
| (l) | Restatement of articles of incorporation | \$ 40 |
| (m) | Amended and restated articles | \$ 80 |
| (n) | Articles of merger or share exchange | \$ 50 |
| (o) | Articles of dissolution | \$ 40 |
| (p) | Articles of revocation of dissolution | \$ 15 |
| (q) | Reinstatement penalty following administrative dissolution | \$ 100 |
| (r) | Application for certificate of authority | \$ 90 |
| (s) | Application for amended certificate of authority | \$ 40 |
| (t) | Application for certificate of withdrawal | \$ 40 |
| (u) | Annual report | \$ 15 |
| (v) | Amendment to annual report..... | \$ 10 |
| (w) | Articles of correction | \$ 20 |
| (x) | Certificate of existence or authorization | \$ 10 |
| (y) | Any other document required or permitted to
be filed by this chapter | \$ 15 |
| (z) | Agent's statement of resignation | No fee |
| (aa) | Certificate of administrative dissolution | No fee |
| (ab) | Certificate of reinstatement | No fee |
| (ac) | Certificate of judicial dissolution | No fee |
| (ad) | Certificate of revocation of authority to transact business | No fee |
- (2) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on him under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if he prevails in the proceeding.
- (3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:
- | | |
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| (a) | Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50) a page for each page thereafter; and |
| (b) | Five dollars (\$5) for the certificate. |
- (4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to corporations.

➔Section 49. KRS 271B.1-250 is repealed and reenacted 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 the date and time of receipt. After filing a document, except as provided in KRS 271B.5-030 and 271B.15-090, the Secretary of State shall deliver 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, if filed by paper, the Secretary of State 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 the refusal. If the document was filed electronically, the Secretary of State's brief explanation of the reason for the refusal may be returned electronically.
- (4) The Secretary of State's duty to file documents under this section shall be ministerial. The filing or refusal to file a document shall not:
 - (a) Affect the validity or invalidity of the document in whole or part;
 - (b) Relate to the correctness or incorrectness of information contained in the document; or
 - (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

➔Section 50. KRS 271B.1-290 is repealed and reenacted to read as follows:

- (1) A person commits an offense by signing a document knowing it is false in any material respect with intent that the document be delivered to the Secretary of State for filing.
- (2) An offense under this section shall be a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).

➔Section 51. KRS 271B.1-400 is repealed and reenacted to read as follows:

In this chapter:

- (1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger;
- (2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue;
- (3) "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;
- (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) "Entity" includes a domestic or 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) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state;
- (12) "Governmental subdivision" includes authority, county, district, and municipality;
- (13) "Includes" denotes a partial definition;
- (14) "Individual" means a natural person and includes the estate of an incompetent or deceased individual;
- (15) "Means" denotes an exhaustive definition;
- (16) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity;
- (17) "Notice" is defined in KRS 271B.1-410;
- (18) "Person" includes individual and entity;
- (19) "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;
- (20) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;
- (21) "Real name" shall have the meaning set forth in KRS 365.015.
- (22) "Record date" means the date established under Subtitle 6 or 7 of this chapter 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;
- (23) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under KRS 271B.8-400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;
- (24) "Share" means the unit into which the proprietary interests in a corporation are divided;
- (25) "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;
- (26) "Sign" or "signature" includes any manual, facsimile, or conformed or electronic signature;
- (27) "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.
- (28) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- (29) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States; and
- (30) "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 52. KRS 271B.1-410 is repealed and reenacted 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 mail or other method of delivery; or by telephone, voice mail, or other electronic means. 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, 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 domestic corporation that has not yet delivered an annual report, in its articles of incorporation 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, if mailed postpaid and correctly addressed; or
 - (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 53. KRS 271B.2-030 is repealed and reenacted to read as follows:

- (1) Unless a delayed effective date is specified, the corporate existence shall begin when the articles of incorporation are filed by the Secretary of State.
- (2) The Secretary of State's filing of the articles of incorporation shall be conclusive proof that the incorporators satisfied all conditions precedent to incorporation, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

➔Section 54. KRS 271B.2-050 is repealed and reenacted to read as follows:

- (1) After incorporation:
 - (a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
 - (b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:
 - 1. To elect directors and complete the organization of the corporation; or
 - 2. To elect a board of directors who shall complete the organization of the corporation.
- (2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.
- (3) An organizational meeting may be held in or out of this state.

➔Section 55. KRS 271B.2-070 is repealed and reenacted to read as follows:

- (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:
 - (a) Procedures for calling a meeting of the board of directors;

- (b) Quorum requirements for the meeting; and
 - (c) Designation of additional or substitute directors.
- (2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.
 - (3) Corporate action taken in good faith in accordance with the emergency bylaws:
 - (a) Shall bind the corporation; and
 - (b) Shall not be used to impose liability on a corporate director, officer, employee, or agent.
 - (4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

➔Section 56. KRS 271B.3-010 is repealed and reenacted to read as follows:

- (1) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.
- (2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

➔Section 57. KRS 271B.4-010 is repealed and reenacted to read as follows:

- (1) A corporate name:
 - (a) Shall contain the word "corporation," "incorporated," "company," or "limited" or the abbreviation "corp.," "inc.," "co.," or "ltd." or words or abbreviations of like import in another language; and
 - (b) Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by KRS 271B.3-010 and its articles of incorporation.
- (2) Except as authorized by subsections (3) and (4) of this section, a corporate name must be distinguishable from any name of record with the Secretary of State.
- (3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) A corporation may use the name, including the fictitious name, of another entity that is used in this state if the other entity is incorporated or authorized to transact business in this state, and the proposed user corporation:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the corporate name, of the other entity.
- (5) This chapter does not control the use of assumed names.
- (6) The filing of articles of incorporation under the particular corporate name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 58. KRS 271B.4-020 is repealed and reenacted to read as follows:

- (1) A person may reserve the exclusive use of a corporate name, including a fictitious name, for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a one hundred twenty (120) day period. During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as

shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.

- (2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.
- (3) The holder of a reserved corporate name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 59. KRS 271B.4-030 is repealed and reenacted to read as follows:

- (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by KRS 271B.15-060, if the name is distinguishable upon the records of the Secretary of State as required under KRS 271B.4-010(2).
- (2) A foreign corporation shall register its corporate name, or its corporate name with any addition required by KRS 271B.15-060, by delivering to the Secretary of State, for filing, an application:
 - (a) Setting forth its corporate name, or its corporate name with any addition required by KRS 271B.15-060, the state or country and date of its incorporation and a brief description of the nature of the business in which it is engaged; and
 - (b) Accompanied by a certificate of existence or a document of similar import from the state or country of incorporation.
- (3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.
- (4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed shall renew the registration for the following calendar year.
- (5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

➔Section 60. KRS 271B.6-010 is repealed and reenacted to read as follows:

- (1) The articles of incorporation shall prescribe the classes of shares and series of shares within a class and the number of shares of each class and series that the corporation is authorized to issue. If more than one (1) class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series, and, prior to the issuance of shares of a class or series, the preferences, limitations, and relative rights of that class or series must be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by KRS 271B.6-020.
- (2) The articles of incorporation shall authorize:
 - (a) One (1) or more classes or series of shares that together have unlimited voting rights; and
 - (b) One (1) or more classes or series of shares which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.
- (3) The articles of incorporation may authorize one (1) or more classes or series of shares that:
 - (a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;
 - (b) Are redeemable or convertible as specified in the articles of incorporation:
 1. At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

2. For cash, indebtedness, securities, or other property; or
 3. In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;
 - (c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or
 - (d) Have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.
- (4) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with KRS 271B.1-200(12).
 - (5) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section shall not be considered exhaustive.

➔Section 61. KRS 271B.6-270 is repealed and reenacted 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 KRS 271B.6-260(2). Unless so noted or contained, 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;
 - (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) 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 62. KRS 271B.7-210 is repealed and reenacted to read as follows:

- (1) Except as provided in subsections (2) and (4) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, shall be entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares shall be entitled to vote.

- (2) Absent special circumstances, the shares of a corporation shall not be entitled to vote if they are owned, directly or indirectly, by an entity, domestic or foreign, and the corporation controls, directly or indirectly, the entity's determination to vote, and how to vote, the shares.
- (3) Subsection (2) of this section shall not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.
- (4) Redeemable shares shall not be entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

➔Section 63. KRS 271B.7-270 is repealed and reenacted to read as follows:

- (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this chapter.
- (2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

➔Section 64. KRS 271B.7-400 is repealed and reenacted to read as follows:

- (1) A person shall not commence a proceeding in the right of a domestic or foreign corporation unless he was a shareholder of the corporation when the transaction complained of occurred or unless he became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding shall not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.
- (2) A complaint in a proceeding brought in the right of a corporation shall be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why he did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.
- (3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.
- (4) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.
- (5) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on his behalf.
- (6) In any derivative proceedings in the right of a foreign corporation, the matters covered by this section shall be governed by the laws of the jurisdiction of incorporation.

➔Section 65. KRS 271B.8-220 is repealed and reenacted to read as follows:

- (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.
- (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two (2) days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

➔Section 66. KRS 271B.8-570 is repealed and reenacted to read as follows:

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, manager, partner, trustee, employee, or agent of

another entity, or of an employee benefit plan or other enterprise, against liability asserted against or incurred in that capacity or arising from the status as a director, officer, manager, employee, or agent, whether or not the corporation would have power to indemnify against the same liability under KRS 271B.8-510 or 271B.8-520.

➔Section 67. KRS 271B.13-020 is repealed and reenacted to read as follows:

- (1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:
 - (a) Consummation of a plan of merger to which the corporation is a party:
 1. If shareholder approval is required for the merger by KRS 271B.11-030 or the articles of incorporation and the shareholder is entitled to vote on the merger; or
 2. If the corporation is a subsidiary that is merged with its parent under KRS 271B.11-040;
 - (b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;
 - (c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;
 - (d) Consummation of a plan of conversion of the corporation as provided for in KRS 275.376;
 - (e) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:
 1. Alters or abolishes a preferential right of the shares to a distribution or in dissolution;
 2. Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase of the shares;
 3. Excludes or limits the right of the shares to vote on any matter other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
 4. Reduces the number of shares owned by the shareholder to a fraction of a share, if the fractional share so created is to be acquired for cash under KRS 271B.6-040;
 - (f) Any transaction subject to the requirements of KRS 271B.12-210 or exempted by KRS 271B.12-220(2); or
 - (g) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.
- (2) A shareholder entitled to dissent and obtain payment for his shares under this chapter shall not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

➔Section 68. KRS 271B.14-050 is repealed and reenacted to read as follows:

- (1) A dissolved corporation shall continue its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
 - (a) Collecting its assets;
 - (b) Disposing of its properties that will not be distributed in kind to its shareholders;
 - (c) Discharging or making provision for discharging its liabilities;
 - (d) Distributing its remaining property among its shareholders according to their interests; and
 - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (2) Dissolution of a corporation shall not:
 - (a) Transfer title to the corporation's property;

- (b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (c) Subject its directors or officers to standards of conduct different from those prescribed in Subtitle 8 of this chapter;
- (d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (e) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;
- (g) Terminate the authority of the registered agent of the corporation;
- (h) Alter the obligations and responsibilities of the corporation as prescribed by applicable federal or state law with regard to the filing or examination of all federal and state tax returns or the payment, assessment, or collection of any federal or state tax due with respect to those returns; or
- (i) Abate or suspend KRS 271B.6-220.

➔Section 69. KRS 271B.14-210 is repealed and reenacted to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 271B.14-200 for dissolving a corporation, he shall serve the corporation with written notice of his determination, by mailing such notice by first-class mail to the corporation at its principal place of business address.
- (2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation by mailing such notice by first-class mail to the corporation at its principal place of business address.
- (3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under KRS 271B.14-050 and notify claimants under KRS 271B.14-060 and 271B.14-070.
- (4) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

➔Section 70. KRS 271B.14-220 is repealed and reenacted to read as follows:

- (1) A corporation administratively dissolved under KRS 271B.14-210, or revoked under the provisions of KRS 271A.615, which was repealed by 1988 Ky. Acts, ch. 23, sec. 248, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution or revocation. The application shall:
 - (a) Recite the name of the corporation and the effective date of its administrative dissolution or revocation;
 - (b) State that the ground or grounds for dissolution or revocation either did not exist or have been eliminated;
 - (c) State that the corporation's name satisfies the requirements of KRS 271B.4-010;
 - (d) Contain a certificate from the Department of Revenue reciting that all taxes owed by the corporation have been paid;
 - (e) Contain a certificate from the Division of Unemployment Insurance in the Department for Workforce Investment reciting that all employer contributions, interest, penalties, and service capacity upgrade fund assessments have been paid; and
 - (f) Be accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report provided for in KRS 271B.1-220.

- (2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, he shall cancel the certificate of dissolution or revocation and prepare a certificate of existence that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation by mailing the notice by first class mail to the corporation at its registered office.
- (3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution or revocation and the corporation shall resume carrying on its business as if the administrative dissolution or revocation had never occurred.
- (4) Notwithstanding any other provision to the contrary, any corporation which was administratively dissolved or revoked and has taken the action necessary to wind up and liquidate its business and affairs under KRS 271B.14-050, and notify claimants under KRS 271B.14-060 and 271B.14-070, shall be prohibited from reinstatement.
- (5) A corporation administratively dissolved upon the expiration of its period of duration may, in the sixty (60) day period of KRS 271B.14-210(2), amend its articles to extend its period of duration or to delete its period of duration, which amendment will relate back to the day immediately preceding the expiration of the period of duration. A corporation which fails to so amend its articles of incorporation in the sixty (60) day period of KRS 271B.14-210(2) may not thereafter be reinstated, and shall liquidate its business and affairs under KRS 271B.14-050 and notify claimants under KRS 271B.14-060 and 271B.14-070.

➔Section 71. KRS 271B.15-010 is repealed and reenacted to read as follows:

- (1) A foreign corporation, except a foreign insurance company, shall not transact business in this state until it obtains a certificate of authority from the Secretary of State.
- (2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:
 - (a) Maintaining, defending, or settling any proceeding;
 - (b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
 - (c) Maintaining bank accounts;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;
 - (e) Selling through independent contractors;
 - (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
 - (g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (i) Owning, without more, real or personal property;
 - (j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; and
 - (k) Transacting business in interstate commerce.
- (3) The list of activities in subsection (2) of this section is not exhaustive.
- (4) This section shall not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

➔Section 72. KRS 271B.15-050 is repealed and reenacted to read as follows:

- (1) A certificate of authority shall authorize the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.
- (2) A foreign corporation with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to

the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

- (3) This chapter shall not authorize this state to regulate the organization or internal affairs, including the inspection of corporate books, records, and documents, of a foreign corporation authorized to transact business in this state.

➔Section 73. KRS 271B.15-060 is repealed and reenacted to read as follows:

- (1) If the real name of a foreign corporation does not satisfy the requirements of KRS 271B.4-010, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:
- (a) May add the word "corporation," "incorporated," "company," or "limited" or the abbreviation "corp.," "inc.," "co.," or "Ltd." to its real name for use in this state; or
 - (b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.
- (2) Except as authorized by subsections (3) and (4) of this section, the real or fictitious name of a foreign corporation shall be distinguishable upon the records of the Secretary of State from any name of record with the Secretary of State.
- (3) A foreign corporation may apply to the Secretary of State for authorization to use in this state a name that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:
- (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
 - (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated or authorized to transact business in this state and the foreign entity:
- (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the corporate name, of the other entity.
- (5) If a foreign corporation authorized to transact business in this state changes its real name to one that does not satisfy the requirements of KRS 271B.4-010, it shall not transact business in this state under the changed name until it adopts a fictitious name satisfying the requirements of KRS 271B.4-010 and obtains an amended certificate of authority under KRS 271B.15-040.

➔Section 74. KRS 271B.16-220 is repealed and reenacted to read as follows:

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:
- (a) The name of the corporation and the state or country under whose law it is incorporated;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its directors and principal officers;
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.
- (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was

authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.

- (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. For purposes of KRS 271B.1-280(2)(d), an annual report returned for correction shall not be deemed to have been delivered until it is returned and accepted by the Secretary of State.
- (5) A domestic or foreign corporation may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.

➔Section 75. KRS 272.010 is repealed and reenacted to read as follows:

- (1) As used in KRS 272.020 to 272.050:
 - (a) "Cooperative corporation" means a business concern that distributes the net profit of its business by first paying a fixed dividend upon its stock, if any, and then prorating the remainder of its profits as patronage refunds to its stockholders, members or customers, as provided in bylaws;
 - (b) "Patronage refund" means the portion of net profit returned to member patrons or to all patrons in proportion to their patronage. In the case of an employee cooperative in which only employees are voting members, "patronage" means the amount or value of work performed by an employee, as provided in bylaws;
 - (c) "Stockholder" means the holder of voting stock in a cooperative corporation organized with shares;
 - (d) "Member" means the holder of a membership in a cooperative corporation organized with memberships;
 - (e) "Membership" means a lifetime payment made to a cooperative corporation to secure or provide services, not made in expectation of dividend or profit, and without any redemption value except at time of dissolution. The articles of incorporation or bylaws may specify the conditions under which a membership may be terminated;
 - (f) "Nonprofit basis" means that no part of the income or profit of the cooperative corporation is distributable to its members, directors or officers except in the form of patronage refunds;
 - (g) "Entity" includes a domestic or foreign corporation and corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business or statutory trust; estate; partnership; limited partnership; limited liability company; trust; two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government;
 - (h) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity; and
 - (i) "Real name" shall have the meaning set forth in KRS 365.015.
- (2) As used in KRS 272.360 to 272.510, unless the content for such requires otherwise, the term:
 - (a) "Livestock" shall mean sheep, cattle, hogs, horses, jacks, mules, poultry, or any other animal or bird commonly kept on the farm;
 - (b) "Farmer" shall mean any individual, firm, partnership, limited partnership, limited liability company, corporation, or farm management group which derives a portion or all of its income from the production of live stock domiciled on a farm within the Commonwealth;
 - (c) "Member" shall include actual members of the association organized under KRS 272.360 to 272.510;
 - (d) "Association" means any corporation organized under KRS 272.360 to 272.510; and
 - (e) "Department" shall mean the Department of Agriculture.
- (3) Associations organized under KRS 272.360 to 272.510 shall be termed nonprofit inasmuch as they are not organized to make profit for themselves.

➔Section 76. KRS 272.050 is repealed and reenacted to read as follows:

No corporation, partnership, limited partnership, limited liability company, or other entity doing business for profit in this state shall use the title "cooperative" as any part of its name unless it has complied with the provisions of KRS 272.020 to 272.050.

➔Section 77. KRS 272.131 is repealed and reenacted to read as follows:

- (1) The articles of incorporation of each association shall state:
 - (a) The name of the association;
 - (b) The purposes for which it is formed;
 - (c) The place where its principal business will be transacted;
 - (d) The period of duration, which may be perpetual. When the articles of incorporation fail to state the period of duration, it shall be considered perpetual. Any association heretofore or hereafter organized for a period less than perpetual, may, by amendment to its articles of incorporation, extend the period of its duration for a specified period or perpetually;
 - (e) The names and addresses, not less than five (5), of those who are to serve as directors for the first term or until the election of their successors;
 - (f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rules applicable to all members by which the property rights and interests, respectively, of each member shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members in accordance with the general rules. These provisions of the articles of incorporation shall not be altered, amended, or repealed except by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by members present in person, or by proxy, if permitted by the bylaws, and voting thereon at any regular or special meeting; and
 - (g) If organized with capital stock, the authorized amount of the stock and the number of shares into which it is divided and the par value thereof. Capital stock may be divided into preferred and common stock. The articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each. No specific amount of the capital stock authorized is required to be subscribed before the association may transact business with other than its members; the board may determine the amount of capital stock to be issued as the business of the association may justify or demand, from time to time, within the amount of the total authorization.
- (2) The articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate with respect to its members, officers, or directors, and any other provisions relating to its affairs; but nothing set forth in this section shall be construed as limiting any of the rights or powers otherwise given to such associations.
- (3) The articles of incorporation must be subscribed by the incorporators and acknowledged by one (1) of them before an officer authorized by the laws of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed and recorded in accordance with the statute relating to corporations generally; and when so filed, the articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of the association. A copy of the articles of incorporation, indorsed by the Secretary of State with the fact and time of recording in his office, shall be filed with the dean of the College of Agriculture of the University of Kentucky and with the Commissioner of the Department of Agriculture.
- (4) Except as authorized by subsections (5) and (6) of this section, the name of an association shall be distinguishable from any name of record with the Secretary of State.
- (5) An association may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

- (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (6) An association may use the name, including the fictitious name, of another entity that is used in this state, if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user association:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other entity.
- (7) This chapter does not control the use of assumed names.
- (8) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 78. KRS 272.390 is repealed and reenacted to read as follows:

- (1) Each association formed under KRS 272.360 to 272.510 must prepare and file articles of incorporation, setting forth:
 - (a) The name of the association;
 - (b) The place where its principal business will be transacted;
 - (c) The term for which it is to exist; the number of directors thereof which must not be less than five (5) and may be any number in excess thereof; the term of office of such directors; and the names and addresses of those who are to serve as incorporating directors for the first term, or until election and qualification of their successors; and
 - (d) The property rights of the members and whether the interest of each member will be equal or unequal; and if unequal, the rule or rules applicable to all members by which the property rights and interests, respectively, of each member shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.
- (2) Except as authorized by subsections (3) and (4) of this section, the name of an association must be distinguishable from any name of record with the Secretary of State.
- (3) An association may apply to the Secretary of State for authorization to use a name that is not distinguishable from any name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying association; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) An association may use the name, including the fictitious name, of another entity that is used in this state, if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user association:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other entity.
- (5) This chapter does not control the use of assumed names.
- (6) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 79. KRS 273.161 is repealed and reenacted to read as follows:

As used in KRS 273.163 to 273.387, unless the context otherwise requires, the term:

- (1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of KRS 273.163 to 273.387, except a foreign corporation;
- (2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state;
- (3) "Nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its members, directors or officers;
- (4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;
- (5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;
- (6) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws;
- (7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which group is designated;
- (8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs;
- (9) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;
- (10) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility for custody of the minutes of the meetings of the board of directors and the members and for authenticating records of the corporation;
- (11) "Individual" includes the estate of an incompetent or deceased individual;
- (12) "Entity" includes a domestic or foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business or statutory trust, estate, partnership, limited partnership, limited liability company, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government;
- (13) "Person" includes individual and entity.
- (14) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity; and
- (15) "Real name" shall have the meaning set forth in KRS 365.015.

➔Section 80. KRS 273.177 is repealed and reenacted to read as follows:

- (1) The corporate name shall include the word "corporation" or "incorporated" or the abbreviation "Inc." or the word "company" or the abbreviation "Co."; but if the word "company" or the abbreviation "Co." is used, it may not be immediately preceded by the word "and" or the abbreviation "&." The provisions of this subsection shall not affect the right of any corporation existing on June 13, 1968, to continue the use of its name.
- (2) Except as authorized by subsection (3) of this section, a corporate name shall be distinguishable from any name of record with the Secretary of State.
- (3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) The corporate name shall not contain any word or phrase which indicates or implies that it is organized for any purpose not permitted under KRS 273.161 to 273.390.

- (5) This chapter shall not control the use of assumed names.
- (6) The filing of articles of incorporation under the particular corporate name shall not automatically prevent the use of that name or protect that name from use by other persons.
- (7) The assumption of a name in violation of this section shall not affect or vitiate the corporate existence; but the courts of this state having equity jurisdiction may, upon the application of the state or of any person interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section, although a certificate of incorporation may have been issued.

➔Section 81. KRS 273.178 is repealed and reenacted to read as follows:

- (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable period of one hundred twenty (120) days. Within thirty (30) days of the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.
- (2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.
- (3) The holder of a reserved corporate name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 82. KRS 273.179 is repealed and reenacted to read as follows:

- (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by KRS 273.364, if the name is distinguishable upon the records of the Secretary of State as required by KRS 273.177(2).
- (2) A foreign corporation shall register its corporate name, or its corporate name with any addition required by KRS 273.364, by delivering to the Secretary of State for filing an application:
 - (a) Setting forth its corporate name, or its corporate name with any addition required by KRS 273.364, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
 - (b) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.
- (3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.
- (4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application, when filed, shall renew the registration for the following calendar year.
- (5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

➔Section 83. KRS 273.364 is repealed and reenacted to read as follows:

- (1) If the corporate name of a foreign corporation does not satisfy the requirements of KRS 273.177, the foreign corporation, in order to obtain or maintain a certificate of authority to transact business in this state:
 - (a) May add the word "corporation," "incorporated," "company," or "limited" or the abbreviation "corp.," "inc.," "co.," or "Ltd." to its corporate name for use in this state; or

- (b) May use a fictitious name to transact business in this state, if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.
- (2) Except as authorized by subsection (3) of this section, the corporate name, including a fictitious name, of a foreign corporation shall be distinguishable from any name of record with the Secretary of State.
- (3) A foreign corporation may apply for authorization to use in this state a name that is not distinguishable upon the records of the Secretary of State from the name applied for. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
 - (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of KRS 273.177, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of KRS 273.177 and obtains an amended certificate of authority under KRS 273.3611.

➔Section 84. KRS 273.2521 is repealed and reenacted to read as follows:

- (1) The Secretary of State may prescribe and furnish on request forms for:
 - (a) A certificate of existence;
 - (b) A foreign corporation's application for a certificate of authority to transact business in this state;
 - (c) A foreign corporation's application for a certificate of withdrawal;
 - (d) A change of registered office or registered agent;
 - (e) A change of the principal office address;
 - (f) Application for a reservation of name;
 - (g) Application to renew a reservation of a name;
 - (h) The annual report; and
 - (i) An amendment of the annual report.

If the Secretary of State so requires, use of these forms shall be mandatory.

- (2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter. Use of these forms shall not be mandatory.

➔Section 85. KRS 273.3671 is repealed and reenacted to read as follows:

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:
 - (a) The name of the corporation and the state or country under whose law it is incorporated;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its directors and principal officers.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.
- (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was

authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.

- (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. For purposes of KRS 273.2527(2)(d), an annual report returned for correction shall not be deemed to have been delivered until it is returned to and accepted by the Secretary of State.
- (5) A domestic or foreign corporation may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.

➔Section 86. KRS 274.005 is repealed and reenacted to read as follows:

As used in this chapter, unless the context indicates otherwise:

- (1) "Foreign professional service corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the law of this state;
- (2) "Professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which, prior to the passage of this chapter and by reason of law or a professional code of ethics, could not be performed by a corporation. The personal services which come within the provisions of this chapter are the personal services rendered by but not limited to certified public accountants, public accountants, chiropractors, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiroprodists, architects, veterinarians, optometrists, and attorneys-at-law;
- (3) "Professional service corporation" means a corporation organized under this chapter;
- (4) "Qualified person" means a natural person, partnership, limited liability company, or professional service corporation which is eligible under this chapter to own shares issued by a professional service corporation; and
- (5) "Regulating board" means the governmental agency which is charged by law with the licensing and regulation of the practice of the profession which the professional service corporation is organized to render.

➔Section 87. KRS 274.015 is repealed and reenacted to read as follows:

- (1) One (1) or more individuals, each of whom is licensed to render the same professional service or who are licensed to render related professional services such that applicable licensing laws and regulations would not prohibit the practice of such multiple professional services through a single business partnership, may incorporate and form a professional service corporation by filing articles of incorporation in the office of the Secretary of State. Such articles of incorporation shall meet the requirements of KRS Chapter 271B, and in addition to the information required by KRS 271B.2-020, such articles shall contain the following:
 - (a) The designation of the profession or professions to be practiced through the professional service corporation;
 - (b) The names and residence addresses of all the original shareholders of the professional service corporation; and
 - (c) A statement by the incorporator or incorporators that each of the incorporators, shareholders, not less than one-half (1/2) of the directors, and each of the officers other than secretary and treasurer is a qualified person within the meaning of this chapter.
- (2) A professional service corporation formed under the provisions of this chapter, except as this chapter may otherwise provide, shall have the same powers, authority, duties, and liabilities as a corporation formed under KRS Chapter 271B.

➔Section 88. KRS 274.017 is repealed and reenacted to read as follows:

- (1) A professional service corporation may issue and a shareholder thereof may transfer or pledge shares, fractional shares, and rights or options to purchase shares only to:
 - (a) Natural persons who are authorized by law in this state or in any other state or territory of the United States or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

- (b) Partnerships, domestic or foreign, in which all the partners are qualified persons with respect to such professional corporation and in which at least one (1) partner is authorized by the laws of this state to render a professional service permitted by the articles of incorporation of the corporation;
 - (c) A professional limited liability company, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of organization of the limited liability company and the articles of incorporation of the corporation; and
 - (d) Professional service corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.
- (2) Any issuance or transfer of shares in violation of this section shall be void; however, nothing herein contained shall prohibit the transfer of shares of a professional corporation by operation of law or court decree.

➔Section 89. KRS 274.019 is repealed and reenacted to read as follows:

No proxy for shares of a professional service corporation shall be valid unless it shall be given to a qualified person. A voting trust with respect to shares of a professional service corporation shall not be valid unless all the trustees and beneficiaries thereof are qualified persons, except that a voting trust may be validly continued for a period of ten (10) months after the death of a deceased beneficiary or for a period of five (5) months after a beneficiary has become a disqualified person.

➔Section 90. KRS 274.065 is repealed and reenacted to read as follows:

Nothing in this chapter shall restrict or limit in any manner the authority and duty of any regulating board of competent jurisdiction to license individual persons rendering professional services or to regulate the practice of the profession which is within the jurisdiction of such regulating board, even though such person is an officer, director, shareholder, or employee of a professional service corporation or engages in the practice of such profession through a professional service corporation.

➔Section 91. KRS 274.077 is repealed and reenacted to read as follows:

The name of a domestic professional service corporation or of a foreign professional service corporation authorized to transact business in this state:

- (1) Shall contain the words "professional service corporation" or the abbreviation "P.S.C.";
- (2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;
- (3) Shall satisfy the requirements of KRS 271B.4-010(2); and
- (4) Shall otherwise conform to any rule promulgated by a regulating board having jurisdiction of a professional service described in the articles of incorporation of such corporation.

➔Section 92. KRS 275.010 is repealed and reenacted to read as follows:

- (1) Except as otherwise set forth in this chapter or unless the articles of organization or operating agreement provide otherwise, every limited liability company shall have the powers to do all things necessary or convenient to carry out its business and affairs.
- (2) A limited liability company is a legal entity distinct from its members.
- (3) Professional limited liability companies shall be governed by the laws, whether statutory or common law, applicable to other limited liability companies. Except for those provisions concerning the personal liability of members, managers, employees, and agents of a limited liability company, nothing in this chapter shall restrict, limit, or expand in any manner the authority and duty of any regulating board to:
 - (a) License individual persons providing professional services; and
 - (b) Regulate the practice of persons providing professional services which are within the jurisdiction of the regulating board, even though the persons are members, managers, employees, or agents of a professional limited liability company, or provide professional services through a professional limited liability company, including the establishment of regulations concerning:
 - 1. The qualifications of members or managers of a professional limited liability company;

2. The transfer of limited liability company interests in a professional limited liability company; or
3. The provision of one (1) or more professional services through a professional limited liability company.

➔Section 93. KRS 275.015 is repealed and reenacted to read as follows:

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

- (1) "Articles of organization" means the articles filed in conformity with the provisions of KRS 275.020 and 275.025, and those articles as amended or restated;
- (2) "Business entity" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;
- (3) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;
- (4) "Court" means every court having jurisdiction in the case;
- (5) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;
- (6) "Dissent" means a right to object to a proposed action or transaction and, in connection therewith, to demand a redemption of a limited liability company interest;
- (7) "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;
- (8) "Event of disassociation" means an event that causes a person to cease to be a member as provided in KRS 275.280;
- (9) "Foreign limited liability company" means an organization that is:
 - (a) An unincorporated association;
 - (b) Organized under laws of a state other than the laws of this Commonwealth, or under the laws of any foreign country; and
 - (c) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity;
- (10) "Knowledge" means actual knowledge of a fact;
- (11) "Limited liability company" or "domestic limited liability company" means a limited liability company formed under this chapter having one (1) or more members;
- (12) "Limited liability company interest" or "interest in the limited liability company" means the interest that may be issued in accordance with KRS 275.195;
- (13) "Limited partnership" means a limited partnership formed under the laws of the Commonwealth or any other state or a foreign country;
- (14) "Majority-in-interest of the members" means those members entitled to cast a majority of the votes to be cast by the members on any matter under the terms of the operating agreement described in KRS 275.175(3);
- (15) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with KRS 275.165;
- (16) "Member" or "members" means a person or persons who have been admitted to membership in a limited liability company as provided in KRS 275.275 and who have not ceased to be members as provided in KRS 275.280;
- (17) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;
- (18) "Nonprofit limited liability company" means a limited liability company formed for a nonprofit purpose;
- (19) "Nonprofit purpose" includes any purpose authorized under KRS 273.167;

- (20) "Operating agreement" means any agreement, written or oral, among all of the members, as to the conduct of the business and affairs of a limited liability company. If a limited liability company has only one (1) member, an operating agreement shall be deemed to include:
- (a) A writing executed by the member that relates to the affairs of the limited liability company and the conduct of its business regardless of whether the writing constitutes an agreement; or
 - (b) If the limited liability company is managed by a manager, any other agreement between the member and the limited liability company as it relates to the limited liability company and the conduct of its business, regardless of whether the agreement is in writing;
- (21) "Person" means an individual, a partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal entity;
- (22) "Principal office" means the office, in or out of the Commonwealth, so designated in writing with the Secretary of State where the principal executive offices of a domestic or foreign limited liability company are located;
- (23) "Proceeding" means civil suit and criminal, administrative, and investigative action;
- (24) "Professional limited liability company" means a limited liability company organized under this chapter or the laws of another state or foreign country for purposes that include, but are not limited to, the providing of one (1) or more professional services. Except as otherwise expressly provided in this chapter, all provisions of this chapter governing limited liability companies shall be applicable to professional limited liability companies;
- (25) "Professional services" mean the personal services rendered by physicians, osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists, psychologists, occupational therapists, veterinarians, engineers, architects, landscape architects, certified public accountants, public accountants, physical therapists, and attorneys;
- (26) "Real name" shall have the meaning set forth in KRS 365.015;
- (27) "Regulating board" means the governmental agency which is charged by law with the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide; and
- (28) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

➔Section 94. KRS 275.020 is repealed and reenacted to read as follows:

- (1) One (1) or more persons may serve as the organizer and form a limited liability company by delivering articles of organization to the Secretary of State for filing. It shall not be necessary that the person or persons be members of the limited liability company.
- (2) Unless a delayed effective date is specified, the existence of the limited liability company shall begin when the articles of organization are filed by the Secretary of State. If a delayed effective date is specified, the existence of the limited liability company shall begin when the articles of organization are effective as specified in KRS 275.060.
- (3) The Secretary of State's filing of the articles of organization shall be conclusive proof that the organizer or organizers satisfied all conditions precedent to organization, except in a proceeding by the state to cancel or revoke the organization or involuntarily dissolve the limited liability company.

➔Section 95. KRS 275.025 is repealed and reenacted to read as follows:

- (1) The articles of organization shall set forth:
 - (a) A name for the limited liability company that satisfies the requirements of KRS 275.100;
 - (b) The street address of the limited liability company's initial registered office, and the name of its initial registered agent at that office;
 - (c) The mailing address of the initial principal office of the limited liability company; and
 - (d) A statement that the limited liability company is to be managed by a manager or managers or that the limited liability company is to be managed by its members.

- (2) The term of a limited liability company shall be perpetual unless a period of duration other than perpetual is set forth in the articles of organization.
- (3) The articles of organization of a professional limited liability company shall designate the professional services to be practiced through the professional limited liability company.
- (4) The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement not inconsistent with law.
- (5) A written statement of the initial registered agent consenting to serve in that capacity shall accompany the articles of organization.
- (6) A member of a limited liability company shall not have a vested property right resulting from any provision of the articles of organization.
- (7) If the limited liability company is a nonprofit limited liability company, then the articles of organization shall state that fact and its nonprofit purpose. This provision of the articles of organization shall not be removed from the articles of organization without written notice to the Attorney General of Kentucky given not less than ten (10) business days prior to the filing of the amendment.
- (8) The fact that the articles of organization are on file with the Secretary of State is notice:
 - (a) That the limited liability company formed by the filing of the articles of organization is a limited liability company formed under the laws of the Commonwealth of Kentucky; and
 - (b) Of all other facts set forth in the articles of organization which are required to be set forth by subsections (1), (3), and (7) of this section.

➔Section 96. KRS 275.030 is repealed and reenacted to read as follows:

- (1) A limited liability company shall amend its articles of organization to add or change a provision that is required by this chapter to be included in the articles of organization. A limited liability company may amend its articles of organization to add, change, or delete a provision that is permitted to be or that is not required to be in the articles of organization. The articles of organization shall be amended if:
 - (a) There is a change in the name of the limited liability company;
 - (b) There is a change in the latest date upon which the limited liability company is to dissolve;
 - (c) There is a change in whether the management of the limited liability company is vested in managers or members; or
 - (d) There is a change in any other matter required to be set forth in the articles of organization under KRS 275.025.
- (2) Except as provided in subsection (3) of this section, or unless the articles of organization or the operating agreement provide otherwise, an amendment to the articles of organization of a limited liability company shall be approved by the members in accordance with KRS 275.175.
- (3) Unless the articles of organization or the written operating agreement provide otherwise, a manager or, if there is no manager, any member may amend the articles of organization of the limited liability company without action by the members to delete:
 - (a) The name and address of the initial registered agent or initial registered office if a statement of change pursuant to KRS 275.120 is on file with the Secretary of State; or
 - (b) The mailing address of the initial principal office, if a statement of change pursuant to KRS 275.040 is on file with the Secretary of State.
- (4) To amend its articles of organization, a limited liability company shall file with the Secretary of State articles of amendment setting forth:
 - (a) The name of the limited liability company;
 - (b) The text of each amendment adopted;
 - (c) The date of each amendment's adoption; and

- (d) A statement that the amendment was duly adopted by the managers or the members in accordance with the articles of organization, the operating agreement of the limited liability company, or this chapter.
- (5) The articles of organization may be amended in any respect as may be desired, if the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.
- (6) Unless the articles of organization provide otherwise, no member of a limited liability company shall have the right to dissent from an amendment to the articles of organization.

➔Section 97. KRS 275.045 is repealed and reenacted to read as follows:

- (1) A document shall satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (2) This chapter shall 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 also contain other information.
- (4) The document shall be typewritten or printed or, if electronically transmitted, it shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Manually-signed photocopies, or other reproduced copies, of typewritten or printed documents may be filed.
- (5) The document shall be in the English language. A limited liability company name may be in a language other than English if written in English letters or Arabic or Roman numerals. Any document that may be filed by a foreign limited liability company which is duly authenticated by the official having custody of the applicable records in the state, country, or other jurisdiction under whose law the limited liability company is formed may be in a language other than English if accompanied by a reasonably authenticated English translation.
- (6) Unless otherwise provided in any other section of this chapter, any document required by this chapter to be filed with the Secretary of State shall be executed:
 - (a) If management of the limited liability company is vested in one (1) or more managers, by any one (1) of the managers;
 - (b) If management of the limited liability company is reserved to the members, by any one (1) of the members;
 - (c) If the limited liability company has not been formed, by the persons forming a limited liability company; or
 - (d) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
- (7) The persons executing the document shall sign it and state beneath or opposite their signatures the names of the persons and the capacity in which each signs.
- (8) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document shall not be required to be provided to or filed with the Secretary of State.
- (9) If the Secretary of State has prescribed a mandatory form for a document, then the document shall be in or on the prescribed form.
- (10) The document shall be delivered to 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 it is filed in typewritten or printed form and not transmitted electronically, then the Secretary of State may require that it be accompanied by two (2) exact or conformed copies.
- (11) One (1) of the exact or conformed copies or, if transmitted electronically, a reproduction in paper form, shall be filed with and recorded by the county clerk of the county in which the registered office of the limited liability company is situated.
- (12) When the document is delivered to the office of the Secretary of State for filing, the correct filing fee and any penalty required by this chapter or other law to be collected by the office of the Secretary of State shall be paid or provision for payment 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, debit card, charge card, or similar method. However,

if the amount due is tendered by any method other than cash, then the liability is not finally discharged until the Secretary of State receives final payment or credit of collectible funds.

➔Section 98. KRS 275.050 is repealed and reenacted to read as follows:

- (1) The Secretary of State shall prescribe and furnish on request forms for:
 - (a) A certificate of existence or authorization;
 - (b) An application for a certificate of authority;
 - (c) An application for a certificate of withdrawal;
 - (d) A statement of change of registered office or registered agent;
 - (e) A statement of change of principal office address;
 - (f) The annual report;
 - (g) An amendment of the annual report;
 - (h) An application for a reservation of name;
 - (i) An application to renew a reservation of name; and
 - (j) An amended application for certificate of authority.
- (2) The Secretary of State shall have the discretion to make mandatory the use of the forms referred to in subsection (1) of this section.
- (3) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed pursuant to this chapter, but their use shall not be mandatory.

➔Section 99. KRS 275.055 is repealed and reenacted to read as follows:

- (1) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:
 - (a) Articles of organization\$ 40.00
 - (b) Application for certificate of authority as a foreign limited liability company\$ 90.00
 - (c) Amendment of article of organization\$ 40.00
 - (d) Restatement of articles of organization\$ 40.00
 - (e) Amendment and restatement of articles of organization\$ 80.00
 - (f) Articles of dissolution with respect to a domestic limited liability company\$ 40.00
 - (g) Limited liability company's statement of change of registered agent or change of the address of the registered office, or both\$ 10.00
 - (h) Registered agent's statement of change of registered office for each affected limited liability company\$ 10.00
not to exceed a total of\$ 1,000.00
 - (i) Limited liability company's statement of change of the mailing address of the principal office\$ 10.00
 - (j) Application to reserve a name for use by a domestic or foreign limited liability company\$ 15.00
 - (k) Renewal of application to reserve a name for use by

	a domestic or foreign limited liability company	\$ 15.00
(l)	Notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company	\$ 15.00
(m)	Application for use of indistinguishable name	\$ 20.00
(n)	Application for registered name	\$ 36.00
(o)	Application for renewal of registered name	\$ 36.00
(p)	Articles of merger	\$ 50.00
(q)	Application for amended certificate of authority	\$ 40.00
(r)	Application for certificate of withdrawal	\$ 40.00
(s)	Articles of correction	\$ 20.00
(t)	Certificate of existence or authorization	\$ 10.00
(u)	Reinstatement penalty following administrative dissolution	\$ 100.00
(v)	Annual report	\$ 15.00
(w)	Amendment to annual report	\$ 10.00
(x)	Articles of share exchange	\$ 50.00
(y)	Any other document required or permitted to be filed by this chapter	\$ 15.00

(2) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on the Secretary of State under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if the party prevails in the proceeding.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed documents relating to a domestic or foreign limited liability company:

- (a) Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50) a page for each page thereafter; and
- (b) Five dollars (\$5) for the certificate.

(4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to limited liability companies.

➔Section 100. KRS 275.060 is repealed and reenacted to read as follows:

(1) Except as provided in subsection (2) of this section and KRS 275.065(3), a document shall be effective at the time of filing on the date it is filed, as evidenced by any means the Secretary of State may allow for the purpose of recording the date and time of filing, or 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. If the document does so specify and is filed pursuant to subsection (1) of this section, then the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, then the document shall be effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

(3) A document filed in accordance with this section shall be effective regardless of a failure to file the document with the county clerk pursuant to KRS 275.045(11).

➔Section 101. KRS 275.065 is repealed and reenacted to read as follows:

(1) A domestic or foreign limited liability company may correct a document filed by the Secretary of State in accordance with subsection (2) of this section if:

- (a) The document contains an inaccuracy;
 - (b) The document was defectively executed, attested, sealed, verified, or acknowledged; or
 - (c) The electronic transmission of the document was defective.
- (2) A document shall be corrected:
- (a) By preparing articles of correction that:
 1. Describe the document, including its filing date, or have attached a copy of the document to the articles of correction;
 2. Specify the inaccuracy or defect to be corrected; and
 3. Correct the inaccuracy or defect; and
 - (b) By delivering the articles of correction 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 102. KRS 275.070 is repealed and reenacted to read as follows:

- (1) If a document delivered to the Secretary of State for filing satisfies the requirements of KRS 275.045, then the Secretary of State shall file it.
- (2) The Secretary of State shall file a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in KRS 275.125 and 275.420, the Secretary of State shall deliver to the domestic or foreign limited liability company 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, then the Secretary of State shall return it to the domestic or foreign limited liability company or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.
- (4) The Secretary of State's duty to file documents under this section shall be ministerial. The filing or refusal to file a document by the Secretary of State shall not:
 - (a) Affect the validity or invalidity of the document in whole or part;
 - (b) Relate to the correctness or incorrectness of information contained in the document; or
 - (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

➔Section 103. KRS 275.080 is repealed and reenacted to read as follows:

A certificate from the Secretary of State delivered with a copy of the document filed by the Secretary of State shall be conclusive evidence that the original document is on file with the Secretary of State.

➔Section 104. KRS 275.095 is repealed and reenacted to read as follows:

All persons purporting to act as or on behalf of a limited liability company, knowing there has been no organization under this chapter, or who assume to act for a limited liability company without authority to do so, shall be jointly and severally liable for all liabilities created while so acting.

➔Section 105. KRS 275.100 is repealed and reenacted to read as follows:

- (1) The name of each limited liability company as set forth in its articles of organization shall contain the words "limited liability company" or "limited company" or the abbreviations "LLC" or "LC." The name of each limited liability company which is a professional limited liability company shall contain the words "professional limited liability company" or "professional limited company" or the abbreviations "PLLC" or "PLC." The word "Limited" may be abbreviated as "Ltd.," and the word "Company" may be abbreviated as "Co."
- (2) Except as authorized by subsections (3) and (4) of this section, the name of a limited liability company shall be distinguishable from any name on record with the Secretary of State.

- (3) A limited liability company may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:
- (a) The other business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (4) A limited liability company may use the name, including the fictitious name, with any modification required by this section or KRS 275.410 of another business entity that is used in this Commonwealth if the other business entity is organized or authorized to transact business in this Commonwealth and the limited liability company:
- (a) Has merged with the other business entity;
 - (b) Has been formed by reorganization of the other business entity; or
 - (c) Has acquired all or substantially all of the assets, including the business name, of the other business entity.
- (5) This chapter shall not control the use of assumed names.
- (6) The filing of articles of organization under the particular name of the limited liability company shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 106. KRS 275.105 is repealed and reenacted to read as follows:

- (1) A person may apply to the Secretary of State to reserve the exclusive use of a limited liability company name, including the fictitious name, for a foreign limited liability company whose limited liability company name is not available for use in this Commonwealth. If the Secretary of State finds that the limited liability company name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for one (1) nonrenewable period of one hundred twenty (120) days. During the thirty (30) days prior to the expiration of a reservation, the holder of the registration may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.
- (2) The holder of a reserved limited liability company name may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.
- (3) The holder of a reserved limited liability company name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 107. KRS 275.135 is repealed and reenacted to read as follows:

- (1) Except as provided in subsection (2) of this section, every member shall be an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including but not limited to the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, shall bind the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge or has received notification of the fact that the member has no such authority.
- (2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:
 - (a) No member, solely by reason of being a member, shall be an agent of the limited liability company; and
 - (b) Every manager shall be an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited

liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is the manager shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge or has received notification of the fact that the manager has no such authority.

- (3) An act of a manager or a member which is apparently not for the carrying on in the usual way of the business or affairs of the limited liability company shall not bind the limited liability company unless, at the time of the transaction or at any other time, the act is authorized in accordance with the operating agreement.
- (4) An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

➔Section 108. KRS 275.165 is repealed and reenacted to read as follows:

- (1) Unless the articles of organization vest management of the limited liability company in a manager or managers, management of the business and affairs of the limited liability company shall vest in the members. Subject to any provisions in the articles of organization, the operating agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.
- (2) If the articles of organization vest management of the limited liability company in one (1) or more managers, except to the extent otherwise provided in the articles of organization, the operating agreement, or this chapter, the manager or managers shall have exclusive power to manage the business and affairs of the limited liability company. Unless otherwise provided in the articles of organization or the operating agreement, managers:
 - (a) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of the majority-in-interest of the members;
 - (b) Shall not be required to be members of the limited liability company or natural persons; and
 - (c) Unless they are sooner removed or sooner resign, shall hold office until their successors shall have been elected and qualified.
- (3) Unless otherwise set forth in a written operating agreement, a member or manager of a limited liability company has the power and authority to delegate to one (1) or more other persons the member's or manager's powers to manage or control the business and affairs of the limited liability company, including without limitation the power to delegate to agents and employees of a member, manager, or limited liability company or to delegate by an agreement to other persons. This delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager of the limited liability company.

➔Section 109. KRS 275.170 is repealed and reenacted to read as follows:

Unless otherwise provided in a written operating agreement:

- (1) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes wanton or reckless misconduct.
- (2) Each member and manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (1/2) by number of the disinterested managers, or a majority-in-interest of the members from:
 - (a) Any transaction connected with the conduct or winding up of the limited liability company; or
 - (b) Any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his status as manager or member.
- (3) In determining whether a transaction has received the approval of a majority-in-interest of the members, membership interests owned by or voted under the control of the member or manager whose actions are under review in accordance with subsection (2) of this section, and membership interests owned by an entity owned by or voted under the control of that member or manager, shall not be counted in a vote of the members to

determine whether to consent, and the membership interests shall not be counted in determining whether a quorum, if required by a written operating agreement, exists to consider whether to consent.

- (4) A member of a limited liability company in which management is vested in managers under KRS 275.165(2) and who is not a manager shall have no duties to the limited liability company or the other members solely by reason of acting in his or her capacity as a member.

➔Section 110. KRS 275.175 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in the articles of organization, a written operating agreement, or this chapter, the affirmative vote, approval, or consent of a majority-in-interest of the members, if management of the limited liability company is vested in the members, or a simple majority of the managers, each having a single vote, if the management of the limited liability company is vested in managers, shall be required to decide any matter connected with the business affairs of the limited liability company.
- (2) Unless otherwise provided in a written operating agreement, the affirmative vote, approval, or consent of the majority-in-interest of the members shall be required to:
- (a) Amend a written operating agreement;
 - (b) Authorize a manager or member to do any act on behalf of the limited liability company that contravenes a written operating agreement, including any written provision thereof which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof; or
 - (c) Amend the articles of organization to change the management of the limited liability company from members to managers or from managers to members.
- (3) Unless otherwise provided in the articles of organization, a written operating agreement, or this chapter, for all purposes of this chapter, the members of a limited liability company shall vote, approve, or consent in proportion to their contributions, based upon the agreed value as stated in the records of the limited liability company as required by KRS 275.185, made by each member to the extent they have been received by the limited liability company and have not been returned.
- (4) Unless otherwise provided in the articles of organization or the written operating agreement, no member of a limited liability company shall have the right to dissent from an amendment to the operating agreement.

➔Section 111. KRS 275.185 is repealed and reenacted to read as follows:

- (1) A limited liability company shall keep at its principal office or other location as set forth in a written operating agreement, the following:
- (a) A current list, and all past lists, setting forth the full name and last known mailing address of each member and, if any, each manager;
 - (b) A copy of the articles of organization and all amendments thereto, together with executed copies of any power of attorney pursuant to which any articles of amendment have been executed;
 - (c) Copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state, and local tax returns for those years;
 - (d) Copies of any effective written operating agreements and all amendments thereto, and copies of any written operating agreements no longer in effect; and
 - (e) Unless contained in writing in an operating agreement:
 1. A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each member and the times at which or events upon the happening of which any additional contributions are to be made;
 2. A writing stating events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up; and
 3. Other writings, if any, prepared pursuant to a requirement, if any, in an operating agreement.

- (2) Upon reasonable written request, a member may, at the member's own expense, inspect and copy during ordinary business hours any limited liability company record, where the record is located or at a reasonable location.
- (3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in managers, shall render, to the extent the circumstances render it just and reasonable, true and full information of all matters affecting the members to any member, and the member's agent, and to the legal representative of any deceased member or of any member under legal disability.
- (4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any member or manager for the debts and obligations of the limited liability company.
- (5) A written operating agreement may impose reasonable limitations upon the use of any record of or information with respect to a limited liability company. Except as to limitations set forth in a written operating agreement to which a member requesting information has assented, the limited liability company bears the burden of proof in demonstrating the reasonableness of any restrictions imposed.

➔Section 112. KRS 275.190 is repealed and reenacted to read as follows:

- (1) Each domestic limited liability company, and each foreign limited liability company authorized to transact business in this Commonwealth, shall deliver to the Secretary of State for filing an annual report that sets forth:
 - (a) The name of the limited liability company and the state or country under whose law it is organized;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its managers, if management is vested in managers, or one (1) or more designated members, if management is vested in members.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the limited liability company.
- (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic limited liability company was organized or a foreign limited liability company was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.
- (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for completion. For purposes of KRS 275.085(2)(e), an annual report returned for completion pursuant to this subsection shall not be deemed to have been delivered.
- (5) A domestic or foreign limited liability company may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.

➔Section 113. KRS 275.195 is repealed and reenacted to read as follows:

- (1) A limited liability company interest may be issued in exchange for consideration consisting of cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.
- (2) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest without making a contribution or being obligated to make a contribution to the limited liability company.
- (3) Unless otherwise provided in the operating agreement, a person may be admitted to a limited liability company as a member without acquiring a limited liability company interest.

➔Section 114. KRS 275.200 is repealed and reenacted to read as follows:

- (1) An obligation of a member to make a contribution to the limited liability company shall not be enforceable unless set forth in a writing signed by the member.

- (2) Unless otherwise provided in an operating agreement, a member shall be obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or other reason.
- (3) If a member does not make a required contribution of property or services, then the member shall be obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that has not been made.
- (4) Unless otherwise provided in an operating agreement, an obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.
- (5) Notwithstanding any compromise approved pursuant to subsection (4) of this section, a creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation after the member executes a writing which reflects that obligation and before any such compromise is reached, may enforce the original obligation.

➔Section 115. KRS 275.225 is repealed and reenacted to read as follows:

- (1) No distribution shall be made if, after giving effect to the distribution:
 - (a) The limited liability company would not be able to pay its debts as they become due in the usual course of business; or
 - (b) The limited liability company's assets would be less than the sum of its liabilities plus, unless otherwise provided in an operating agreement, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution which are superior to the rights of the member receiving the distribution.
- (2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) of this section either on:
 - (a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or
 - (b) A fair valuation or other method that is reasonable under the circumstances.
- (3) Except as provided in subsection (5) of this section, the effect of a distribution under subsection (1) of this section shall be measured as of:
 - (a) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or
 - (b) The date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.
- (4) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section shall be at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.
- (5) If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, then indebtedness of a limited liability company, including indebtedness issued as a distribution, shall not be a liability for purposes of determinations made under subsection (1) of this section.
- (6) If the indebtedness is issued as a distribution, then each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.
- (7) For purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefit program.

➔Section 116. KRS 275.255 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in a written operating agreement:

- (a) A limited liability company interest shall be assignable in whole or in part;
 - (b) An assignment shall entitle the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;
 - (c) An assignment of a limited liability company interest shall not dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member other than the right to receive distributions pursuant to subsection (1)(b) of this section;
 - (d) Until the assignee of a limited liability company interest becomes a member pursuant to KRS 275.265(1), the assignor shall continue to be a member and to have the power to exercise any rights of a member, subject to the members' right to remove the assignor pursuant to KRS 275.280(1)(c)2.;
 - (e) Until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment; and
 - (f) The assignor of a limited liability company interest shall not be released from liability as a member solely as result of the assignment.
- (2) A written operating agreement may provide that a member's limited liability company interest may be evidenced by a certificate of limited liability company interest issued by the limited liability company and may also provide for the assignment or transfer of any interest represented by the certificate.
 - (3) Unless otherwise provided in a written operating agreement, the pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the limited liability company interest of a member shall not constitute an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.
 - (4) Limitations upon the assignment or pledge of a membership interest set forth or adopted in accordance with this section shall be enforced notwithstanding KRS 355.9-406 and 355.9-408.

➔Section 117. KRS 275.260 is repealed and reenacted to read as follows:

- (1) This section provides the exclusive remedy by which the judgment creditor of a member or the assignee of a member may satisfy a judgment out of the judgment debtor's limited liability company interest.
- (2) On application to a court of competent jurisdiction by a judgment creditor of a member or a member's assignee, a court may charge the judgment debtor's interest in the limited liability company with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a assignee and shall have no right to participate in the management or to cause the dissolution of the limited liability company. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited liability company interest and make all other orders, directions, accounts, and inquiries the judgment creditor might have made or which the circumstances of the case may require to give effect to the charging order.
- (3) A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's limited liability company interest. A charging order does not of itself constitute an assignment of the limited liability company interest.
- (4) The court may order a foreclosure upon the limited liability company interest subject to the charging order at any time. The purchaser of the liability company interest at the foreclosure sale has the rights of a assignee. At any time before foreclosure, the charged limited liability company interest may be redeemed:
 - (a) By the judgment debtor;
 - (b) With property other than limited liability company property, by one (1) or more of the other members; and
 - (c) With limited liability company property, by the limited liability company with the consent of all members whose interest are not so charged.
- (5) This section does not deprive a member or a member's transferee of the benefit of any exemption laws applicable to the member's or transferee's limited liability company interest.

➔Section 118. KRS 275.285 is repealed and reenacted to read as follows:

A limited liability company shall be dissolved, and it shall commence to wind up its affairs upon the happening of the first to occur of the following:

- (1) The expiration of the term of the limited liability company set forth in the articles of organization, if any;
- (2) Upon the occurrence of events specified in the articles of organization or a written operating agreement;
- (3) Unless otherwise set forth in the operating agreement, the written consent of all of the members of a limited liability company;
- (4) There are no remaining members, except that the limited liability company shall not be dissolved and its affairs shall not be wound up when:
 - (a) A member is admitted to the limited liability company in the manner provided for in a written operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or
 - (b) Unless otherwise provided in a written operating agreement, within ninety (90) days after the occurrence of the event that terminated the continued membership of the last remaining member, the successor-in-interest of the last remaining member agrees in writing to continue the limited liability company and to the admission of the successor-in-interest of that member or its designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member;
- (5) Entry of a decree of judicial dissolution under KRS 275.290; or
- (6) Filing of a certificate of dissolution by the Secretary of State under KRS 275.295.

➔Section 119. KRS 275.295 is repealed and reenacted to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a limited liability company if:
 - (a) The limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after the annual report is due;
 - (b) The limited liability company is without a registered agent or registered office in Kentucky for at least sixty (60) days;
 - (c) The limited liability company does not notify the Secretary of State within sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued; or
 - (d) The limited liability company's term as set forth in its articles of organization expires.
- (2)
 - (a) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for dissolving a limited liability company, the Secretary of State shall serve the limited liability company with written notice of the determination by first-class mail at its principal place of business address.
 - (b) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which notice was mailed, the Secretary of State shall administratively dissolve the limited liability company by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the limited liability company by mailing the notice by first-class mail to the limited liability company at its principal place of business address. If a limited liability company is dissolved for having reached the end of its period of duration, and it does not within sixty (60) days of the end of its duration amend the articles of organization to extend its duration, the certificate of dissolution shall be effective as of the end of the period of duration as set forth in the articles of organization.
- (3)
 - (a) A limited liability company administratively dissolved under subsection (2) of this section, other than for failure to amend the articles of organization to extend the duration of the limited liability company within sixty (60) days of the expiration of its term, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:

1. State the name of the limited liability company and the effective date of its administrative dissolution;
 2. State that the ground or grounds for dissolution either did not exist or have been eliminated;
 3. State that the limited liability company's name satisfies the requirements under KRS 275.100;
 4. Contain a certificate from the Kentucky Department of Revenue stating that all taxes owed by the limited liability company have been paid; and
 5. Be accompanied by the reinstatement penalty and the current fee on filing each delinquent report as provided for in KRS 275.055(1).
- (b) If the Secretary of State determines that the application contains the information required by paragraph (a) of this subsection and that the information is correct, the Secretary of State shall:
1. Cancel the certificate of dissolution and prepare a certificate of existence that states the determination and the effective date of existence; and
 2. Serve a copy on the limited liability company in the manner provided in subsection (2)(a) of this section.
- (c) When the reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the limited liability company shall resume carrying on business as if the administrative dissolution had never occurred.
- (4) (a) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited liability company with a written notice that explains the reason or reasons for denial by mailing notice by first-class mail to the limited liability company at its registered office or, if none, to the last principal office identified on the most recent annual report, or, if none, the articles of organization.
- (b) The limited liability company may appeal the denial of reinstatement to the Circuit Court of the county where the limited liability company's principal office, or, if there is none in Kentucky, its registered office, is located within thirty (30) days after service of the notice of denial by doing the following:
1. Filing a petition with the court to set aside the dissolution; and
 2. Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial.
- (c) The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.
- (d) The court's final decision may be appealed as are other civil proceedings.

➔Section 120. KRS 275.300 is repealed and reenacted to read as follows:

Unless otherwise provided in a written operating agreement:

- (1) The business or affairs of the limited liability company may be wound up:
 - (a) By the members or managers who have authority pursuant to KRS 275.165 to manage the limited liability company prior to dissolution; or
 - (b) If one (1) or more of the members or managers have engaged in wrongful conduct, or upon other cause shown, by the Circuit Court for the county in which the principal office of the limited liability company is located or in which the registered office of the limited liability company is located, on application of any member, any member's legal representative, or assignee.
- (2) A dissolved limited liability company shall continue its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
 - (a) Collecting its assets;
 - (b) Disposing of its properties that will not be distributed in kind to its members;
 - (c) Discharging or making provision for discharging its liabilities;
 - (d) Distributing its remaining property among its members according to their interests; and

- (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (3) Dissolution of a limited liability company shall not:
- (a) Transfer title to the limited liability company's property;
 - (b) Prevent transfer of a limited liability company interest, although the authorization to dissolve may provide for the limited liability company restricting the transfer of the limited liability company's interest;
 - (c) Subject its members or managers to standards of conduct different from those prescribed herein;
 - (d) Change quorum or voting requirements for its members or managers; change provisions for selection, resignation, or removal of its members or managers; or change provisions for amending its operating agreement;
 - (e) Prevent commencement of a proceeding by or against the limited liability company in its name;
 - (f) Abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution;
 - (g) Terminate the authority of the registered agent of the limited liability company;
 - (h) Alter the obligations and responsibilities of the limited liability company as prescribed by applicable federal or state law with regard to the filing or examination of all federal and state tax returns or the payment, assessment, or collection of any federal or state tax due with respect to those returns; or
 - (i) Abate or suspend KRS 275.150(1).

➔Section 121. KRS 275.315 is repealed and reenacted to read as follows:

After the dissolution of the limited liability company pursuant to KRS 275.285, the limited liability company shall file articles of dissolution with the Secretary of State which set forth:

- (1) The name of the limited liability company;
- (2) A statement of the subsection of KRS 275.285 pursuant to which the limited liability company has dissolved;
- (3) The effective date, which shall be a date certain, of the dissolution; and
- (4) Any other information the members or managers filing the articles of dissolution shall deem proper.

➔Section 122. KRS 275.345 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in writing in a written operating agreement, and subject to any law applicable to business entities other than limited liability companies, one (1) or more limited liability companies may merge with or into one (1) or more other business entities with the limited liability company or other business entity being the surviving or resulting limited liability company or other business entity.
- (2) Rights or securities of or interests in a business entity that is a party to the merger may be exchanged for or converted into cash, property, obligations, rights, or securities of or interests in the surviving or resulting business entity or of any other business entity.
- (3) Unless otherwise provided in the articles of organization, a written operating agreement, or a written agreement and plan of merger, no member of a limited liability company shall have the right to dissent from a merger.
- (4) A nonprofit limited liability company shall not merge with or into any business entity which is not a domestic nonprofit limited liability company.

➔Section 123. KRS 275.350 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in a written operating agreement, a limited liability company that is a party to a proposed merger shall approve the plan of merger in KRS 275.355 by a majority-in-interest of the members.
- (2) Each business entity that is a party to a proposed merger shall approve the plan of merger in the manner and by the vote required by the laws applicable to the business entity.
- (3) Each business entity that is a party to the merger shall have the rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the business entity.

- (4) Unless otherwise provided in the articles of organization, a written operating agreement, or a written agreement and plan of merger, no member of a limited liability company shall have the right to dissent from a merger.

➔Section 124. KRS 275.370 is repealed and reenacted to read as follows:

- (1) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.
- (2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company shall, in the case of a partnership, be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement or, in the case of a limited partnership, by all the partners, notwithstanding any provision to the contrary in the limited partnership agreement.
- (3) After the conversion is approved under subsection (2) of this section, the partnership or limited partnership shall file articles of organization with the office of the Secretary of State which satisfy the requirements of KRS 275.025 and include:
 - (a) A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;
 - (b) Its former name;
 - (c) In the case of a partnership, a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement; and
 - (d) If the partnership has filed a statement of registration as a limited liability partnership in accordance with KRS 362.555 or a statement of qualification in accordance with KRS 362.1-1001, each shall be deemed canceled as of the effective date and time of the articles of organization as determined in accordance with KRS 275.020; and
 - (e) In the case of a limited partnership, the limited partnership's certificate of limited partnership shall be deemed canceled as of the effective date and time of the articles of organization as determined in accordance with KRS 275.020.
- (4) The conversion shall take effect when the articles of organization are filed with the office of the Secretary of State or, as provided in KRS 275.020, at a later date specified in the articles of organization.
- (5) A partner or, in the case of a limited partnership, a general partner who becomes a member of a limited liability company as a result of a conversion shall remain liable as a partner or general partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect. If the other party to a transaction with the limited liability company reasonably believes when entering the transaction that the member undertaking the transaction is a partner in a partnership or a general partner in a limited partnership, the member shall be liable for an obligation incurred by the limited liability company within ninety (90) days after the conversion takes effect. The partner's or general partner's liability for all other obligations of the limited liability company incurred after the conversion takes effect shall be that of a member as provided in this chapter. A limited partner who becomes a member as a result of a conversion shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect.

➔Section 125. KRS 275.375 is repealed and reenacted to read as follows:

- (1) A partnership or limited partnership that has been converted pursuant to this chapter shall be for all purposes the same entity that existed before the conversion.
- (2) When a conversion takes effect:
 - (a) All property and contract rights owned by, and all rights, privileges, and immunities of the converting partnership or limited partnership shall remain vested in the converted limited liability company without assignment, reversion, or impairment;
 - (b) All obligations of the converting partnership or limited partnership shall continue as obligations of the converted limited liability company;
 - (c) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred and the name of the converted limited liability company may be substituted in any pending action or proceeding for the name of the converting partnership or limited partnership; and

- (d) The written operating agreement of the converted limited liability company shall be binding upon each person who becomes a member of the limited liability company.

➔Section 126. KRS 275.380 is repealed and reenacted to read as follows:

- (1) Subject to the Constitution of this Commonwealth:
- (a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs, including the inspection of the books, records, and documents, and the liability of its members, except as provided in subsection (2) of this section; and
 - (b) A foreign limited liability company shall not be denied registration by reason of any difference between the laws of another jurisdiction under which a foreign limited liability company is organized and the laws of this Commonwealth.
- (2) A certificate of authority obtained pursuant to this chapter shall not authorize a foreign limited liability company to exercise any powers or engage in any business that a domestic limited liability company is forbidden to exercise or engage in by the laws of this Commonwealth.

➔Section 127. KRS 275.395 is repealed and reenacted to read as follows:

- (1) A foreign limited liability company may apply for a certificate of authority to transact business in this Commonwealth by delivering an application to the Secretary of State for filing. The application shall set forth:
- (a) The name of the foreign limited liability company, or if its name is unavailable for use in this Commonwealth, a company name that satisfies the requirements of KRS 275.410;
 - (b) The name of the state or country under whose law it is organized;
 - (c) Its date of organization and, if the limited liability company has a specific date of dissolution, the latest date upon which it is to dissolve;
 - (d) The street address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company;
 - (e) The address of its registered office in this Commonwealth and the name of its registered agent at that office;
 - (f) The names and usual business addresses of its current managers, if any; and
 - (g) A statement that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its organization.
- (2) A written statement of the initial registered agent consenting to serve in that capacity shall accompany an application for the certificate of authority.

➔Section 128. KRS 275.400 is repealed and reenacted to read as follows:

- (1) A foreign limited liability company authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Secretary of State if it changes:
- (a) Its real name;
 - (b) The latest date on which it is to dissolve; or
 - (c) The state or country of its organization.
- (2) The requirements of KRS 275.395 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.

➔Section 129. KRS 275.405 is repealed and reenacted to read as follows:

- (1) A certificate of authority shall authorize the foreign limited liability company to which it is issued to transact business in this Commonwealth subject to the right of the Commonwealth to revoke the certificate as provided in this chapter.

- (2) A foreign limited liability company with a valid certificate of authority shall have the same but no greater rights as, and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic limited liability company.
- (3) This chapter shall not authorize this Commonwealth to regulate the organization or internal affairs, including the inspection of books, records and documents, of a foreign limited liability company authorized to transact business in this Commonwealth.

➔Section 130. KRS 275.410 is repealed and reenacted to read as follows:

- (1) If the real name of a foreign limited liability company does not satisfy the requirements of KRS 275.100, the foreign limited liability company, to obtain or maintain a certificate of authority to transact business in this Commonwealth:
 - (a) May add to its name for use in this Commonwealth:
 - 1. The words "limited liability company," "limited company," "professional limited liability company," or "professional liability company." The word "limited" may be abbreviated as "Ltd.," and the word "Company" may be abbreviated as "Co."; or
 - 2. The abbreviations "LLC," "LC," "PLLC," or "PLC"; or
 - (b) May use a fictitious name to transact business in this Commonwealth if its real name is unavailable and it delivers to the Secretary of State for filing a certificate by a person authorized to execute documents pursuant to KRS 275.045(6) that the limited liability company has adopted the fictitious name.
- (2) Except as authorized by subsections (3) and (4) of this section, the name, including a fictitious name, of a foreign limited liability company shall be distinguishable from any name of record with the Secretary of State.
- (3) A foreign limited liability company may apply to the Secretary of State for authorization to use in this Commonwealth the name of another business entity, organized or authorized to transact business in this Commonwealth, that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or
 - (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (4) A foreign limited liability company may use in this Commonwealth the name, including the fictitious name, of another business entity that is used in this Commonwealth if the business entity is organized or authorized to transact business in this Commonwealth and the foreign limited liability company:
 - (a) Has merged with the other business entity;
 - (b) Has been formed by reorganization of the business entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other business entity.
- (5) If a foreign limited liability company authorized to transact business in this Commonwealth changes its name to one that does not satisfy the requirements of this section, it shall not transact business in this Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and obtains an amended certificate of authorization under KRS 275.400.

➔Section 131. KRS 279.010 is repealed and reenacted to read as follows:

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

- (1) "Acquire" means to construct, purchase, obtain by lease, devise, gift, or by eminent domain, or to obtain by any other lawful means;
- (2) "Board" means the board of directors of a corporation formed under this chapter;

- (3) "Business entity" means a domestic and foreign limited liability company, corporation, general partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;
- (4) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;
- (5) "Farm Credit Act" means Section 12 of the Federal Farm Credit Act of 1935 and the amendments thereto;
- (6) "Federal agency" means and includes the United States, the President of the United States, and all federal authorities, instrumentalities and agencies in the ordinary sense;
- (7) "Improve" means to construct, reconstruct, extend, enlarge, alter, better, or repair;
- (8) "Member" means and includes each person signing the articles of incorporation of a corporation formed under this chapter, each person later admitted to membership according to law or according to the articles of incorporation or bylaws of the corporation, and each common stockholder in a corporation organized under this chapter that has capital stock;
- (9) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;
- (10) "Obligations" means and includes negotiable bonds, notes, debentures, interim certificates or receipts and all other evidences of indebtedness either issued or the payment thereof assumed by a corporation organized under this chapter;
- (11) "Real name" shall have the meaning set forth in KRS 365.015; and
- (12) "System" means and includes any plant, works, facilities, and properties, and all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, or distribution of electric energy.

➔Section 132. KRS 279.030 is repealed and reenacted to read as follows:

- (1) The articles of incorporation shall set forth:
 - (a) The name of the corporation, which shall be distinguishable from any name of record with the Secretary of State;
 - (b) The purpose for which it is formed;
 - (c) The place, including the county, where its principal office will be located;
 - (d) A reasonable description of the territory in which its operations are to be conducted;
 - (e) The number of directors;
 - (f) The names and post office addresses of the directors who are to manage the affairs of the corporation for the first year of its existence, or until the first meeting called to elect directors, or until the successors of the first directors are elected and have qualified;
 - (g) The period limited for the duration of the corporation, or that the corporation is to be perpetual;
 - (h) If the corporation is organized without capital stock, the terms upon which members may be admitted and the terms upon which their membership shall terminate;
 - (i) If the corporation is organized with capital stock, the amount of the stock, the number of shares into which it is divided and the par value; and
 - (j) If the capital stock is divided into common and preferred stock, as it may be, the number of shares to which preference is granted and the number of shares to which no preference is granted, and the nature and definite extent of the preference and privileges granted to each.
- (2) The articles of incorporation may contain any other lawful provision that the incorporators choose to insert for the purpose of regulating the business and affairs of the corporation, for the purpose of creating, defining, limiting or regulating the rights, powers and duties of the corporation and its board of directors and members, and the exercise of any such powers, or for the purpose of creating or defining the rights and privileges of the members of the corporation among themselves, including separation of members into classes or districts and providing for representation of each class or district on the board of directors.

- (3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) A corporation may use the name, including the fictitious name, of another entity that is used in this state if the other entity is incorporated, organized, or authorized to transact business in this state, and the proposed user corporation:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other entity.
- (5) This chapter does not control the use of assumed names.
- (6) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 133. KRS 279.060 is repealed and reenacted to read as follows:

The words "Rural Electric Cooperative" shall not be used in the real, fictitious, or assumed name of any corporation, limited liability company, partnership, limited partnership, or other business entity other than one (1) formed under this chapter.

➔Section 134. KRS 279.310 is repealed and reenacted to read as follows:

As used in KRS 279.320 to 279.600, unless the context requires otherwise:

- (1) "Cooperative" means any corporation organized under KRS 279.320 to 279.600 or which becomes subject to those sections in the manner provided therein;
- (2) "Person" means any natural person, firm, association, corporation, business trust, or partnership;
- (3) As used in this chapter, the term "telephone service" shall include in its meaning communications services of all kinds allowed to any other telephone utility, authorized by regulatory agency and with some unregulated, that being the transmission of voice, data, sounds, signals, pictures, writing, or signs of all kinds, by use of wire, radio, light, electromagnetic impulse, broadband (wideband) spectrum, or any other transmission mode and facility used in rendition of such services; but shall not include in their meaning message telegram service, or radio broadcasting services or facilities within the meaning of Section 153(O) of the Federal Communications Act of 1934, as amended;
- (4) "Acquire" means to construct, purchase, obtain by lease, devise, gift, or eminent domain, or to obtain by any other lawful means;
- (5) "Board" means the board of trustees of a corporation formed under KRS 279.320 to 279.600;
- (6) "Federal agency" means and includes the United States, the President of the United States, and all federal authorities, instrumentalities, and agencies in the ordinary sense;
- (7) "Improve" means to construct, reconstruct, extend, enlarge, alter, better, or repair;
- (8) "Member" means and includes each person signing the articles of incorporation of a corporation formed under KRS 279.320 to 279.600, each person later admitted to membership according to law or according to the articles of incorporation or bylaws of the corporation, and each common stockholder in a corporation, having capital stock, organized under KRS 279.320 to 279.600;
- (9) "Obligations" means and includes negotiable bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness either issued or the payment thereof assumed by a corporation organized under KRS 279.320 to 279.600;
- (10) "System" means and includes any plant, works, facilities, and properties, and all parts thereof and appurtenances thereto, used or useful in the operation and maintenance of telephone communication service;

- (11) "Rural area" shall be deemed to mean any area of this state not included within the boundaries of any incorporated or unincorporated city or of a consolidated local government, having a population in excess of fifteen hundred (1,500) inhabitants;
- (12) "Telephone company" means any natural person, firm, association, corporation, or partnership owning, leasing, or operating any line, facility, or system used in the furnishing of telephone service within this state;
- (13) "Business entity" means a domestic and foreign limited liability company, corporation, general partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;
- (14) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;
- (15) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity; and
- (16) "Real name" shall have the meaning set forth in KRS 365.015.

➔Section 135. KRS 279.340 is repealed and reenacted to read as follows:

- (1) The name of a cooperative shall include the words "Telephone," "Telecommunications," "Company," or "Corporation" and the abbreviation "Inc.," unless, in an affidavit made by its president or vice president, and filed with the Secretary of State, or in an affidavit made by a person signing articles of incorporation, consolidation, merger or conversion, which relate to such cooperative, and filed, together with any such articles, with the Secretary of State, it shall appear that the cooperative desires to do business in another state and is or would be precluded therefrom by reason of the inclusion of such words or either thereof in its name. The name may include the word "Cooperative."
- (2) Except as authorized by subsection (3), (4), or (5) of this section, the name of a cooperative shall be distinguishable from any name of record with the Secretary of State.
- (3) This section shall not apply to any corporation which becomes subject to KRS 279.310 to 279.600 by complying with the provisions of KRS 279.470, which does business in this state pursuant to KRS 279.570 and which elects to retain a corporate name which does not comply with this section.
- (4) A cooperative may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying cooperative; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (5) A cooperative may use the name, including the fictitious name, of another entity that is used in this state, if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user cooperative:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other entity.
- (6) This chapter does not control the use of assumed names.
- (7) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 136. KRS 304.38-040 is repealed and reenacted to read as follows:

- (1) A corporation, limited liability company, or partnership may apply to the executive director for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this subtitle.

- (2) Health maintenance organizations which are corporations may be organized by applying the provisions of KRS Chapter 271B, if for profit, and KRS Chapter 273, if for nonstock, nonprofit, to the extent that the same are not inconsistent with the express provisions of this subtitle.
- (3) Each application for a certificate of authority shall be submitted to the executive director upon a form prescribed by him and shall set forth or be accompanied by:
- (a) Evidence that the applicant has been issued a certificate of need in accordance with the provisions of KRS Chapter 216B or evidence that no certificate of need is required by KRS Chapter 216B;
 - (b) Articles of incorporation, articles of organization, partnership agreement, or other applicable documents in quadruplicate, acknowledged and verified by the applicant;
 - (c) The initial bylaws, operating agreement, or other equivalent documents of the organization in triplicate, or any other similar documents;
 - (d) A statement which shall include describing the health maintenance organization:
 1. The health services to be offered;
 2. The financial risks to be assumed;
 3. The initial geographic area to be served;
 4. Pro forma financial projections for the first three (3) years of operations including the assumptions the projections are based upon;
 5. The sources of working capital and funding;
 6. A description of the persons to be covered by the health maintenance organization;
 7. Any proposed reinsurance arrangements;
 8. Any proposed management, administrative, or cost-sharing arrangements; and
 9. A description of the health maintenance organization's proposed method of marketing;
 - (e) The names, addresses, and positions of the initial board of directors, board of trustees, or other governing body responsible for the conduct of the affairs of the applicant;
 - (f) Any proposed evidence of coverage to be issued by the applicant to individuals, enrollees, groups, or other contract holders; and
 - (g) Evidence of financial responsibility as provided in KRS 304.38-060.

➔Section 137. KRS 304.38-070 is repealed and reenacted to read as follows:

- (1) This subsection applies to a corporation or limited liability company applying for and holding a certificate of authority as a health maintenance organization:
- (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation or limited liability company shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars (\$1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars (\$2,000,000);
 - (b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. Notwithstanding the other provisions hereof, the exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and
 - (c) Each corporation authorized as a health maintenance organization shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000) and shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the executive director. A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection

against insolvency as required for such authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.

- (2) This subsection applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:
- (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars (\$3,000,000) in its capital accounts. Thereafter, a partnership authorized as a health maintenance organization shall possess and maintain a total of at least one million two hundred fifty thousand dollars (\$1,250,000) in its capital accounts and shall comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the executive director;
 - (b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.
- (3) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with risk-based capital (RBC) requirements as follows:
- (a) For purposes of this subsection, risk-based capital shall be determined in accordance with the risk-based capital requirements for health maintenance organizations established under this subtitle and any administrative regulation promulgated pursuant to KRS Chapter 13A, except as otherwise provided in this subsection. A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with the same risk-based capital requirements as other health maintenance organizations, except that no additional phase-in or risk-based capital reports shall be required for 2000 or 2001, and the risk-based capital levels shall be established in accordance with paragraph (b) of this subsection;
 - (b) For the risk-based capital reports required to be filed by health maintenance organizations which manage care and process health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program, the risk-based capital levels shall be defined as follows:
 - 1. "Company Action Level RBC" means the product of two (2.0) and its Authorized Control Level RBC;
 - 2. "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;
 - 3. "Authorized Control Level RBC" means the product of four-tenths (.40) and the risk-based capital after covariance determined under the risk-based capital formula in accordance with the RBC instruction; and
 - 4. "Mandatory Control Level RBC" means the product of seven-tenths (.70) and the Authorized Control Level RBC; and
 - (c) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization managing care, processing health care claims, or providing health benefits to groups or individuals in addition to Medicaid-eligible and Kentucky Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle, and shall not be eligible to calculate its risk-based capital according to this subsection.

➔Section 138. KRS 311A.070 is repealed and reenacted to read as follows:

- (1) When a complaint is filed against an ambulance service, emergency medical services provider, or an emergency medical services educational institution or an employee or volunteer thereof, or when the office of the board is contemplating action against an ambulance service, emergency medical services provider, or emergency medical services educational institution or an employee or volunteer thereof, written notice of the complaint or proposed action shall be sent to:
 - (a) The county judge/executive, in the event of a county-operated ambulance service, emergency medical services provider, or educational institution;
 - (b) The mayor, in the event of a city-operated ambulance service, emergency medical services provider, or educational institution;
 - (c) The mayor, in the event of an urban-county government-operated ambulance service, emergency medical services provider, or educational institution;
 - (d) The chairman of the fire protection district, in the event of a fire district-operated ambulance service, emergency medical services provider, or educational institution;
 - (e) The head of the public agency, in the event of an ambulance service, emergency medical services provider, or educational institution operated by a public agency other than specified in paragraphs (a) to (d) of this subsection;
 - (f) The president, chancellor, or other officer in charge of an educational institution operated, in the event of an ambulance service or educational institution;
 - (g) The chief operating officer or president of a nonprofit corporation, corporation for profit, limited liability company, or other business entity, in the event of an ambulance service, emergency medical services provider, or educational institution operated by the business entity; and
 - (h) Both the ambulance service, emergency medical services provider, or educational institution officials specified in this subsection and the officials of any public agency contracting for services.
- (2) The notice specified in this section shall be in addition to any notice provided to any other person or organization.

➔Section 139. KRS 313.240 is repealed and reenacted to read as follows:

- (1) (a) No person shall practice or offer to practice dentistry or dental surgery under the name of any company, association, or corporation except the name of a professional service corporation, established under KRS Chapter 274, a professional limited liability company established under KRS Chapter 275, a partnership established under the Kentucky Uniform Partnership Act, or a partnership established under the Kentucky Revised Uniform Partnership Act, or as provided under KRS 313.197. Any person practicing or offering to practice dentistry or dental surgery shall practice under his or her own name; the name of a professional service corporation, professional limited liability company, or partnership, which includes his or her name; or the name of a deceased or incapacitated dentist for whom the person practicing dentistry has contracted to perform continuing operations.
 - (b) No such person shall conduct a dental office in his or her name nor advertise his or her name in connection with any dental office unless he or she personally performs services as a dentist or dental surgeon in such office or personally supervises such services as are performed in such office during a portion of the time such office is operated by him or her only, and shall not use his or her name in connection with that of any other dentist, except as provided for deceased or incapacitated dentists in KRS 313.197.
- (2) No person shall be an incorporator, director, officer, member, manager, or shareholder in more than three (3) professional service corporations, three (3) professional limited liability companies, or three (3) partnerships, or any three (3) of these business entities, rendering dental or dental surgery services. No dentist or dental surgeon or group of dentists or dental surgeons shall practice in more than three (3) locations.

➔Section 140. KRS 322.010 is repealed and reenacted to read as follows:

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

- (1) "Board" means the State Board of Licensure for Professional Engineers and Land Surveyors;

- (2) "Engineer" means a person who is qualified to engage in the practice of professional engineering by reason of special knowledge and use of:
- (a) The mathematical, physical, and engineering sciences; and
 - (b) The principles and methods of engineering analysis and design, acquired by engineering education and practical engineering experience;
- (3) "Professional engineer" means a person who is licensed as a professional engineer by the board;
- (4) "Engineering" means any professional service or creative work, the adequate performance of which requires engineering education, training, and experience as an engineer.
- (a) "Engineering" shall include:
1. Consultation, investigation, evaluation, planning, certification, and design of engineering works and systems;
 - a. Engineering design and engineering work associated with design/build projects;
 - b. Engineering works and systems which involve earth materials, water or other liquids, and gases;
 - c. Planning the use of land, air, and waters; and
 - d. Performing engineering surveys and studies;
 2. The review of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces this service or work, either public or private, in connection with any utilities, structures, certain buildings, building systems, machines, equipment, processes, work systems, or projects with which the public welfare or the safeguarding of life, health, or property is concerned, when that professional service or work requires the application of engineering principles and data;
 3. The teaching of engineering design courses in any program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or any engineering program deemed equivalent by the board;
 4. The negotiation or solicitation of engineering services on any project in this state, regardless of whether the persons engaged in the practice of engineering:
 - a. Are residents of this state;
 - b. Have their principal place of business in this state; or
 - c. Are in responsible charge of the engineering services performed; and
 5. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering that does not relate to the location or determination of land boundaries.
- (b) "Engineering" shall not include the professional services performed by persons who:
1. Develop or administer construction project safety programs, construction safety compliance, construction safety rules or regulations, or related administrative regulations; or
 2. Only operate or maintain machinery or equipment;
- (5) "Practice of engineering" means the performance of any professional service included in subsection (4)(a) of this section;
- (6) "Engineer in training" means a person who has passed the Fundamentals of Engineering Examination and is otherwise qualified to earn experience toward licensure as a professional engineer;
- (7) "Responsible charge of engineering" means direct control and personal supervision of engineering, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved engineering program;

- (8) "Land surveyor" means a person who is qualified to engage in the practice of land surveying by reason of special knowledge and use of mathematics, the physical and applied sciences, and the principles and methods of land surveying, acquired by education and practical experience in land surveying;
- (9) "Professional land surveyor" means a person who is licensed as a professional land surveyor by the board;
- (10) "Land surveying" means any professional service or work, the adequate performance of which requires the education, training, and experience as a land surveyor.
- (a) "Land surveying" shall include but not be limited to the following:
1. Measuring and locating, establishing, or reestablishing lines, angles, elevations, natural and man-made features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surfaces of bodies of water involving the:
 - a. Determination or establishment of the facts of size, shape, topography, and acreage;
 - b. Establishment of photogrammetric and geodetic control that is published and used for the determination, monumentation, or description of property boundaries;
 - c. Subdivision, division, and consolidation of lands;
 - d. Measurement of existing improvements, including condominiums, after construction and the preparation of plans depicting existing improvements, if the improvements are shown in relation to property boundaries;
 - e. Layout of proposed improvements, if those improvements are to be referenced to property boundaries;
 - f. Preparation of subdivision record plats;
 - g. Determination of existing grades and elevations of roads and land;
 - h. Creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them; and
 - i. Certification of documents;
 2. The negotiation or solicitation of land surveying services on any project in this state, regardless of whether the persons engaged in the practice of land surveying:
 - a. Are residents of this state;
 - b. Have their principal office or place of business in this state; or
 - c. Are in responsible charge of the land surveying services or work performed; and
 3. The preparation of survey descriptions for use in legal instruments affecting real property or property rights. "Land surveying" does not include the preparation of a physical description that identifies and describes the tract, parcel, or lot by reference to the tract, parcel, lot, block, or unit number of any subdivision, or other summary identifier appearing on a properly recorded plat of record, or by reference to a deed of record.
- (b) "Land surveying" shall not include:
1. The measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or the state of Kentucky;
 2. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering, if the land surveying work does not relate to the location or determination of land boundaries; or
 3. The design of grades and elevations of roads and land;
- (11) "Practice of land surveying" means the performance of any professional service included in subsection (10)(a) of this section;
- (12) "Land surveyor in training" means a person who has passed the Fundamentals of Land Surveying Examination and is otherwise qualified to earn experience toward licensure as a professional land surveyor;

- (13) "Responsible charge of land surveying" means direct control and personal supervision of land surveying, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved land surveying program;
- (14) "Business entity" means a corporation, partnership, limited liability company, limited partnership, or firm;
- (15) "Offer to practice" means:
 - (a) A promise or commitment to engage in any act directly related to engineering or land surveying;
 - (b) Undertaking to engage in the practice of engineering or land surveying; or
 - (c) Any claim, express or implied, by any person representing himself or herself to be a professional engineer or professional land surveyor;
- (16) "Certification" means affixing a seal or stamp, signature, and date by a professional engineer or professional land surveyor to represent that the services or work addressed therein was performed by that professional engineer or professional land surveyor according to his or her knowledge, information, and belief, and that it was completed in accordance with applicable standards of practice. "Certification" shall not mean a guaranty or warranty, either express or implied;
- (17) The "Fundamentals of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;
- (18) The "Fundamentals of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;
- (19) The "Principles and Practice of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying; and
- (20) The "Principles and Practice of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying.

➔Section 141. KRS 322.060 is repealed and reenacted to read as follows:

- (1) (a) A business entity shall not engage in the practice of engineering in this state unless:
 - 1. At least one (1) of its principals, officers, or a designated employee is a professional engineer who is in responsible charge of the engineering work; and
 - 2. The board has issued a permit to the business entity.
- (b) To apply for a permit, a business entity offering engineering services in this state shall file with the board, on a form prescribed by the board:
 - 1. The names and addresses of all principals and officers;
 - 2. The license number of principals, officers, and employees who are professional engineers in responsible charge of the business entity's practice of engineering in this state;
 - 3. A list of locations of all offices in this state at which the business entity offers professional engineering services;
 - 4. A statement of qualifications for the permit; and
 - 5. References as required by administrative regulations promulgated by the board.
- (c) If more than one (1) place of business is maintained in this state, a professional engineer shall be in responsible charge of the engineering work for each office.
- (d) A professional engineer who renders occasional, part-time, or consulting engineering services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the engineering work.
- (e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status in those items listed in paragraph (b) of this subsection.

- (f) Individual professional engineers providing engineering services in their own names, or architectural firms offering engineering services incident to their practice, shall be excluded from the provisions of this subsection.
- (2) (a) A business entity shall not engage in the practice of land surveying in this state unless:
 - 1. At least one (1) of its principals, officers, or a designated employee is a professional land surveyor in direct responsible charge of the land surveying work; and
 - 2. The board has issued a permit to the business entity.
- (b) To apply for a permit, a business entity offering land surveying services in this state shall file with the board, on a form prescribed by the board:
 - 1. The names and addresses of all principals and officers;
 - 2. The license numbers of the principals, officers, and employees who are professional land surveyors in responsible charge of the practice of land surveying in this state;
 - 3. A list of locations of all offices in this state at which the business entity offers professional land surveying services;
 - 4. A statement of qualifications for the services relating to the permit; and
 - 5. References as required by administrative regulations promulgated by the board.
- (c) If more than one (1) place of business is maintained in this state, a professional land surveyor shall be in responsible charge of the land surveying work for each office.
- (d) A professional land surveyor who renders occasional, part-time, or consulting services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the land surveying activity of the firm.
- (e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status.
- (f) Individual professional land surveyors providing land surveying services in their own names shall be excluded from the provisions of this subsection.
- (3) (a) After a business entity applies for a professional engineering or professional land surveying permit and pays the proper fees, the board shall review the application and, upon approval, shall issue a permit.
- (b) The board may suspend, revoke, or refuse to issue a permit for violation of the code of professional practice and conduct.
- (c) The expiration date and renewal period for each permit and renewal procedures shall be established by administrative regulations promulgated by the board.
- (4) (a) No business entity shall be relieved of responsibility for the conduct or acts of its agent, employees, or officers by reason of its compliance with this section.
- (b) No individual practicing professional engineering or professional land surveying shall be relieved of the responsibility for professional services performed by reason of the individual's employment or relationship with a business entity holding a permit under this section.
- (5) Disciplinary action against a business entity holding a permit under this section shall be administered in the same manner and on the same grounds as disciplinary action against an individual professional engineer or professional land surveyor.
- (6) The Secretary of State shall not accept articles of incorporation, articles of organization, statement of qualification or certificate of limited partnership or an application for a certificate of authority to transact business as a foreign corporation, limited liability company or limited partnership or a statement of foreign qualification from a business entity which includes in its name or, among objects for which it is established, any of the words, "engineer," "engineering," "surveyor," "surveying," "land surveying," or any modification or derivation thereof, unless the filing with the Secretary of State includes a certificate or letter from the board.

➔Section 142. KRS 362.401 is repealed and reenacted to read as follows:

As used in KRS 362.403 to 362.525, unless the context otherwise requires, the term:

- (1) "Certificate of limited partnership" means the certificate referred to in KRS 362.415, or the certificate of limited partnership as amended or restated;
- (2) "Business entity" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, business or statutory trust and not-for-profit unincorporated association;
- (3) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner;
- (4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in KRS 362.445;
- (5) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than this state and having as partners one (1) or more general partners and one (1) or more limited partners;
- (6) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and is named in the certificate of limited partnership as a general partner;
- (7) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;
- (8) "Limited partnership" or "domestic limited partnership" means a partnership formed by two (2) or more persons under the laws of this state and having one (1) or more general partners and one (1) or more limited partners;
- (9) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;
- (10) "Partner" means a limited partner or general partner;
- (11) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;
- (12) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;
- (13) "Person" means a natural person; trust; estate; or business entity;
- (14) "Real name" shall have the meaning set forth in KRS 365.015; and
- (15) "State" means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

➔Section 143. KRS 362.403 is repealed and reenacted to read as follows:

The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) Shall contain the word "Limited" or its abbreviation, "Ltd.";
- (2) Shall not contain the name of a limited partner unless:
 - (a) That name is also the name of a general partner or the corporate name of a corporate general partner; or
 - (b) The business of the limited partnership had been carried on under that name before the admission of that limited partner; and
- (3) Shall be distinguishable from any name of record with the Secretary of State.

➔Section 144. KRS 362.405 is repealed and reenacted to read as follows:

- (1) The exclusive right to the use of a name may be reserved by:
 - (a) Any person intending to organize a limited partnership under KRS 362.403 to 362.525 and to adopt that name;
 - (b) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

- (c) Any foreign limited partnership intending to register in this state and adopt that name; or
 - (d) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.
- (2) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic limited partnership or foreign limited partnership, it shall reserve the name for the exclusive use of the applicant for a nonrenewable period of one hundred twenty (120) days. The right to the exclusive use of a reserved name may be transferred to any other person by filing with the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee. During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.
- (3) The holder of a reserved name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 145. KRS 362.555 is repealed and reenacted to read as follows:

- (1) To become and to continue as a registered limited liability partnership, a partnership that is not a limited partnership shall file with the Secretary of State a statement or a renewal statement, as the case may be, stating the name of the partnership; the address of its principal office; the number of partners; the names of the partners; a brief statement of the business in which the partnership engages; and that the partnership registers its status or renews its status, as the case may be, as a registered limited liability partnership.
- (2) The statement or renewal statement shall be executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a statement or renewal statement.
- (3) The statement or renewal statement shall be accompanied by a fee of two hundred dollars (\$200).
- (4) The Secretary of State shall register as a registered limited liability partnership, and shall renew the registration of any registered limited liability partnership, any partnership that submits a completed statement or renewal statement with the required fee.
- (5) Registration shall be effective for one (1) year after the date a statement is filed, unless voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a withdrawal notice. Registration, whether pursuant to an original statement or a renewal statement, as a registered limited liability partnership shall be renewed if, during the sixty (60) day period preceding the date the statement or renewal statement otherwise would have expired, the partnership files with the Secretary of State a renewal statement. Registration pursuant to a renewal statement shall expire one (1) year after the date the registration would have expired if the last renewal of the registration had not occurred.
- (6) The status of a partnership as a registered limited liability partnership shall not be affected by changes made in the information stated in the statement or renewal statement after the filing of the statement or renewal statement.
- (7) The Secretary of State may provide forms for use under this section.

➔Section 146. KRS 362.595 is repealed and reenacted to read as follows:

- (1) The failure of a registered limited liability partnership to comply with any requirements of KRS 362.555 shall not impair the validity of any contract, deed, mortgage, security interest, lien, or act of the registered limited liability partnership or prevent the registered limited liability partnership from defending any action, suit, or proceeding in any court of this Commonwealth.
- (2) Subject to subsection (3) of this section, the protection from liability of a partner of a registered limited liability partnership under KRS 362.220(2) shall not be altered by reason of the failure of the partnership to comply with any requirements of KRS 362.555.
- (3) A partner in a partnership which has previously filed a statement under KRS 362.555, and which has failed to comply with the renewal statement requirements of KRS 362.555, shall not be entitled to protection from

liability under KRS 362.220(2) in any action or proceeding brought by any person who did business with the partnership during the period it failed to comply and who did not at that time have actual knowledge that it was a limited liability partnership.

➔Section 147. KRS 362.1-109 is repealed and reenacted to read as follows:

(1) The Secretary of State shall collect the following fees when the statements described in this subsection are delivered for filing:

- (a) Statement of Partnership Authority \$40.00
- (b) Statement of Denial \$20.00
- (c) Statement of Dissociation \$20.00
- (d) Statement of Dissolution \$40.00
- (e) Statement of Merger \$40.00
- (f) Statement of Qualification \$40.00
- (g) Amendment to a Statement of Qualification \$40.00
- (h) Statement of Foreign Qualification \$90.00
- (i) Reinstatement of a Statement of Qualification \$100.00
- (j) Change of Registered Agent or Change of the Address of the
Registered Office, or Both \$10.00
- (k) Registered Agent's Statement of Change of Registered Office
for Each Affected Partnership \$10.00
not to exceed a total of.....\$1,000.00
- (l) Change of the Mailing Address of the Chief Executive Office \$10.00
- (m) Application to Reserve a Name for Use by a Domestic or Foreign
Partnership \$15.00
- (n) Notice of the Transfer of a Name Reserved for Use by a Domestic
or Foreign Partnership \$15.00
- (o) Application for Registered Name \$36.00
- (p) Application for Renewal of Registered Name \$36.00
- (q) Annual report.....\$15.00
- (r) Amendment to the annual report.....\$10.00
- (s) All other filings \$40.00

(2) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed statements relating to a domestic or foreign partnership:

- (a) Fifty cents (\$0.50) a page for copying; and
- (b) Five dollars (\$5) for the certificate.

➔Section 148. KRS 362.1-115 is repealed and reenacted to read as follows:

(1) A person may apply to the Secretary of State to reserve the exclusive use of a partnership name, including the fictitious name, for a limited liability partnership or for a foreign limited liability partnership whose partnership name is not available for use in this Commonwealth. If the Secretary of State finds that the name applied for is available, then the Secretary of State shall reserve the name for the applicant's exclusive use for a period of one hundred twenty (120) days. During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The

renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.

- (2) The holder of a reserved partnership name may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, executed by the holder for whom the name was reserved, and specifying the name and address of the transferee.
- (3) The holder of a reserved partnership name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 149. KRS 362.1-504 is repealed and reenacted to read as follows:

- (1) This section provides the exclusive remedy by which the judgment creditor of a partner or the transferee of a partner may satisfy a judgment out of the judgment debtor's transferable interest.
- (2) On application to a court of competent jurisdiction by a judgment creditor of a partner or a partner's transferee, a court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a transferee and shall have no right to participate in the management of or to cause the dissolution of the partnership. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.
- (3) A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's transferable interest in the partnership.
- (4) The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee. A charging order does not of itself constitute an assignment of the transferable interest.
- (5) At any time before foreclosure, an interest charged may be redeemed:
 - (a) By the judgment debtor;
 - (b) With property other than partnership property, by one (1) or more of the other partners; or
 - (c) With partnership property, by one (1) or more of the other partners with the consent of all of the partners whose interests are not so charged.
- (6) This subchapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

➔Section 150. KRS 362.1-802 is repealed and reenacted to read as follows:

- (1) Subject to subsection (2) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.
- (2) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:
 - (a) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and
 - (b) The rights of a third party accruing under KRS 362.1-804(1) or arising out of conduct in reliance on the dissolution before the third party has notice of the waiver shall not be adversely affected.
- (3) The dissolution of a partnership that is or was a limited liability partnership shall not abate or suspend KRS 362.1-306(3).

➔Section 151. KRS 362.1-1104 is repealed and reenacted to read as follows:

- (1) Activities of a foreign limited liability partnership which do not constitute transacting business for the purposes of KRS 362.1-1001 to 362.1-1103 include:
 - (a) Maintaining, defending, or settling an action or proceeding;

- (b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
 - (c) Maintaining bank accounts;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
 - (e) Selling through independent contractors;
 - (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
 - (g) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
 - (h) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
 - (i) Conducting an isolated transaction that is completed within thirty (30) days and is not one (1) in the course of repeated transactions of a like nature;
 - (j) Owning, without more, real or personal property; or
 - (k) Transacting business in interstate commerce.
- (2) The list of activities in subsection (1) of this section shall not be considered exhaustive. This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership or any partner therein to service of process, taxation, or regulation under any other law of this Commonwealth. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under KRS 454.210.

➔Section 152. KRS 362.2-109 is repealed and reenacted to read as follows:

- (1) A person may apply to the Secretary of State to reserve the exclusive use of a limited partnership name, including the fictitious name for a foreign limited partnership whose limited partnership name is not available for use in this Commonwealth. If the Secretary of State finds that the limited partnership name applied for is available, then the Secretary of State shall reserve the name for the applicant's exclusive use for a period of one hundred twenty (120) days. During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.
- (2) The holder of a reserved limited partnership name may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, executed by the holder for whom the name was reserved, and specifying the name and address of the transferee.
- (3) The holder of a reserved limited partnership name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 153. KRS 362.2-119 is repealed and reenacted to read as follows:

- (1) The Secretary of State may prescribe and furnish on request forms for:
 - (a) A certificate of existence or authorization;
 - (b) An application for a certificate of authority;
 - (c) An application for a certificate of withdrawal;
 - (d) A statement of change of registered office or registered agent;
 - (e) A statement of change of designated office;
 - (f) Application to reserve or renew the reservation of a name;
 - (g) Application to cancel the reservation of a name;
 - (h) Resignation of a registered agent;

- (i) The annual report;
 - (j) An amendment to the annual report; and
 - (k) Amended application for certificate of authority.
- (2) The Secretary of State may mandate the use of the forms listed in subsection (1) of this section.
- (3) The Secretary of State may prescribe and furnish on request forms for other records required or permitted to be filed pursuant to this subchapter, but their use shall not be mandatory.

➔Section 154. KRS 362.2-121 is repealed and reenacted to read as follows:

- (1) A record that satisfies the requirements of this section, and of any other section of this subchapter that adds to or varies these requirements, shall be entitled to filing by the Secretary of State.
- (2) This subchapter shall require or permit filing the record in the Office of the Secretary of State.
- (3) The record shall contain the information required by this subchapter. It may also contain other information.
- (4) The record shall be typewritten or printed or, if electronically transmitted, it shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Manually signed photocopies or other reproduced copies of typewritten or printed records may be filed.
- (5) The record shall be in the English language. A limited partnership name may be in a language other than English if written in English letters or Arabic or Roman numerals. Any record that may be filed by a foreign limited partnership that is duly authenticated by the official having custody of the applicable records in the state, country, or other jurisdiction under whose law the limited liability company is formed may be in a language other than English if accompanied by a reasonably-authenticated English translation.
- (6) The person executing the record shall sign it and print beneath or opposite his or her signature the names of the person and the capacity in which he or she signs.
- (7) The person executing the record may do so as an attorney-in-fact. Powers of attorney relating to the execution of the record shall not be required to be provided to or filed with the Secretary of State.
- (8) A person who executes a record to be filed with the Secretary of State shall be deemed to have declared under penalty of perjury that to that person's knowledge the contents of the statement are accurate.
- (9) (a) It shall be unlawful for any person to sign a statement the person knows is false in any material respect with the intent that the statement be delivered to the Secretary of State for filing.
- (b) Any person who violates the provisions of this subsection shall be guilty of an offense punishable by a fine not to exceed one hundred dollars (\$100).
- (10) If the Secretary of State has prescribed a mandatory form for a record, then the record shall be in or on the prescribed form.
- (11) The record shall be delivered to 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 it is filed in typewritten or printed form and not transmitted electronically, then the Secretary of State may require that it be accompanied by two (2) exact or conformed copies.
- (12) One (1) exact or conformed copy, or, if transmitted electronically, a reproduction in paper form, shall be filed with and recorded by the county clerk of the county in which the registered office of the limited partnership is located. A county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to limited partnerships. A document otherwise filed in accordance with this section with the Secretary of State shall be effective regardless of failure to file the document with the county clerk in accordance with this subsection.
- (13) When the record is delivered to the Secretary of State for filing, the correct filing fee and any other moneys required by this subchapter or other law to be collected by the Secretary of State therewith shall be paid or provision for payment 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, debit card, charge card, or similar method. However, if the amount due is tendered by any method other than cash, then the liability is not finally discharged until the Secretary of State receives final payment or credit of collectible funds.

➔Section 155. KRS 362.2-210 is repealed and reenacted to read as follows:

- (1) A limited partnership subject to this subchapter or a foreign limited partnership authorized to transact business in this Commonwealth shall deliver to the Secretary of State for filing an annual report that states:
 - (a) The name of the limited partnership or foreign limited partnership and the state or country under whose law it is organized;
 - (b) The street address of its designated office or, if a foreign limited partnership, the street address of its principal office; and
 - (c) The street address of the limited partnership's registered office and the name of its registered agent at that office.
- (2) Information in an annual report shall be current as of the date the annual report is delivered to the Secretary of State for filing.
- (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a limited partnership was formed or a foreign limited partnership was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the ensuing calendar years.
- (4) If a filed annual report contains an address of a designated office or the name of a registered agent or registered office address which differs from the information shown upon the records of the Secretary of State immediately before the filing, then the differing information in the annual report is not considered a statement of change under KRS 362.2-115.
- (5) A limited partnership or foreign limited partnership may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on an appropriate form provided by the Secretary of State.

➔Section 156. KRS 362.2-703 is repealed and reenacted to read as follows:

- (1) This section provides the exclusive remedy by which the judgment creditor of a partner or the transferee of a partner may satisfy a judgment out of the judgment debtor's transferable interest.
- (2) On application to a court of competent jurisdiction by any judgment creditor of a partner or a partner's transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a transferee, and shall have no right to participate in the management or to cause the dissolution of the partnership. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.
- (3) A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's transferable interest. A charging order does not of itself constitute an assignment of the transferable interest.
- (4) The court may order a foreclosure upon the transferable interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.
- (5) At any time before foreclosure, an interest charged may be redeemed:
 - (a) By the judgment debtor;
 - (b) With property other than limited partnership property, by one (1) or more of the other partners; or
 - (c) With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.
- (6) This subchapter does not deprive any partner or a partner's transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

➔Section 157. KRS 362.2-803 is repealed and reenacted to read as follows:

- (1) A limited partnership continues after dissolution only for the purpose of winding up its activities.

- (2) In winding up its business, the limited partnership:
- (a) May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of cancellation as provided in KRS 362.2-203, and perform other necessary acts; and
 - (b) Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.
- (3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:
- (a) Has the powers of a general partner under KRS 362.2-804; and
 - (b) Shall promptly amend the certificate of limited partnership to:
 1. State that the limited partnership does not have a general partner and that the person has been appointed to wind up the limited partnership; and
 2. State the street and mailing address of the person.
- (4) On the application of any partner, the Circuit Court of the county in which the limited partnership maintains its registered agent may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:
- (a) A limited partnership does not have a general partner and, within a reasonable time following the dissolution, no person has been appointed pursuant to subsection (3) of this section; or
 - (b) The applicant establishes other good cause.
- (5) The dissolution of a limited partnership shall not abate or suspend KRS 362.2-303, and the dissolution of a limited partnership that is a limited liability limited partnership shall not abate or suspend KRS 362.2-404(3).
- ➔Section 158. KRS 362.2-901 is repealed and reenacted to read as follows:
- (1) The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs, including the inspection of books, records, and documents, and the liability of its partners as partners.
 - (2) A foreign limited partnership shall not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this Commonwealth.
 - (3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this Commonwealth.
- ➔Section 159. KRS 362.2-903 is repealed and reenacted to read as follows:
- (1) Activities of a foreign limited partnership which do not constitute transacting business in this Commonwealth within the meaning of KRS 362.2-901 to 362.2-908 include:
 - (a) Maintaining, defending, and settling an action or proceeding;
 - (b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
 - (c) Maintaining accounts in financial institutions;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;
 - (e) Selling through independent contractors;
 - (f) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
 - (g) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

- (h) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
 - (i) Owning, without more, real or personal property;
 - (j) Conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of similar transactions of a like manner; and
 - (k) Transacting business in interstate commerce.
- (2) The list of activities in subsection (1) of this section shall not be considered exhaustive. This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this Commonwealth.
- (3) The term "transacting business" as used in this section shall have no effect on personal jurisdiction under KRS 454.210.

➔Section 160. KRS 362.2-906 is repealed and reenacted to read as follows:

The Secretary of State may commence a proceeding under KRS 362.2-907 to revoke the certificate of authority of a foreign partnership authorized to transact business in this Commonwealth if:

- (1) The foreign partnership does not file its annual report to the Secretary of State within sixty (60) days after it is due;
- (2) The foreign partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;
- (3) The foreign partnership does not inform the Secretary of State that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance; or
- (4) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of partnership records in the state or other jurisdiction under whose law the foreign limited partnership is organized stating that it has been dissolved or disappeared as the result of a merger.

➔Section 161. KRS 362.2-1104 is repealed and reenacted to read as follows:

- (1) After a plan of conversion of a limited liability company into a limited partnership is approved, a converting limited liability company shall deliver to the Secretary of State for filing a certificate of limited partnership, which shall include:
 - (a) A statement that the limited liability company has been converted into a limited partnership;
 - (b) The name of that limited liability company and its jurisdiction;
 - (c) A statement that the conversion was approved as required by this subchapter;
 - (d) A statement that the conversion was approved as required by the governing statute of the converted limited liability company; and
 - (e) If the converted limited liability company is a foreign limited liability company not authorized to transact business in this Commonwealth, the street and mailing address of an office which the Secretary of State may use for the purposes of KRS 362.2-1105(3).
- (2) A conversion of a limited liability company into a limited partnership becomes effective when the certificate of limited partnership takes effect.

➔Section 162. KRS 362.2-1108 is repealed and reenacted to read as follows:

- (1) After a plan of merger is approved by each domestic or foreign partnership, limited partnership, limited liability company, or corporation that is a party to the merger, the surviving domestic or foreign partnership, limited partnership, limited liability company, or corporation shall deliver to the Secretary of State for filing articles of merger duly executed by each party to the merger setting forth:
 - (a) The name and jurisdiction of formation or organization of each constituent business entity which is to merge;

- (b) The plan of merger;
 - (c) The name of the surviving business entity;
 - (d) A statement that the plan of merger was duly authorized and approved by each constituent business entity in accordance with the laws applicable to such business entity; and
 - (e) If the surviving entity is not a business entity organized under the laws of this Commonwealth, a statement that the surviving business entity:
 - 1. Agrees that it may be served with process in this Commonwealth in any proceeding for enforcement of any obligation of any constituent business entity party to the merger that was organized under the laws of this Commonwealth, as well as for enforcement of any obligation of the surviving business entity arising from the merger; and
 - 2. Appoints the Secretary of State as its agent for service of process in any such proceedings. The surviving entity shall specify the address to which a copy of process shall be mailed to it by the Secretary of State.
- (2) The merger shall take effect on the later of the date of the filing of the articles of merger or the date set forth in the articles of merger, in which case it shall not be later than ninety (90) days after the date on which the articles of merger were filed.
- (3) Upon the merger taking effect, if the surviving entity in the merger is a foreign partnership, limited partnership, or limited liability company, the entity shall be deemed:
- (a) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or rights of dissenting shareholders of each domestic corporation party to the merger; and
 - (b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger the amount, if any, to which they are entitled under Subtitle 13 of KRS Chapter 271B.
- (4) The articles of merger filed by the surviving entity in accordance with this section shall also be deemed to have been filed for any domestic limited liability company party to the merger in accordance with the applicable provisions of KRS Chapter 275 and for any domestic corporation party to the merger in accordance with KRS Chapter 271B.
- (5) The filing of articles of merger shall act to cancel the certificate of limited partnership for a domestic limited partnership that is not the surviving entity of the merger and that partnership's certificate of limited partnership shall be canceled upon the effective date of the articles of merger.
- ➔Section 163. KRS 365.015 is repealed and reenacted to read as follows:
- (1) (a) The real name of an individual shall include his or her surname at birth, or his or her name as changed by a court of competent jurisdiction, or the surname of a married woman.
 - (b) The real name of a domestic:
 - 1. General partnership that is not a limited liability partnership and that has not filed a statement of partnership authority is that name which includes the real name of each of the partners;
 - 2. General partnership that is not a limited liability partnership and that has filed a statement of partnership authority is the name set forth on the statement of partnership authority;
 - 3. General partnership that is a limited liability partnership is the name stated on the statement of qualification filed pursuant to KRS 362.1-1001 or predecessor law;
 - 4. Limited partnership is that name stated in its certificate of limited partnership filed pursuant to KRS 362.2-201 or predecessor law;
 - 5. Business trust is the name set forth in the declaration of trust;
 - 6. Corporation is the name set forth in its articles of incorporation; and
 - 7. Limited liability company is the name set forth in its articles of organization.
 - (c) The real name of a foreign:

1. General partnership is the name recognized by the laws of the jurisdiction under which it is formed as being the real name;
 2. Limited liability partnership is the name stated in its statement of foreign qualification filed pursuant to KRS 362.1-1102 or predecessor law;
 3. Limited partnership is the name set forth in its certificate of limited partnership or the fictitious name adopted for use in this Commonwealth under KRS 362.2-905 or predecessor law;
 4. Business trust is the name recognized by the laws of the jurisdiction under which it is formed as being the real name of the business trust;
 5. Corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in this Commonwealth under KRS 271B.15-060; and
 6. Limited liability company is the name set forth in its articles of organization or the fictitious name adopted for use in this Commonwealth under KRS 275.410.
- (2) (a) No individual, general partnership, limited partnership, business trust, corporation, or limited liability company shall conduct or transact business in this Commonwealth under an assumed name or any style other than his or its real name, as defined in subsection (1) of this section, unless such individual, partnership, limited partnership, business trust, corporation, or limited liability company has filed a certificate of assumed name;
- (b) The certificate shall state the assumed name under which the business will be conducted or transacted, the real name of the individual, partnership, limited partnership, business trust, corporation, or limited liability company and his or its address, including street and number, if any;
- (c) A separate certificate shall be filed for each assumed name;
- (d) No certificate to be filed with the Secretary of State shall set forth an assumed name which is not distinguishable upon the records of the Secretary of State from any other name previously filed and on record with the Secretary of State;
- (e) The certificate shall be executed for an individual, by the individual; for a general partnership, by at least one (1) partner authorized to do so by the partners; for a limited partnership, by a general partner; for a business trust, by a trustee; for a corporation, by any person authorized to act for the corporation; and for a limited liability company, by a member or manager authorized to act for the limited liability company.
- (3) Each certificate of assumed name for an individual shall be filed with the county clerk where the person maintains his or her principal place of business. Each certificate of assumed name for a general partnership, limited partnership, business trust, corporation, or limited liability company shall be delivered to the Secretary of State for filing, accompanied by one (1) exact or conformed copy. One (1) of the exact or conformed copies stamped as "filed" by the Secretary of State shall be filed with the county clerk of the county where the entity maintains its registered agent for service of process or, if no registered agent for service of process is required, then with the county clerk of the county where the entity maintains its principal office. If the entity does not maintain a registered agent for service of process and does not maintain a principal office in this Commonwealth, then the certificate of assumed name shall be filed only with the Secretary of State.
- (4) An assumed name shall be effective for a term of five (5) years from the date of filing and may be renewed for successive terms upon filing a renewal certificate within six (6) months prior to the expiration of the term, in the same manner of filing the original certificate as set out in subsection (3) of this section. Any certificate in effect on July 15, 1998, shall continue in effect for five (5) years and may be renewed by filing a renewal certificate with the Secretary of State.
- (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn by filing a certificate in the office wherein the original certificate of assumed name was filed. The certificate of withdrawal shall state the assumed name, the real name and address of the party formerly transacting business under the assumed name and the date upon which the original certificate was filed. The certificate of withdrawal shall be signed for a general partnership by at least one (1) partner authorized to act for the partnership, for a limited partnership by a general partner, for a business trust by a trustee, for a corporation by any person authorized to act for the

corporation, and for a limited liability company by a member or manager authorized to act for the limited liability company.

- (6) A general partnership, except a limited liability partnership, shall amend an assumed name to reflect a change in the identity of partners. The amendment shall set forth:
 - (a) The assumed name and date of original filing;
 - (b) A statement setting out the changes in identity of the partners; and
 - (c) Shall be signed by at least one (1) partner authorized to do so by the partners.
- (7) The filing of a certificate of assumed name shall not automatically prevent the use of that name or protect that name from use by other persons.
- (8) In the event of the merger or conversion of a partnership, limited partnership, business trust, corporation, or limited liability company, any certificate of assumed name filed by a party to a merger or conversion shall remain in full force and effect, as provided in subsection (4) of this section, as if originally filed by the business organization which survives the merger or conversion.
- (9) A certificate of assumed name may be amended to revise the real name or the address of the person or business organization holding the certificate of assumed name.
- (10) A certificate of assumed name, or its amendment or cancellation, shall be effective on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document, or at a time specified in the document as its effective time on the date it is filed. The 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 shall not be later than the ninetieth day after the date it is filed.
- (11) The county clerk shall receive a fee pursuant to KRS 64.012 for filing each certificate, and the Secretary of State shall receive a fee of twenty dollars (\$20) for filing each certificate, amendment, and renewal certificate.

➔Section 164. KRS 386.370 is repealed and reenacted to read as follows:

- (1) A business trust is an express trust created by a written declaration of trust whereby property is conveyed to one (1) or more trustees, who hold and manage same for the benefit and profit of such persons as may be or become, the holders of transferable certificates evidencing the beneficial interest in the trust estate. For the purposes of KRS 386.370 to 386.440, business trusts shall include but are not limited to "Real Estate Investment Trusts" as defined by and which comply with the Federal Internal Revenue Code of 1986 as amended or such section or sections of any subsequent Internal Revenue Code as may be applicable to real estate investment trusts.
- (2) "Business entity" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association.
- (3) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity.

➔Section 165. KRS 386.410 is repealed and reenacted to read as follows:

No beneficial owner of certificates in a foreign business trust shall have his interests therein assessed and no beneficial owner of a foreign trust shall be personally liable for any debts or liabilities incurred by the trustees or by the foreign business trust after June 16, 1966.

➔Section 166. KRS 386.420 is repealed and reenacted to read as follows:

- (1) The written declaration of trust may provide for the election of successor trustees in the event of the death, resignation and removal of a trustee and may provide for the amendment of the declaration of trust. The declaration of trust may also contain such other provisions regarding the operating and administration of the business trust as may be necessary or desirable.
- (2) A declaration of trust filed on or after June 26, 2007, shall name or shall be accompanied by a document naming the initial registered agent and registered office conforming to KRS 386.384.

- (3) The declaration of trust shall be recorded in the office of the Secretary of State of the Commonwealth of Kentucky and in the office of the county clerk in the county in which its principal place of business is located and a recording charge of \$15 shall be paid at each of those offices.

➔Section 167. KRS 386.440 is repealed and reenacted to read as follows:

A business trust may be sued for debts and other obligations incurred by the trustees in the performance of their duties under the declaration of trust, and for any damages resulting from the negligence of such trustees and its property shall be subject to attachment and execution in like manner as if it were a corporation.

➔Section 168. KRS 275.090 is repealed and reenacted to read as follows:

- (1) It shall be unlawful for any person to sign a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.
- (2) Any person who violates the provisions of this section shall be guilty of an offense punishable by a fine not to exceed one hundred dollars (\$100).

➔Section 169. KRS 362.1-105 is repealed and reenacted to read as follows:

- (1) A statement may be filed in the office of Secretary of State. A filed statement has the effect provided in this subchapter with respect to partnership property located in or transactions that occur in this Commonwealth.
- (2) A certified copy of a statement that has been filed in the office of the Secretary of State may be filed with and recorded by any county clerk to which the statement is presented for filing and recording.
- (3) A statement filed by a partnership shall be executed by at least two (2) partners. Other statements shall be executed by a partner or other person authorized by this subchapter.
- (4) A person authorized by this subchapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation. No amendment or cancellation shall be made with respect to a statement of merger or statement of dissolution after filing with the Secretary of State.
- (5) A person authorized by this subchapter to file a statement may correct a filed statement if the statement contains information that was incorrect as of the time of the original filing or if the statement was defectively executed, attested, sealed, verified, or acknowledged. A statement is corrected by filing with the Secretary of State a statement of correction that describes the original filing, specifies the information that was incorrect as of the original filing or the manner in which the execution was defective, corrects the incorrect information or the defective execution, and is accompanied by a copy of the original defective statement, accompanied by the proper filing fee. A statement of correction shall be effective as of the effective date of the statement it corrects except as to persons relying on the uncorrected document adversely affected by the correction. As to those persons, the statement of correction shall be effective in the same manner as they were on notice of the original statement.
- (6) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.
- (7) A person who executes a statement shall be deemed to have declared under penalty of perjury that to that person's knowledge the contents of the statement are accurate.
- (8) (a) It shall be unlawful for any person to sign a statement the person knows is false in any material respect with the intent that the statement be delivered to the Secretary of State for filing.
- (b) Any person who violates this subsection shall be guilty of an offense punishable by a fine not to exceed one hundred dollars (\$100).
- (9) The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The county clerk may collect a fee of ten dollars (\$10) for recording a statement.
- (10) The Secretary of State may prescribe and furnish on request forms for:
- (a) A statement of change of registered office or registered agent;

- (b) An application to reserve a name;
 - (c) An application to cancel the reservation of a name;
 - (d) A resignation of a registered agent or registered office or both;
 - (e) An annual report; and
 - (f) An amendment to the annual report.
- (11) The Secretary of State may mandate the use of the forms listed in subsection (10) of this section.
- (12) The Secretary of State may prescribe and furnish on request forms for any other records required or permitted to be filed pursuant to this subchapter, but their use shall not be mandatory.

➔Section 170. KRS 362.575 is repealed and reenacted to read as follows:

- (1) A registered limited liability partnership, formed and existing under KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605, may conduct its business, carry on its operations, and have and exercise the powers granted by KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605 in any state, territory, district, or possession of the United States or in any foreign country.
- (2) It is the intent of the General Assembly that the legal existence of any registered limited liability partnership formed and existing under KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605 shall be recognized outside the boundaries of this Commonwealth and that the laws of this Commonwealth governing any registered limited liability partnership transacting business outside this Commonwealth shall be granted the protection of full faith and credit under the Constitution of the United States.
- (3) It is the policy of this Commonwealth that the internal affairs of registered limited liability partnerships, formed and existing under KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605, including the liability of partners for debts, obligations, and liabilities chargeable to partnerships, shall be subject to and governed by the laws of this Commonwealth.
- (4) Subject to any statutes for the regulation and control of specific types of business limited liability partnerships, formed and existing under the laws of another state or jurisdiction, may engage in any business in this Commonwealth.
- (5) It is the policy of this Commonwealth that the internal affairs of partnerships, including limited liability partnerships, formed and existing under the laws of another state or jurisdiction, including the liability of partners for debts, obligations, and liabilities chargeable to partnerships, shall be subject to and governed by the laws of that other state or jurisdiction.

➔Section 171. KRS 45.560 is repealed and reenacted to read as follows:

As used in KRS 45.570 to 45.640, unless the context requires otherwise:

- (1) "Contract" means any binding legal relationship between the Commonwealth of Kentucky and a contractor for supplies and services, including construction, or for the use of Commonwealth property, in which the parties, respectively, do not stand in the relationship of employer and employee;
- (2) "Contractor" means any prime contractor holding a contract with the Commonwealth of Kentucky government, and shall include subcontractors when the context so indicates;
- (3) "Contracting agency" means the person or persons, board, commission, court, council, governing body, employee, or official which is authorized by law to purchase or contract for supplies, materials, services, or equipment for the state;
- (4) "Subcontractor" means any person, including a corporation, partnership, or business association of any kind, who holds an agreement or purchase order to perform all or any part of the work or to make or furnish any article or service required for the performance of a negotiated contract or of a subcontract entered thereunder;
- (5) "Cabinet" means the Finance and Administration Cabinet; and
- (6) "Equal employment opportunity job categories" means the major employment classifications described by the United States Equal Employment Opportunity Commission.

➔Section 172. KRS 45.570 is repealed and reenacted to read as follows:

- (1) Except in contracts exempted in accordance with KRS 45.590, all government contracting agencies of the Commonwealth of Kentucky, any county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in every directly or indirectly publicly funded contract for supplies, materials, services, or equipment hereinafter entered into the following provisions:
- (2) During the performance of this contract, the contractor agrees as follows:
 - (a) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;
 - (b) The contractor shall take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;
 - (c) The contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;
 - (d) The contractor shall post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section; and
 - (e) The contractor shall send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.

➔Section 173. KRS 45.590 is repealed and reenacted to read as follows:

A contractor or subcontractor otherwise subject to the provisions of KRS 45.570 is exempt as to any affirmative action or reporting requirements if:

- (1) The contract or subcontract awarded is in the amount of five hundred thousand dollars (\$500,000) or less, and the amount of the contract is not a subterfuge to avoid compliance with the provisions of KRS 45.560 to 45.640;
- (2) The contractor or subcontractor utilizes the services of fewer than eight (8) employees during the course of the contract;
- (3) The contractor or subcontractor employs only family members or relatives;
- (4) The contractor or subcontractor employs only persons having a direct ownership interest in the business, and such interest is not a subterfuge to avoid compliance with the provisions of KRS 45.560 to 45.640; or
- (5) The subcontract is below the second-tier level of contracts.

➔Section 174. KRS 45.600 is repealed and reenacted to read as follows:

- (1) Any party not otherwise exempted by KRS 45.590 and intending to submit a bid on any contract covered by the provisions of KRS 45.560 to 45.640 shall within a time frame set by the contracting agency in the bid documents submit to the contracting agency upon being declared the successful bidder:
 - (a) A statement of intent to comply in full with all requirements of the Kentucky Civil Rights Act, and to submit data required by KRS 45.560 to 45.640 upon being designated the successful bidder.
 - (b) A breakdown of the bidding party's existing work force, indicating the race, ethnicity, gender, and equal employment opportunity job category of each employee.
 - (c) A breakdown of subcontracts valued at five hundred thousand dollars (\$500,000) or more, indicating specific items of work on the contract for which the contractor has submitted or intends to submit a bid to the Commonwealth of Kentucky.

The reports shall be submitted in a manner as shall be prescribed by the cabinet and on forms devised by the cabinet and supplied by the contracting agency.

- (2) Within ten (10) days after the receipt of the reports, the cabinet shall determine whether the bidding party's work force is reflective of the percentage of available minorities and women in the area from which the bidding party's employees are drawn. If a determination is made that the bidding party's work force is reflective of the percentage of available minorities and women in this drawn area, the bidding party shall be "certified" and be thereby qualified to bid on any contract covered by KRS 45.560 to 45.640 without filing additional data for a period of one (1) year.
- (3) If it is determined by the cabinet that the bidding party's work force reflects an underutilization of minorities or women, the bidding party and contracting agency shall be so notified, and no certification shall be issued. The bidding party shall then have the option of filing with the contracting agency and the cabinet, an affirmative action program, indicating goals and timetables for recruiting and hiring minorities or women throughout the contractors' work force. The cabinet shall be available, upon the request of any contractor, to furnish technical assistance in fulfilling the requirements of KRS 45.560 to 45.640.
- (4) If the bidding party is subsequently awarded the contract being sought, failure to comply with the goals and timetables set forth in the affirmative action plan shall be an unlawful practice under KRS 45.560 to 45.640 and shall constitute a material breach of the contract.
- (5) If the cabinet determines that the submitted affirmative action program does not fulfill the provisions of KRS 45.560 to 45.640, the bidding party and contracting agency shall be so notified, and no certification shall be granted.
- (6) If the bidding party's work force is not reflective of the percentage of minorities or women in the drawing area and the bidding party has complied with all other affirmative action requirements in KRS 45.560 to 45.640, the bidding party may certify by verified affidavit that the bidding party has made every reasonable effort to comply with said percentage requirements, and the bidding party shall thereafter be entitled to all the benefits of KRS 45.560 to 45.640.

➔Section 175. KRS 45.610 is repealed and reenacted to read as follows:

- (1) For the length of the contract, each contractor shall hire minorities and women from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities or women to satisfy the agreed upon goals and timetables.
- (2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to 45.640 and by such rules, regulations, and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the cabinet for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations, and orders issued pursuant thereto.

➔Section 176. KRS 45.620 is repealed and reenacted to read as follows:

- (1) The Finance and Administration Cabinet may investigate the employment practices of any contractor or subcontractor to determine if any of the provisions of KRS 45.560 to 45.640 have been violated. If any contractor is found by the cabinet to have engaged in an unlawful practice under KRS 45.560 to 45.640 during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the cabinet shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.
- (2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the cabinet. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.
- (3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority or woman contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority or woman contractor or subcontractor shall mean a business that is owned and controlled by one (1) or more persons disadvantaged by racial, ethnic, or gender circumstances.

➔Section 177. KRS 45.630 is repealed and reenacted to read as follows:

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee.

➔Section 178. KRS 45.565 is repealed and reenacted to read as follows:

The Finance and Administration Cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to carry out the provisions of KRS 45.560 to 45.640.

➔Section 179. The following KRS sections are repealed:

274.087 Merger or consolidation.

362.495 Law governing foreign limited partnerships. (Effective until January 1, 2008)

362.497 Registration of foreign limited partnership. (Effective until January 1, 2008)

362.499 Filing of application by foreign limited partnership. (Effective until January 1, 2008)

362.501 Name under which foreign limited partnership must register. (Effective until January 1, 2008)

362.503 Changes and amendment. (Effective until January 1, 2008)

362.505 Cancellation of registration of foreign limited partnership. (Effective until January 1, 2008)

362.507 Registration required for access to courts -- Effects of failure to register. (Effective until January 1, 2008)

362.509 Action by Attorney General to restrain foreign limited partnership from transacting business. (Effective until January 1, 2008)

362.585 Registration of foreign limited liability partnership -- Effect of withdrawal -- Injunctive action by Attorney General. (Effective until January 1, 2008)

➔Section 180. The repeals set out in Section 179 of this Act are hereby expressly made retroactive to the first moment of June 26, 2007.

➔Section 181. 2006 Ky. Acts ch. 149, sec. 239 is repealed, and this repeal is expressly made retroactive to June 26, 2007.

➔Section 182. The General Assembly finds and declares that the amendment of KRS 271B.6-210, 271B.6-230, 271B.7-040, 271B. 7-280, and 271B.8-080, as provided for in 2002 Ky. Acts, ch. 102, secs. 10, 11, 15, 18, and 19 respectively, are and were effective as of November 15, 2002.

➔Section 183. The specific textual provisions of Sections 1 to 178 of this act which reflect amendments made to those sections by 2007 Ky. Acts. ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section.

➔Section 184. (1) It is the intent of the General Assembly that the repeal and reenactment of sections in this Act shall not serve to void amendments made to those sections by other bills enacted during the 2010 Regular session of the Kentucky General Assembly, regardless of whether this Act is enacted before or after those other Acts.

(2) Notwithstanding KRS 446.100 or 446.260 or any other statute to the contrary, the Reviser of Statutes shall give force and effect to other 2010 Acts that amend one or more sections contained in this Act, and shall codify those amendments in accordance with KRS 446.250 and other applicable rules of codification.

Signed by Governor March 30, 2010.