

CHAPTER 81

(HB 341)

AN ACT relating to business organizations.

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

➔SECTION 1. KRS CHAPTER 386A IS ESTABLISHED, SUBCHAPTER 1 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

Sections 1 to 76 of this Act may be cited as the "Kentucky Uniform Statutory Trust Act (2012)."

➔SECTION 2. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 76 of this Act:

- (1) *"Appropriate court" means the circuit court for the county of the Commonwealth in which the statutory trust maintains its principal office or, if none, the county in which the registered office is located.*
- (2) *"Authorized foreign statutory trust" means a foreign statutory trust that is authorized to transact business in this Commonwealth pursuant to a certificate of authority issued by the Secretary of State.*
- (3) *"Beneficial owner" means the owner of a beneficial interest in a statutory trust or foreign statutory trust.*
- (4) *"Certificate of trust" means the certificate required by Section 7 of this Act. The term includes the certificate as amended or restated.*
- (5) *"Common-law trust" means a fiduciary relationship with respect to property arising from a manifestation of intent to create that relationship and subjecting the person that holds title to the property to duties to deal with the property for the benefit of charity or for one (1) or more persons, at least one (1) of which is not the sole trustee, whether the purpose of the trust is donative or commercial. The term includes the type of trust known at common law as a "business trust," "Massachusetts trust," or "Massachusetts business trust."*
- (6) *"Constituent organization" means an organization that is party to a merger.*
- (7) *"Constituent statutory trust" means a constituent organization that is a statutory trust.*
- (8) *"Converted organization" means the organization into which a converting organization converts.*
- (9) *"Converted statutory trust" means a converted organization that is a statutory trust.*
- (10) *"Converting organization" means an organization that converts into another organization.*
- (11) *"Converting statutory trust" means a converting organization that is a statutory trust.*
- (12) *"Covered party" means a trustee, officer, employee, or manager of a statutory trust, a related party of a trustee, officer, employee, manager, and any other person designated pursuant to subsection (4)(h) of Section 3 of this Act.*
- (13) *"Distribution" means a transfer of money or other property from a statutory trust or a series on account of a beneficial interest, and includes redemption or other purchase of a beneficial interest by a statutory trust.*
- (14) *"Entity" has the meaning set forth in Section 78 of this Act.*
- (15) *"Foreign series trust" means a foreign statutory trust that has one (1) or more series that under the laws of its jurisdiction of organization provides rules substantially equivalent to subsection (1) of Section 23 of this Act.*
- (16) *"Foreign entity" has the same meaning as set forth in Section 78 of this Act.*
- (17) *"Foreign statutory trust" means a trust that is formed under the laws of a jurisdiction other than this Commonwealth which would be a statutory trust if formed under the laws of this Commonwealth.*
- (18) *"Governing instrument" means the trust instrument and certificate of trust.*
- (19) *"Governing law" means the law that governs an organization's internal affairs.*
- (20) *"Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a subdivision of a foreign country.*

- (21) *"Organization" means a common-law trust that does not have a predominantly donative purpose; general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; corporation; or foreign statutory trust. The term includes a domestic or foreign organization whether or not organized for profit.*
- (22) *"Organizational documents" means the records that create an organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.*
- (23) *"Person" means an individual, profit or nonprofit corporation, statutory trust, estate, partnership, limited partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. The term does not include a common-law trust.*
- (24) *"Principal office" has the same meaning as set forth in Section 78 of this Act.*
- (25) *"Professional service" means 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, or attorneys.*
- (26) *"Property" means all property, whether real, personal, or mixed, or tangible or intangible, or any interest therein.*
- (27) *"Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*
- (28) *"Related party," with respect to a party that is a trustee, officer, employee, manager, or beneficial owner, means:*
- (a) *The spouse of the party;*
 - (b) *A child, parent, sibling, grandchild, or grandparent of the party, or the spouse of one (1) of them;*
 - (c) *An individual having the same residence as the party;*
 - (d) *A trust or estate of which a related party described in subparagraphs (a), (b), or (c) of this subsection is a substantial beneficiary;*
 - (e) *A trust, estate, legally incapacitated individual, conservatee, or minor for which the party is a fiduciary; or*
 - (f) *A person that directly or indirectly controls, is controlled by, or is under common control with, the party.*
- (29) *"Series trust" means a statutory trust that has one (1) or more series created under Subchapter 4 of this chapter.*
- (30) *"Sign" means, with the present intent to authenticate or adopt a record:*
- (a) *To execute or adopt a tangible symbol; or*
 - (b) *To attach to or logically associate with the record an electronic symbol, sound, or process.*
- (31) *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*
- (32) *"Statutory trust," except in the phrase "foreign statutory trust," means an entity formed under this chapter.*
- (33) *"Surviving organization" means an organization into which one (1) or more other organizations are merged, whether the surviving organization pre-existed the merger or was created by the merger.*
- (34) *"Trust" includes a common-law trust, statutory trust, and foreign statutory trust.*
- (35) *"Trust instrument" means a record other than the certificate of trust which provides for the governance of the affairs of a statutory trust and the conduct of its business. The term includes a trust agreement, a declaration of trust, and bylaws.*
- (36) *"Trustee" means a person designated, appointed, or elected as a trustee of a statutory trust or foreign statutory trust in accordance with the governing instrument or applicable law.*

➔SECTION 3. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of Section 4 of this Act, the governing instrument governs:*
 - (a) *The management, affairs, and conduct of the business of a statutory trust; and*
 - (b) *The rights, interests, duties, obligations, and powers of, and the relations among, the trustees, the beneficial owners, the statutory trust, and other persons.*
- (2) *To the extent the governing instrument does not otherwise provide for a matter described in subsection (1) of this section, this chapter governs the matter.*
- (3) *The governing instrument may include one (1) or more instruments, agreements, declarations, bylaws, or other records and refer to or incorporate any record.*
- (4) *Subject to subsection (2) of Section 4 of this Act, without limiting the terms that may be included in a governing instrument, the governing instrument may:*
 - (a) *Provide the means by which beneficial ownership is determined and evidenced;*
 - (b) *Limit a beneficial owner's right to transfer a beneficial interest;*
 - (c) *Provide for one (1) or more series under Subchapter 4 of this chapter;*
 - (d) *To the extent that voting rights are granted to the beneficial owners or trustees under the governing instrument, include terms relating to:*
 1. *Notice of the date, time, place, or purpose of any meeting at which any matter is to be voted on;*
 2. *Waiver of notice;*
 3. *Action by consent without a meeting;*
 4. *Establishment of record dates;*
 5. *Quorum requirements;*
 6. *Voting:*
 - a. *In person;*
 - b. *By proxy;*
 - c. *By any form of communication that creates a record, telephone, or video conference; or*
 - d. *In any other manner; or*
 7. *Any other matter with respect to the exercise of the right to vote;*
 - (e) *Provide for the creation of one (1) or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties;*
 - (f) *Provide for any action to be taken without the vote or approval of any particular trustee or beneficial owner, or classes of trustees, beneficial owners, or beneficial interests, including:*
 1. *Amendment of the governing instrument;*
 2. *Merger, conversion, or reorganization;*
 3. *Appointment of trustees;*
 4. *Sale, lease, exchange, transfer, pledge, or other disposition of all or any part of the property of the statutory trust or the property of any series thereof; and*
 5. *Dissolution of the statutory trust;*
 - (g) *Provide for the creation of a statutory trust, including the creation of a statutory trust to which all or any part of the property, liabilities, profits, or losses of a statutory trust may be transferred or exchanged, and for the conversion of beneficial interests in a statutory trust, or series thereof, into beneficial interests in the new statutory trust or series thereof;*

- (h) *Provide for the appointment, election, or engagement of agents or independent contractors of the statutory trust or delegates of the trustees, or agents, officers, employees, managers, committees, or other persons that may manage the business and affairs of the statutory trust, designate their titles, and specify their rights, powers, and duties;*
- (i) *Provide rights to any person, including a person who is not a beneficial owner or not otherwise a party to the governing instrument, to the extent set forth therein;*
- (j) *Subject to paragraph (k) of this subsection, specify the manner in which the governing instrument may be amended, including, unless waived by all persons for whose benefit the condition or requirement was intended:

 1. *A condition that a person that is not a party to the instrument must approve the amendment for it to be effective; and*
 2. *A requirement that the governing instrument may be amended only as provided in the governing instrument or as otherwise permitted by law;**
- (k) *Provide that a person may comply with paragraph (j) of this subsection by a representative authorized by the person orally, in a record, or by conduct;*
- (l) *Provide that a person becomes a beneficial owner, acquires a beneficial interest, and is bound by the governing instrument if the person complies with the conditions for becoming a beneficial owner set forth in the governing instrument;*
- (m) *Provide that the beneficial interest of any beneficial owner who fails to make any contribution that the beneficial owner is obligated to make or who otherwise violates an obligation undertaken in the governing instrument shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting beneficial owner's proportionate interest in the statutory trust, subordinating the beneficial owner's interest to that of nondefaulting beneficial owners, a forced sale of that beneficial interest, forfeiture of his or her beneficial interest, the lending by other beneficial owners of the amount necessary to meet the defaulting beneficial owner's commitment, a fixing of the value of his or her beneficial interest by appraisal or by formula and redemption or sale of the beneficial interest at such value, or other penalty or consequence;*
- (n) *Provide that the statutory trust or the trustees, acting for the statutory trust, hold beneficial ownership of any income earned on securities held by the statutory trust that are issued by any business entity formed, organized, or existing under the laws of any jurisdiction;*
- (o) *Provide for the establishment of record dates;*
- (p) *Grant to, or withhold from, a trustee or beneficial owner, or class of trustees or beneficial owners, the right to vote, separately or with any or all other trustees or beneficial owners, or class of trustees or beneficial owners, on any matter; and*
- (q) *Provide that neither the power to direct a trustee or other person nor the exercise of the power by any person, including a beneficial owner, causes the person to be a trustee or imposes on the person duties, including fiduciary duties, or liabilities relating to these duties, to a statutory trust or beneficial owner.*

➔SECTION 4. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, relations among the statutory trust, the beneficial owners, and the trustees are governed by the governing instrument. To the extent the governing instrument does not otherwise provide, Sections 1 to 76 of this Act govern relations among the statutory trust, the beneficial owners, and the trustees.*
- (2) *The governing instrument may not:

 - (a) *Eliminate the obligation of good faith and fair dealing in the governing instrument, but it may prescribe the standards by which the performance of the obligations are to be measured provided the standards are not manifestly unreasonable;*
 - (b) *Vary subsection (3), (5), or (7) of Section 5 of this Act;**

- (c) *Vary the requirements of Subchapter 2 of this chapter;*
- (d) *Vary Section 16 of this Act;*
- (e) *Negate subsection (2) of Section 18 of this Act;*
- (f) *Except as provided therein, vary the provisions pertaining to series trusts in Subchapter 4 of this chapter;*
- (g) *Vary subsection (2) of Section 33 of this Act;*
- (h) *Vary subsection (2) of Section 34 of this Act;*
- (i) *Vary subsection (3) of Section 35 of this Act;*
- (j) *Vary the standards of conduct for trustees under Section 37 of this Act, but the governing instrument may prescribe the standards by which good faith, best interests of the statutory trust, and care that a person in a similar position would reasonably believe appropriate under similar circumstances are determined, if the standards are not manifestly unreasonable;*
- (k) *Vary Section 39 of this Act, but the governing instrument may provide a mechanism for prior approval, upon full disclosure, of a transaction with a covered party by at least two (2) disinterested trustees or the disinterested beneficial owners;*
- (l) *Restrict the right of a trustee to information under Section 40 of this Act, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the trustee's discharge of the trustee's duties as trustee, if the standards are not manifestly unreasonable;*
- (m) *Vary subsection (2) of Section 42 of this Act;*
- (n) *Vary subsections (3) and (4) of Section 43 of this Act;*
- (o) *Vary subsection (4) of Section 45 of this Act;*
- (p) *Restrict the right of a judgment creditor of a beneficial owner to seek a charging order under Section 50 of this Act;*
- (q) *Provide indemnification, advancement of expenses, or exoneration for conduct involving bad faith, willful misconduct, self-dealing, reckless indifference, approval or consent to a distribution violating Section 52 of this Act, or a transaction from which the trustee derived an improper personal benefit or in which the trustee's personal financial interest was in conflict with those of the statutory trust;*
- (r) *Permit a trustee to follow a direction that is contrary to the terms of the governing instrument or would constitute a breach of fiduciary duty by the trustee;*
- (s) *Vary subsection (3), (4), (6), or (7) of Section 52 of this Act;*
- (t) *Vary Section 53 of this Act;*
- (u) *Restrict the right of a beneficial owner to information under Section 54 of this Act, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the beneficial owner's interest, if the standards are not manifestly unreasonable;*
- (v) *Restrict the right of a beneficial owner to bring an action under Section 55 of this Act;*
- (w) *Vary Subchapter 7 of this chapter;*
- (x) *Except to the extent expressly provided therein, vary Subchapter 8 of this chapter;*
- (y) *Vary Subchapter 9 of this chapter; or*
- (z) *Vary Subchapter 10 of this chapter.*

➔SECTION 5. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *The law of this Commonwealth pertaining to common-law trusts supplements this chapter.*
- (2) *A governing instrument may supersede or modify application to the statutory trust of any law of this Commonwealth pertaining to common-law trusts.*

- (3) *Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.*
- (4) *Although this chapter is in derogation of common law, the rule of construction requiring strict construction of statutes which are in derogation of common law shall not apply to its provisions.*
- (5) *Each statutory trust and each foreign statutory trust is subject to KRS Chapter 14A.*
- (6) *If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in KRS 360.010.*
- (7) *For purposes of KRS 141.0401, each statutory trust and foreign statutory trust and each series of a series trust or of a foreign series trust shall be treated as a limited liability pass-through entity.*

➔SECTION 6. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *It shall be the policy of the Commonwealth through this chapter to give maximum effect to the principles of freedom of contract and the enforceability of governing instruments.*
- (2) *Except to the extent set forth in a governing instrument, a statutory trust is bound by the governing instrument.*
- (3) *Except to the extent set forth in the governing instrument, each trustee of a statutory trust is bound by the governing instrument.*
- (4) *Action validly taken pursuant to one (1) provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.*
- (5) *No beneficial owner or other person shall have a vested property right resulting from any provision of the governing instrument which may not be modified by its amendment or as otherwise permitted by law.*
- (6) *Each beneficial owner and trustee and any other party to a governing instrument shall discharge all duties and exercise all rights consistently with the obligation of good faith and fair dealing.*
- (7) *If a governing instrument contains a provision to the effect that any amendment to the governing instrument shall be in writing and adopted in accordance with the provisions of the governing instrument, 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 statutory trust which is not in writing and adopted in accordance with the provisions of the governing instrument shall not be considered part of the governing instrument and shall be void and unenforceable.*
- (8) *A statutory trust governed by this chapter is subject to any amendment or repeal thereof.*
- (9) *This chapter shall not be construed to impair the obligations of any contract existing when this chapter, or any amendment of it, becomes effective, nor to affect any action or proceeding begun or right accrued before the chapter or amendment takes effect.*

➔SECTION 7. SUBCHAPTER 2 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *A statutory trust is formed when a certificate of trust that complies with subsection (2) of this section and filed by the Secretary of State is effective as determined under KRS 14A.2-070.*
- (2) *A certificate of trust must state:*
 - (a) *The name of the statutory trust, which must comply with Section 82 of this Act;*
 - (b) *The name and business address of each person who, upon formation of the trust, will be a trustee;*
 - (c) *The mailing address of the principal office of the trust;*
 - (d) *The name and street address of the trust's initial registered office and registered agent that comply with KRS 14A.4-010; and*
 - (e) *The name and business address of the person executing the certificate of trust as the organizer thereof.*

- (3) *If the trust may have one (1) or more series, the certificate of trust must contain a statement to that effect as provided in subsection (2)(c) of Section 23 of this Act.*
- (4) *A certificate of trust may contain any term required or permitted to be set forth in the trust instrument.*
- (5) *A filed certificate of trust, statement of cancellation, statement of change or articles of conversion or merger prevail over inconsistent terms of a trust instrument.*
- (6) *That the certificate of trust is on file with the Secretary of State is notice:*
 - (a) *That the statutory trust formed by the certificate of trust is a statutory trust formed under the laws of the Commonwealth of Kentucky;*
 - (b) *Of all other facts set forth in the certificate which are required to be set forth by subsection (2) of this section; and*
 - (c) *Of any statement made pursuant to subsection (3) of this section.*

➔SECTION 8. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A statutory trust shall amend its certificate of trust to add or change a provision that is required by this chapter to be included in the certificate of trust. A statutory trust may amend its certificate of trust to add, change, or delete a provision that is permitted to be or that is not required to be in the certificate of trust. The certificate of trust shall be amended if there is a change in any matter required to be set forth in the certificate of trust under subsections (2) or (3) of Section 7 of this Act.*
- (2) *To amend its certificate of trust, a statutory trust must deliver to the Secretary of State for filing an amendment, articles of conversion, or articles of merger stating:*
 - (a) *The name of the trust;*
 - (b) *The date of filing of its initial certificate; and*
 - (c) *The changes to the certificate.*
- (3) *A trustee that knows that any information in a filed certificate of trust was incorrect when the certificate was filed shall promptly:*
 - (a) *Cause the certificate to be amended; or*
 - (b) *Deliver to the Secretary of State for filing a statement of correction as provided for in KRS 14A.2-090.*
- (4) *A statutory trust shall promptly deliver to the Secretary of State for filing an amendment to the certificate of trust to reflect any admission, appointment, resignation, or other change in the trustees thereof.*
- (5) *A statutory trust, to change its principal office, shall comply with KRS 14A.5-010, thereby amending the certificate of trust.*
- (6) *A statutory trust, to change its registered agent, its registered office, or both, shall comply with KRS 14A.4-020, thereby amending the certificate of trust.*
- (7) *A statutory trust may restate its certificate of trust by delivering to the Secretary of State for filing a restated certificate of trust setting forth the name of statutory trust and the text of the restated certificate. A restated certificate of trust shall supersede the preceding certificate of trust and all amendments thereto. The Secretary of State may certify a restated certificate of trust, with any amendments thereto, as the certificate of trust currently in effect.*

➔SECTION 9. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A record delivered by a statutory trust to the Secretary of State for filing shall be executed as provided in KRS 14A.2-020.*
- (2) *It shall not be necessary that the person who as organizer executes the initial certificate of trust be a trustee.*

➔SECTION 10. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A record authorized or required to be delivered to the Secretary of State for filing under this Act shall satisfy the requirements of this chapter and KRS Chapter 14A.*
- (2) *A record delivered to the Secretary of State for filing under this chapter is effective as provided in KRS 14A.2-070.*

➔SECTION 11. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

A record filed by the Secretary of State may be corrected as provided in KRS 14A.2-090.

➔SECTION 12. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

The Secretary of State may with respect to a statutory trust issue a certificate of existence as provided in Section 80 of this Act.

➔SECTION 13. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

The name of a statutory trust must satisfy the requirements of Section 82 of this Act.

➔SECTION 14. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

A statutory trust shall designate and maintain in this Commonwealth a registered agent and registered office in compliance with KRS 14A.4-010.

➔SECTION 15. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

A statutory trust shall file an annual report in compliance with KRS 14A.6-010.

➔SECTION 16. SUBCHAPTER 3 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

The laws of this Commonwealth govern the internal affairs of a statutory trust including:

- (1) *The liability of a beneficial owner as beneficial owner and a trustee as trustee for a debt, obligation, or other liability of a statutory trust or a series thereof;*
- (2) *The enforceability of a debt, obligation, or other liability of the statutory trust against the property of the trust;*
- (3) *The enforceability of a debt, obligation, or other liability of a series of a statutory trust, including recourse against the property of or associated with a series; and*
- (4) *The inspection of the books and records of the statutory trust.*

➔SECTION 17. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A statutory trust is a legal entity distinct from its trustees and beneficial owners.*
- (2) *A statutory trust may hold or take title to property in its own name, or in the name of a trustee in the trustee's capacity as trustee, whether in an active, passive, or custodial capacity.*
- (3) *Property transferred to or otherwise acquired by a statutory trust shall be the property of the trust and not of the beneficial owners or of the trustees. A creditor of a beneficial owner or trustee may not obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of a statutory trust or the property of or associated with any series thereof.*
- (4) *The property of a statutory trust is not subject to KRS 381.135(1)(a)1.*

➔SECTION 18. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, a statutory trust may have any lawful purpose.*
- (2) *A statutory trust may not:*

- (a) *Have a predominantly donative purpose; or*
- (b) *Be organized for the purpose of rendering a professional service.*

➔SECTION 19. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A debt, obligation, or other liability of a statutory trust is solely a debt, obligation, or other liability of the trust.*
- (2) *A debt, obligation, or other liability incurred by or otherwise existing with respect to the property of or associated with a particular series of a statutory trust is solely a debt, obligation, or liability of the particular series for which there is recourse against only the property of or associated with the particular series.*
- (3) *A person is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for a debt, obligation, or other liability of the statutory trust solely by reason of being or acting as a trustee, beneficial owner, agent of the trust, or agent of the trustee.*
- (4) *A person is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for a debt, obligation, or other liability of a series or against the property of or associated with a series of a statutory trust by reason of being associated with a series as a beneficial owner, trustee, agent of the series, or agent of the trustee.*
- (5) *The property of a statutory trust not associated with a series is subject to attachment and execution to satisfy a debt, obligation, or other liability of the trust. The property of a statutory trust associated with a series is subject to attachment and execution to satisfy a debt, obligation, or other liability incurred by or with respect to the property associated with that series. The property of a series is subject to attachment and execution to satisfy a debt, obligation, or other liability incurred by or with respect to the property associated with that series.*
- (6) *Subsections (3) and (4) of this section shall not affect the liability of any person for his or her own negligence, wrongful acts, or misconduct.*

➔SECTION 20. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A statutory trust has perpetual existence.*
- (2) *A statutory trust, or any series thereof, may not be terminated or revoked except in accordance with this chapter or the terms of the governing instrument.*
- (3) *A statutory trust does not terminate because the same person is the sole trustee and sole beneficial owner.*
- (4) *A series of a statutory trust does not terminate because the same person is the sole trustee and the sole beneficial owner associated with the series.*
- (5) *That the same person is the sole trustee and sole beneficial owner of a statutory trust or of a series thereof is not a basis for not applying subsections (3) or (4) of Section 19 of this Act.*

➔SECTION 21. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A statutory trust may sue and be sued in its own name.*
- (2) *A beneficial owner or a trustee of a statutory trust shall not be a proper party to a proceeding by or against a statutory trust solely by reason of being a beneficial owner or trustee of the statutory trust except if the object of the proceeding is to enforce a beneficial owner's or trustee's right against or liability to the statutory trust or as otherwise provided in a governing instrument.*
- (3) *A beneficial owner or a trustee of a statutory trust shall not be a proper party to a proceeding by or against a series or the property associated therewith solely by reason of being a beneficial owner or trustee associated with the series except if the object of the proceeding is to enforce a beneficial owner's or trustee's right against or liability to the series or as otherwise provided in a governing instrument.*

➔SECTION 22. SUBCHAPTER 4 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *If a statutory trust complies with subsection (2) of Section 23 of this Act, a governing instrument may establish or provide for the establishment of one (1) or more designated series that:*

- (a) *Has separate rights, powers, or duties with respect to specified property or obligations or profits and losses associated with specified property or obligations; or*
- (b) *Has a separate purpose or investment objective.*
- (2) *A series of a statutory trust is to the degree provided in subsection (4) of this section an entity separate from the statutory trust.*
- (3) *A series of a statutory trust may have a separate purpose from the trust or any other series thereof if the purpose of the series is:*
 - (a) *Permitted by Section 18 of this Act; and*
 - (b) *Not outside the purpose of the trust.*
- (4) *Unless otherwise provided in the governing instrument, a series established in accordance with subsection (1) of this section shall have the power and capacity to, in its own name, contract, hold title to real, personal, and intangible assets, grant liens and security interests, and sue and be sued.*
- (5) *The registered agent and registered office of a statutory trust that is a series trust shall be the registered agent and registered office of each series thereof.*
- (6) *The governing instrument may provide that one (1) or more trustees shall be associated with a series, in which case they shall be the trustees discharging the obligations of Subchapter 5 of this chapter as to that series. In the absence of such an association, all trustees of the statutory trust shall be trustees associated with a series.*

➔SECTION 23. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (2) of this section:*
 - (a) *A debt, liability, obligation, and expense incurred, contracted for, or otherwise existing with respect to a series, whether in its name or as to the property of or associated therewith, shall be enforceable against the assets of or associated with that series only, and shall not be enforceable against the assets of the statutory trust generally or any assets of or associated with other series thereof; and*
 - (b) *None of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the statutory trust generally or any other series thereof shall be enforceable against the assets of or associated with a series.*
- (2) *Subsection (1) of this section applies only if:*
 - (a) *The records maintained by the statutory trust account for the assets of or associated with that series separately from the other assets of the statutory trust or of or associated with any other series;*
 - (b) *The governing instrument contains a statement to the effect of the limitations provided in subsection (1) of this section; and*
 - (c) *The statutory trust's certificate of trust contains a statement that the statutory trust may have one (1) or more series subject to the limitations provided in subsection (1) of this section.*
- (3) *The statement of limitation on liabilities of a series required by subsection (2)(c) of this section is sufficient regardless of whether:*
 - (a) *The statutory trust has established any series under this subchapter when the statement of limitations is contained in the certificate of formation; and*
 - (b) *The statement of limitations makes reference to any specific series of the statutory trust.*
- (4) *If the records are maintained in a manner such that the assets of or associated with a series can be reasonably identified by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any assets, or by any other method in which the identity of the assets can be objectively determined, the records are considered to satisfy the requirements of subsection (2)(a) of this section.*
- (5) *The association, disassociation, or reassociation of property of a statutory trust or a series thereof to or with the trust or a series thereof is deemed to be a transfer between separate persons under the laws of Kentucky governing fraudulent transfers.*

(6) *A distribution by a series shall be made to the beneficial owner associated with the series.*

➔SECTION 24. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

Assets of or associated with a series may be held directly or indirectly, including in the name of the series, in the name of the statutory trust, through a nominee, or otherwise.

➔SECTION 25. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A person who ceases to be a beneficial owner of a statutory trust shall cease to be associated, as a beneficial owner, with any series thereof.*
- (2) *A trustee who ceases to be a trustee of a statutory trust shall cease to be associated, as a trustee, with any series thereof.*
- (3) *A beneficial owner or trustee associated with a series shall have such right to cease being associated with a series as is provided in the governing instrument.*
- (4) *A person who has dissociated as a beneficial owner associated with a series shall have no right to participate in the activities and affairs of that series and is entitled only to receive the distributions to which that beneficial owner was entitled through the date of dissociation.*
- (5) *A person's dissociation as a beneficial owner associated with a series does not of itself discharge the person from any debt, obligation, or liability to that series, the statutory trust, or the other beneficial owners that the person incurred while a beneficial owner associated with that series.*
- (6) *A beneficial owner's dissociation from a series does not of itself cause the beneficial owner to dissociate from any other series or, unless the dissociated beneficial owner was the last remaining beneficial owner associated with the series, require the winding up of the series.*
- (7) *A beneficial owner's dissociation from a series does not of itself cause the beneficial owner to dissociate from the statutory trust.*

➔SECTION 26. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A series may be dissolved and its activities and affairs may be wound up without causing the dissolution of the statutory trust.*
- (2) *The dissolution and winding up of a series does not abate, suspend, or otherwise affect the application of Section 19 of this Act.*
- (3) *The dissolution and winding up of a series does not abate, suspend, or otherwise affect the application of subsection (1) of Section 23 of this Act.*

➔SECTION 27. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A series shall be dissolved, and it shall commence to wind up its activities and affairs, upon the first to occur of the following:*
 - (a) *The dissolution of the statutory trust;*
 - (b) *An event or circumstance that the governing instrument states causes dissolution of the series;*
 - (c) *Except as otherwise provided in the governing instrument, the consent of all of the beneficial owners associated with the series;*
 - (d) *The passage of ninety (90) days after the occurrence of the dissociation of the last remaining beneficial owner associated with the series; or*
 - (e) *On application by a beneficial owner associated with the series, the entry by the appropriate court of an order dissolving the series on the grounds that it is not reasonably practicable to carry on the series's activities in conformity with the governing instrument.*
- (2) *The date of dissolution of a series shall be:*
 - (a) *The date of dissolution of the statutory trust;*

- (b) *The effective date of the event or circumstance that the governing instrument states causes dissolution;*
- (c) *The effective date of the consent of the beneficial owners;*
- (d) *The ninety-first day after the dissociation of the last beneficial owner associated with the series; or*
- (e) *The effective date of the decree of dissolution issued by an appropriate court.*

➔SECTION 28. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A dissolved series continues its existence as a series, but may not carry on any activities except as is appropriate to wind up and liquidate its activities and affairs, including:*
 - (a) *Collecting the assets of or associated with the series;*
 - (b) *Disposing of the assets of or associated with the series that will not be distributed in kind to beneficial owners associated with the series or the statutory trust;*
 - (c) *Discharging or making provision for discharging the liabilities of or associated with the series or the assets of or associated therewith, including entering into new agreements with creditors having claims on assets of or associated with the series for the satisfaction thereof;*
 - (d) *Distributing the remaining property of or associated with the series in accordance with Section 32 of this Act; and*
 - (e) *Doing every other act necessary to wind up and liquidate the series's activities and affairs.*
- (2) *Except as otherwise provided in the governing instrument, dissolution of a series shall not:*
 - (a) *Transfer title to the property of or associated with the series;*
 - (b) *Prevent transfer of a beneficial interest associated with a series;*
 - (c) *Subject its trustees associated with the series to standards of conduct different from those applicable prior to the dissolution; or*
 - (d) *Amend the governing instrument or terminate contribution obligations existing thereunder.*
- (3) *Dissolution of a series does not:*
 - (a) *Prevent the commencement of a proceeding by or against the series in the series's name;*
 - (b) *Abate or suspend a proceeding by or against the series pending on the effective date of dissolution;*
 - (c) *Transfer title to property of or associated with the series; or*
 - (d) *Terminate, as to the series, the authority of the registered agent of the statutory trust.*

➔SECTION 29. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (2) of this section, after dissolution of a series, the trustees associated with the series, if any, and if none, the trustees of the statutory trust, shall wind up the series's activities.*
- (2) *The appropriate court may order judicial supervision of the winding up of a dissolved series, including the appointment of a person to wind up the series's activities:*
 - (a) *On application of a beneficial owner associated with the series, if the applicant establishes good cause; or*
 - (b) *In connection with a proceeding under subsection (1)(e) of Section 27 of this Act.*

➔SECTION 30. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Upon dissolution pursuant to subsection (1)(b), (c), (d), or (e) of Section 27 of this Act, a series of a statutory trust shall dispose of the known claims against the property of or associated with it by following the procedures described in this section.*
- (2) *The series shall notify its known claimants in writing of its dissolution at any time after the effective date of dissolution. The written notice shall:*

- (a) *Identify the series by such name or names as it used in transacting business and the name of the statutory trust;*
 - (b) *Describe information that must be included in a claim;*
 - (c) *Provide a mailing address where a claim may be sent;*
 - (d) *State the deadline, which may not be fewer than one hundred twenty (120) days after the date of the written notice, by which the series must receive the claim; and*
 - (e) *State that the claim will be barred if not received by the deadline.*
- (3) *A claim against a series shall be barred:*
- (a) *If a claimant who is given written notice under subsection (2) of this section does not deliver the claim to the series by the deadline; or*
 - (b) *If a claimant whose claim was rejected by the series does not commence a proceeding to enforce the claim within ninety (90) days after the date of the rejection notice.*
- (4) *For purposes of this section, "claim" shall not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.*

➔SECTION 31. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A dissolved series shall publish notice of its dissolution pursuant to this section.*
- (2) *The notice shall:*
- (a) *Be published once in a newspaper of general circulation in the county where the statutory trust's principal office, or, if none in this Commonwealth, its registered office, is or was last located;*
 - (b) *Set forth the information required by subsection (2)(a), (b), or (c) of Section 30 of this Act; and*
 - (c) *State that the claim will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.*
- (3) *If the dissolved series publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the claim against the series within two (2) years after the publication date of the newspaper notice:*
- (a) *A claimant who did not receive written notice under Section 30 of this Act;*
 - (b) *A claimant whose claim was timely sent to the series but not rejected; and*
 - (c) *A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.*
- (4) *A claim may be enforced under this section:*
- (a) *Against the series, to the extent of the assets of or associated with the series that remain undistributed; and*
 - (b) *To the extent of the assets of or associated with the series that have been distributed in liquidation, against a beneficial owner or the statutory trust to the extent of a pro rata share of the claim, but the total liability of a beneficial owner for all claims under this section shall not exceed the total assets of or associated with the series distributed in liquidation to the beneficial owner.*
- (5) *A dissolved series that published a notice under this section may file an application with the appropriate court for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved series or that are based on an event occurring after the effective date of the dissolution of the series but that, based on the facts known to the dissolved series, are reasonably estimated to arise after the effective date of the dissolution of the series. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection (3) of this section.*
- (6) *Within ten (10) days after the filing of the application provided for in subsection (5) of this section, notice of the proceeding shall be given by the dissolved series to each potential claimant as described in subsection (2) of Section 30 of this Act.*

- (7) *The appropriate court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section, including those claimants whose claims are contingent or based upon an event occurring after the effective date of dissolution. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved series.*
- (8) *Provision by the dissolved series for security in the amount and form ordered by the appropriate court under subsection (5) of this section shall satisfy the dissolved series's obligation with respect to claims that are contingent, have not been made known to the dissolved series, or are based on an event occurring after the effective date of the dissolution of the series, and those claims may not be enforced against a beneficial owner to whom assets of or associated with a dissolved series have been distributed.*

➔SECTION 32. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

Upon the winding up of a series, the assets of or associated with the series shall be distributed as follows:

- (1) *First, payment or adequate provisions for payment shall be made to creditors, including, to the extent permitted by law, beneficial owners who are creditors, in satisfaction of liabilities of the series or associated with the properties of or associated with the series;*
- (2) *Second, unless otherwise provided in the governing instrument, to beneficial owners in satisfaction of liabilities for distributions declared but unpaid; and*
- (3) *Third, unless otherwise provided in the governing instrument, to beneficial owners in proportion to their respective rights to share in distributions from the series prior to dissolution.*

➔SECTION 33. SUBCHAPTER 5 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *The business and affairs of a statutory trust must be managed by or under the authority of its trustees.*
- (2) *If there is at least one (1) trustee that in the discharge of all obligations under the governing instrument and this chapter is obligated to consider the interests of the trust and all series thereof, the governing instrument may provide that one (1) or more other trustees, in discharging their obligations, may consider only the interests of the trust or of one (1) or more series thereof.*

➔SECTION 34. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A trustee may exercise:*
- (a) *Powers conferred by the governing instrument;*
- (b) *Except as limited by the governing instrument, any other powers necessary or convenient to carry out the business and affairs of the statutory trust; and*
- (c) *Other powers conferred by this chapter.*
- (2) *Every trustee of a statutory trust, by acceptance of election or appointment as a trustee, including by service, shall be deemed thereby to have consented to the jurisdiction of the courts of the Commonwealth of Kentucky for any action by the statutory trust or a beneficial owner against the trustee.*

➔SECTION 35. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *On any matter that is to be acted on by trustees:*
- (a) *Each trustee has equal rights in the management and conduct of trust business; and*
- (b) *The trustees act by majority of the trustees.*
- (2) *The trustees may act other than at a meeting of the trustees if the minimum number of trustees necessary to authorize or to take action at a meeting consent in a signed record. Prompt notice of the action taken must be promptly communicated to all trustees.*
- (3) *A trustee may not vote by proxy.*

➔SECTION 36. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A person that in good faith assists a trustee, or in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's power, is protected from liability as if the trustee properly exercised the power.*
- (2) *A person that in good faith deals with a trustee need not inquire into the extent of a trustee's power or the propriety of the exercise of the power.*
- (3) *A person that in good faith delivers property to a trustee need not ensure its proper use.*
- (4) *A person that in good faith and without knowledge that the trusteeship has terminated assists a former trustee as if the former trustee were still a trustee, or in good faith and for value deals with a former trustee as if the former trustee were still a trustee, is protected from liability as if the former trustee were still a trustee.*

➔SECTION 37. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (2) of Section 33 of this Act, in exercising the powers of trusteeship, a trustee shall act in good faith, on an informed basis, and in a manner the trustee reasonably believes to be in the best interests of the statutory trust.*
- (2) *A trustee shall discharge his or her duties with the care that an ordinarily prudent person in a similar position would reasonably believe appropriate under similar circumstances.*

➔SECTION 38. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A trustee, officer, employee, manager, committee of a statutory trust, or other person designated pursuant to subsection (4)(h) of Section 3 of this Act shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

 - (a) *One (1) or more trustees, employees, or agents of the trust whom the person relying reasonably believes to be reliable and competent in the matters presented;*
 - (b) *Legal counsel, public accountants, or other persons as to matters the person relying reasonably believes are within the person's professional or expert competence; or*
 - (c) *A committee of the trustees of which the relying person is not a member, if the relying person reasonably believes the committee to be reliable and competent in the matters presented.**
- (2) *No person shall be considered to be acting reasonably if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (1) of this section unwarranted.*

➔SECTION 39. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Each trustee and each person designated pursuant to subsection (4)(h) of Section 3 of this Act owes a duty of loyalty to the statutory trust and any series thereof including, but not limited to, the following:

 - (a) *To account to the trust or a series thereof and hold as trustee for it any property, profit, or benefit derived in the conduct and winding up of the trust's or series's business or derived from a use of property, including the appropriation of an opportunity, of the trust or a series thereof;*
 - (b) *To refrain from dealing with the trust in the conduct or winding up of the trust's business as or on behalf of a party having an interest adverse to the trust; and*
 - (c) *To refrain from competing with the trust or with any series thereof in the conduct of its business before dissolution.**
- (2) *A person subject to subsection (1) of this section who acts through a related party shall be treated as having acted directly.*
- (3) *That a transaction was fair to the statutory trust or a series thereof shall not constitute a defense to the breach of the obligation in subsection (1) of this section.*

➔SECTION 40. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

A trustee has the right to receive from a statutory trust or another trustee information relating to the affairs of the trust which is reasonably related to the trustee's discharge of the trustee's duties as trustee. The trustee may enforce this right to information by summary proceeding in the appropriate court.

➔SECTION 41. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (2)(q) of Section 4 of this Act, a statutory trust may:*
- (a) *Indemnify and hold harmless a trustee, beneficial owner, or other person with respect to any claim or demand against the person by reason of the person's relationship with the trust; and*
 - (b) *Advance expenses, including reasonable attorney's fees and costs, incurred by a trustee, beneficial owner, or other person in connection with a claim or demand against the person by reason of the person's relationship to a trust before the final disposition of the claim or demand, upon an undertaking by or on behalf of the person to repay the trust if the person is ultimately determined not to be entitled to be indemnified under subsection (1) of this section. The terms of the undertaking shall be as set forth in the governing instrument or as approved by the disinterested trustees and shall be in a record.*
- (2) *The decision to indemnify or advance expenses shall be made by a committee of at least two (2) trustees not at that time parties to the proceeding or by the beneficial owners, but beneficial interests owned by or voted under the control of a trustee who are at the time parties to the proceeding shall not be voted on the determination.*

➔SECTION 42. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *The governing instrument may authorize any person, including a beneficial owner, to direct a trustee or other person in the management of a statutory trust.*
- (2) *If the governing instrument confers on a person a power to direct actions by a trustee or other person, the trustee or other person shall act in accordance with a direction given, unless the direction is contrary to the terms of the governing instrument or the trustee or other person knows or has reason to know that following the direction would constitute a breach of fiduciary duty.*

➔SECTION 43. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A trustee may delegate duties and powers, including to a co-trustee. The trustee shall exercise the care that a person in a similar position would reasonably believe appropriate under similar circumstances in:*
- (a) *Selecting an agent;*
 - (b) *Establishing the scope and terms of the delegation; and*
 - (c) *Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.*
- (2) *In performing a delegated function, an agent of a trustee owes a duty to the statutory trust to comply with the terms of the delegation and to act with the care, competence, and diligence normally exercised by agents in similar circumstances.*
- (3) *A trustee that delegates duties and powers as provided in subsection (1) of this section is responsible to the statutory trust and the beneficial owners for the conduct of the agent in the performance of all delegated duties and powers.*
- (4) *An agent of a trustee submits to the jurisdiction of the courts of this Commonwealth by accepting a delegation of powers or duties from a trustee with respect to a claim related to the agency.*

➔SECTION 44. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *In this section, "affiliated person" and "interested person" have the meanings set forth in the Investment Company Act of 1940, P.L. 76-768, as amended, or any successor statute and any regulations issued thereunder.*

- (2) *If a statutory trust is registered as an investment company under the Investment Company Act of 1940, P.L. 76-768, as amended, or any successor statute and any regulations issued thereunder, a trustee is an independent trustee for all purposes under this chapter if the trustee is not an interested person of the trust. The receipt of compensation does not affect the status of the trustee as an independent trustee under this section if it is for:*
- (a) *Service as an independent trustee of the trust; or*
 - (b) *Service as an independent trustee of one (1) or more other investment companies managed by a single investment adviser or an affiliated person of an investment adviser.*

➔SECTION 45. SUBCHAPTER 6 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *A beneficial interest in a statutory trust is personal property regardless of the nature of the property of the trust.*
- (2) *A beneficial interest in a statutory trust is not an interest in specific property of the statutory trust.*
- (3) *A beneficial interest in a statutory trust is freely transferable.*
- (4) *Any limitations upon transfer of a beneficial interest set forth in the governing instrument shall be void if the same person is the sole trustee and sole beneficial owner.*
- (5) *A beneficial owner does not have a preemptive right to subscribe to any additional issue of beneficial interests or any other interest of a statutory trust.*

➔SECTION 46. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *The vote of all beneficial owners is required for:*
 - (a) *The amendment of the governing instrument;*
 - (b) *Compromise of a beneficial owner's obligation to make a contribution to the statutory trust;*
 - (c) *The conversion of the statutory trust;*
 - (d) *The merger of the statutory trust;*
 - (e) *The extension of the term of the statutory trust beyond that provided for in the governing instrument;*
and
 - (f) *The dissolution of the statutory trust.*
- (2) *Except as provided in subsection (1) of this section, the beneficial owners act by a majority of the beneficial interests.*
- (3) *A beneficial owner may vote in person or by proxy, but if by proxy, the proxy must be contained in a signed record.*

➔SECTION 47. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Any distribution by a statutory trust before dissolution shall be made in proportion to the beneficial interests.*
- (2) *A contribution of a beneficial owner to a statutory trust may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services. A person may become a beneficial owner of a statutory trust and may receive a beneficial interest in a statutory trust without making or being obligated to make a contribution to the trust.*
- (3) *An obligation of a beneficial owner to make a contribution, whether of cash, property, or services, to the statutory trust shall not be enforceable unless set forth in a writing signed by the beneficial owner.*
- (4) *Unless otherwise provided in a governing instrument, a beneficial owner shall be obligated to the statutory trust to perform any enforceable promise to contribute cash or property or to perform services, even if the beneficial owner is unable to perform because of death, disability, or other reason. If a beneficial owner does not make a required contribution of property or services, then the beneficial owner shall be obligated, at the option of the statutory trust, to contribute cash equal to that portion of value of the stated*

contribution that has not been made. This obligation is in addition to any other right, including the right to specific performance, that the trust has against the beneficial owner under the governing instrument or applicable law.

- (5) *Unless otherwise provided in a governing instrument, an obligation of a beneficial owner to make a contribution may be compromised by the beneficial owners. Notwithstanding any compromise, a creditor of a statutory trust who extended credit or otherwise acted in reliance on an obligation after the beneficial owner executed a writing which reflects that obligation and before any such compromise is reached may enforce the original obligation.*

➔SECTION 48. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *When a beneficial owner becomes entitled to receive a distribution, the trust's indebtedness to a beneficial owner shall be at parity with the trust's indebtedness to its general creditors except to the extent subordinated by agreement.*
- (2) *When a beneficial owner associated with a series becomes entitled to a distribution, the series's indebtedness to a beneficial owner shall be at parity with the series's indebtedness to its general creditors except as subordinated by agreement.*
- (3) *Unless otherwise provided in a governing instrument:*
- (a) *A beneficial owner, regardless of the nature of the beneficial owner's contribution, shall not have a right to demand and receive a distribution in any form other than cash; and*
- (b) *A beneficial owner shall not be compelled to accept a distribution of any asset in kind to the extent that the percentage of the asset distributed to the beneficial owner exceeds the percentage that the beneficial owner would have shared in cash distribution equal to the value of the property at the time of distribution.*

➔SECTION 49. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

On the terms set forth in the governing instrument, a statutory trust may acquire, by purchase, redemption, or otherwise, any beneficial interest in the trust, including a beneficial interest associated with a series thereof. A beneficial interest acquired under this section is canceled.

➔SECTION 50. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *If a beneficial interest is not freely transferable by a beneficial owner so that the transferee has all rights of the transferor, this section provides the exclusive remedy by which the judgment creditor of a beneficial owner or a transferee of a beneficial owner may satisfy a judgment out of the judgment debtor's beneficial interest.*
- (2) *On application to a court of competent jurisdiction by a judgment creditor of a beneficial owner or a beneficial owner's transferee, a court may charge the judgment debtor's beneficial interest with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor shall have no right to participate in the management or to cause the dissolution of the statutory trust. 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 beneficial 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 beneficial interest. A charging order does not of itself constitute an assignment of the beneficial interest.*
- (4) *The court may order a foreclosure upon the beneficial interest subject to the charging order at any time. The purchaser of the beneficial interest at the foreclosure sale shall have no right to participate in the management or to cause the dissolution of the statutory trust. Upon foreclosure the beneficial owner shall be dissociated from and cease to be a beneficial owner of the trust. At any time before foreclosure, the charged beneficial interest may be redeemed:*
- (a) *By the judgment debtor;*

- (b) *With property other than statutory trust property, by one (1) or more of the other beneficial owners; and*
 - (c) *With statutory trust property, by the statutory trust with the consent of the trustees.*
- (5) *This section does not deprive a beneficial owner or a beneficial owner's transferee of the benefit of any exemption laws applicable to the beneficial interest.*
- (6) *The statutory trust is not a necessary party to an application for a charging order. Service of the charging order on a statutory trust may be made by the court granting the charging order or as the court should otherwise direct.*

➔SECTION 51. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

Subject to Section 39 of this Act, a beneficial owner may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume an obligation of, provide collateral for, or do other business with the statutory trust and, subject to law other than this chapter, has the same rights and obligations with respect to those matters as a person that is not a beneficial owner.

➔SECTION 52. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to any restriction in the governing instrument and the limitations in subsection (3) of this section, the trustees may authorize and the statutory trust may make distributions to its beneficial owners, including distributions to the beneficial owners associated with a series out of property of or associated with a series.*
- (2) *If there is no record date for determining the beneficial owners entitled to a distribution other than one involving a purchase, redemption, or other acquisition of beneficial interests in the statutory trust, it shall be the date the distribution is authorized.*
- (3) *No distribution shall be made if, after giving it effect:*
- (a) *The statutory trust would not be able to pay its debts as they become due in the usual course of business;*
 - (b) *The statutory trust's total assets would be less than the sum of its total liabilities plus, unless the governing instrument permits otherwise, the amount that would be needed, if the statutory trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of beneficial owners whose preferential rights are superior to those receiving the distribution; or*
 - (c) *The distribution is impermissible under the governing instrument.*
- (4) *With respect to any distribution to the beneficial owners associated with a series out of property of or associated with a series, subsection (3) of this section shall be applied with respect to that series and not the statutory trust or any other series thereof.*
- (5) *The trustees may base a determination that a distribution is not prohibited under subsection (3) or (4) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.*
- (6) *Except as provided in subsection (7) of this section, for purposes of subsections (3) and (4) of this section, the effect of a distribution shall be measured:*
- (a) *In the case of distribution by purchase, redemption, or other acquisition of the statutory trust's beneficial interests, as of the earlier of:*
 - 1. *The date money or other property is transferred or debt incurred by the statutory trust; or*
 - 2. *The date the beneficial owner ceases to be a beneficial owner with respect to the acquired beneficial interests;*
 - (b) *In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and*
 - (c) *In all other cases, as of:*

1. *The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or*
 2. *The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.*
- (7) *Indebtedness of a statutory trust or a series thereof, including indebtedness issued as a distribution, shall not be considered a liability for purposes of subsections (3) or (4) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to beneficial owners could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest shall be treated as a distribution, the effect of which is measured on the date the payment is actually made.*

➔SECTION 53. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A trustee who votes for or assents to a distribution made in violation of Section 52 of this Act shall be personally liable to the statutory trust for the amount of the distribution that exceeds what could have been distributed without violating Section 52 of this Act if it is established that the trustee did not perform his or her duties in compliance with Section 37 of this Act. In any proceeding commenced under this section, a trustee shall have all of the defenses ordinarily available to a trustee.*
- (2) *A trustee held liable under subsection (1) of this section for an unlawful distribution shall be entitled to contribution:*
 - (a) *From every other trustee who could be held liable under subsection (1) of this section for the unlawful distribution; and*
 - (b) *From each beneficial owner for the amount the beneficial owner accepted knowing the distribution was made in violation of Section 52 of this Act.*
- (3) *A proceeding under this section shall be barred unless it is commenced within two (2) years after the date on which the effect of the distribution was measured under subsections (6) and (7) of Section 52 of this Act.*

➔SECTION 54. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A beneficial owner has the right to receive from the statutory trust or a trustee information relating to the affairs of a statutory trust which is reasonably related to the beneficial owner's interest.*
- (2) *A governing instrument may impose reasonable limitations upon the use of any record of or information with respect to a statutory trust. Except as to limitations set forth in a governing instrument to which a beneficial owner requesting information has assented, the trust bears the burden of proof in demonstrating the reasonableness of any restrictions imposed.*

➔SECTION 55. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A beneficial owner may maintain a direct action against a statutory trust or a trustee to redress an injury sustained by, or to enforce a duty owed to, the beneficial owner if the beneficial owner can prevail without showing an injury or breach of duty to the trust.*
- (2) *A beneficial owner may maintain a derivative action to redress an injury sustained by or enforce a duty owed to a statutory trust if:*
 - (a) *The beneficial owner first makes a demand on the trustees, requesting that the trustees cause the trust to bring an action to redress the injury or enforce the right, and the trustees do not bring the action within a reasonable time; or*
 - (b) *A demand would be futile.*
- (3) *A derivative action on behalf of a statutory trust may be maintained only by a person that is a beneficial owner at the time the action is commenced and who:*
 - (a) *Was a beneficial owner when the conduct giving rise to the action occurred; or*

- (b) *Acquired the status as a beneficial owner by operation of law or pursuant to the terms of the governing instrument from a person that was a beneficial owner at the time of the conduct giving rise to the action occurred.*
- (4) *In a derivative action on behalf of the statutory trust, the complaint must state with particularity:*
 - (a) *The date and content of the plaintiff's demand and the trustees' response to the demand; or*
 - (b) *The reason the demand should be excused as futile.*
- (5) *Except as otherwise provided in subsection (6) of this section:*
 - (a) *Any proceeds or other benefits of a derivative action on behalf of a statutory trust, whether by judgment, compromise or settlement, are the property of the trust and not of the plaintiff; and*
 - (b) *If the plaintiff receives any proceeds or other benefits, the plaintiff shall immediately remit them to the trust.*
- (6) *A derivative action on behalf of a statutory trust may not be voluntarily dismissed or settled without the court's approval.*
- (7) *The proper venue for a direct action under subsection (1) of this section or a derivative action in which the action is brought solely against one (1) or more trustees shall be an appropriate court.*
- (8) *A beneficial owner associated with a series, if the series may pursuant to subsection (4) of Section 22 of this Act be sued in its own name, may bring an action pursuant to subsection (1) or (2) of this section against only that series, the trustees associated with the series, or both. If brought only against a series or the trustees associated with the series, any demand made pursuant to subsection (2)(a) of this section shall be upon the trustees associated with the series.*
- (9) *On termination of the proceeding brought pursuant to this section, the court may:*
 - (a) *Require the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding to the extent it finds that the proceeding or any portion thereof was commenced without reasonable cause or for an improper purpose; and*
 - (b) *Require the statutory trust, or as appropriate a series thereof, to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the statutory trust or to a series thereof.*

➔SECTION 56. SUBCHAPTER 7 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *Unless otherwise provided in a governing instrument, and if permitted by any law applicable to entities other than statutory trusts, one (1) or more statutory trusts may merge with or into one (1) or more other entities with the statutory trust or other business entity being the surviving organization.*
- (2) *Unless otherwise provided in a governing instrument, unless prohibited by applicable law, one (1) or more statutory trusts may merge with or into one (1) or more foreign entities with the statutory trust or foreign entity being the surviving organization.*

➔SECTION 57. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *With respect to each constituent statutory trust, the plan of merger shall require the approval of the beneficial owners.*
- (2) *Each constituent organization that is not a statutory trust and 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 constituent organization.*
- (3) *Unless otherwise provided in the governing instrument or a written agreement and plan of merger, no beneficial owner of a statutory trust shall have the right to dissent from a merger.*
- (4) *Each constituent organization shall have the rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the constituent organization.*

➔SECTION 58. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Each constituent organization shall enter into a written plan of merger.*
- (2) *The plan of merger shall set forth:*
 - (a) *The name of each constituent organization and the name of the constituent organization into which each constituent organization proposes to merge;*
 - (b) *The terms and conditions of the proposed merger, including but not limited to a statement which sets forth whether limited liability is retained by the surviving constituent organization;*
 - (c) *The manner and basis of converting the beneficial interest in each constituent statutory trust and the interests in each constituent organization into interests, shares, or other securities or obligations, as the case may be, of the surviving constituent organization or of any other business entity, or, in whole or in part, into cash or other property;*
 - (d) *The amendments to the organizational documents of the surviving constituent organization as are desired to be effected by the merger, or that no changes are desired; and*
 - (e) *Other provisions relating to the proposed merger that are deemed necessary or desirable.*

➔SECTION 59. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *The surviving constituent organization shall deliver to the Secretary of State for filing articles of merger duly executed by each constituent organization setting forth:*
 - (a) *The name and jurisdiction of incorporation, formation, or organization of each constituent organization which is to merge;*
 - (b) *The plan of merger;*
 - (c) *The name of the surviving constituent organization;*
 - (d) *A statement that the plan of merger was duly authorized and approved by each constituent organization in accordance with Section 57 of this Act; and*
 - (e) *If the surviving constituent organization is not incorporated, formed, or organized under the laws of this Commonwealth, a statement that the surviving constituent organization:*
 1. *Agrees that it may be served with process in this Commonwealth in any proceeding for enforcement of any obligation of any constituent organization party to the merger that was incorporated, formed, or organized under the laws of this Commonwealth, as well as for enforcement of any obligation of the surviving constituent organization arising from the merger; and*
 2. *Appoints the Secretary of State as its agent for service of process in any such proceeding. The surviving constituent organization shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.*
- (2) *A merger shall take effect upon the effective date and time of the articles of merger as provided in KRS 14A.2-070.*
- (3) *A plan of merger approved in accordance with Section 57 of this Act may effect any amendment to the certificate of trust or governing instrument of a statutory trust if it is the surviving constituent organization. An approved plan of merger may also provide that the governing instrument of any constituent statutory trust to the merger, including a statutory trust formed for the purpose of consummating a merger, shall be the governing instrument of the statutory trust that is the surviving constituent organization. Any amendment to a certificate of trust or governing instrument or adoption of a new governing instrument made pursuant to this subsection shall be effective at the effective date and time of the merger.*

➔SECTION 60. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

A merger shall have the following effects:

- (1) *The constituent organizations that are parties to the merger shall be a single entity, which shall be the entity designated in the plan of merger as the surviving constituent organization;*
- (2) *Each constituent organization, except the surviving constituent organization, shall cease to exist;*

- (3) *The surviving constituent organization shall possess all the rights, privileges, immunities, and powers of each constituent organization and shall be subject to all the restrictions, disabilities, and duties of each of the constituent organizations to the extent the rights, privileges, immunities, powers, restrictions, disabilities, and duties are applicable to the type of constituent organization that is the surviving constituent organization;*
- (4) *All property, real, personal, and intangible, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, beneficial interests, limited liability company interests or other interests in a constituent organization, and all other choses in action, and all and every other interest of, belonging to, or due to each of the constituent organizations shall be vested in the surviving constituent organization without further act or deed;*
- (5) *The title to all property, whether real, personal, or intangible, and any interest therein, vested in any constituent organization shall not revert or be in any way impaired by reason of the merger;*
- (6) *The surviving constituent organization shall be liable for all liabilities and obligations of each of the constituent organizations merged, and any claim existing or action or proceeding pending by or against any constituent organization may be prosecuted as if the merger had not taken place, or the surviving constituent organization may be substituted in the action;*
- (7) *Neither the rights of creditors nor any liens on the property of any constituent organization shall be impaired by the merger;*
- (8) *The interests in a constituent organization that are to be converted or exchanged into interests, other securities, cash, obligations, or other property under the terms of the plan of merger are so converted, and the former holders thereof are entitled only to the rights provided in the plan of merger or the rights otherwise provided by law; and*
- (9) *A partner or, in the case of a limited partnership, a general partner, who becomes a beneficial owner of a statutory trust as a result of a merger, shall remain liable as a partner or general partner for an obligation incurred by the partnership or limited partnership before the merger takes effect. A limited partner who becomes a beneficial owner as a result of a merger shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the merger takes effect. A partner's liability for all other obligations of the statutory trust incurred after the merger takes effect shall be that of a beneficial owner as provided in this chapter.*

➔SECTION 61. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *An entity other than a corporation governed as to its internal affairs by KRS Chapter 273 or a nonprofit limited liability company may be converted to a statutory trust pursuant to this section.*
- (2) *The terms and conditions of a conversion shall be approved:*
 - (a) *In the case of a partnership or a limited partnership, by all of the partners notwithstanding any provision to the contrary in the partnership agreement;*
 - (b) *In the case of a limited liability company, by all of the members notwithstanding any provision to the contrary in the operating agreement; and*
 - (c) *In the case of a corporation, by such action of the board of directors as would be required to approve a merger and, notwithstanding any provision to the contrary in the articles of incorporation, bylaws, or other agreement, all of the shareholders.*
- (3) *After the conversion is approved under subsection (2) of this section, the converting organization shall deliver to the Secretary of State for filing a certificate of trust which satisfies the requirements of Section 7 of this Act and includes as well:*
 - (a) *A statement that the converting organization was converted to a statutory trust;*
 - (b) *The former name of the converting organization;*
 - (c) *The form of organization of the converting organization prior to the conversion; and*
 - (d) *A statement that the conversion was approved in accordance with subsection (2) of this section.*
- (4) *In the case of a converting partnership that 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 certificate of trust as determined in accordance with KRS 14A.2-070.

- (5) *In the case of a converting limited partnership, the limited partnership's certificate of limited partnership shall be deemed canceled as of the effective date and time of the certificate of trust as determined in accordance with KRS 14A.2-070.*
- (6) *In the case of a converting limited liability company, its articles of organization shall be deemed canceled as of the effective time and date of the certificate of trust as determined in accordance with KRS 14A.2-070.*
- (7) *In the case of a converting corporation, its articles of incorporation shall be deemed canceled as of the effective time and date of the certificate of trust as determined in accordance with KRS 14A.2-070.*
- (8) *The conversion shall take effect when the certificate of trust is filed with the office of the Secretary of State or, as provided in KRS 14A.2-070, at a later date specified in the certificate of trust.*
- (9) *A partner or, in the case of a limited partnership, a general partner, who becomes a beneficial owner of a statutory trust 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.*

➔SECTION 62. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A converted statutory trust 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 organization shall remain vested in the converted statutory trust without assignment, reversion, or impairment;*
 - (b) *All obligations of the converting organization shall continue as obligations of the converted statutory trust;*
 - (c) *An action or proceeding pending against the converting organization may be continued as if the conversion had not occurred, and the name of the converted statutory trust may be substituted in any pending action or proceeding for the name of the converting organization; and*
 - (d) *The governing instrument of the converted statutory trust shall be binding upon each person who becomes a beneficial owner or trustee of the converted statutory trust.*

➔SECTION 63. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

This subchapter does not preclude an organization from being merged or converted under law other than this chapter.

➔SECTION 64. SUBCHAPTER 8 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

A statutory trust is dissolved by:

- (1) *Administrative dissolution under Subchapter 7 of KRS Chapter 14A;*
- (2) *The filing of articles of dissolution under Section 65 of this Act:*
 - (a) *On the occurrence of an event or circumstance that the governing instrument states causes dissolution; or*
 - (b) *With the approval of the beneficial owners;*
- (3) *Having no beneficial owners for ninety (90) days; or*
- (4) *Judicial dissolution in accordance with Section 66 of this Act.*

➔SECTION 65. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *If dissolution of a statutory trust is authorized under subsection (2) or (3) of Section 64 of this Act, the trust shall deliver to the Secretary of State for filing articles of dissolution setting forth:*

- (a) *The name of the trust; and*
 - (b) *The date of the event or circumstance causing the dissolution.*
- (2) *Except as otherwise provided in KRS 14A.2-070, a statutory trust is dissolved when articles of dissolution that comply with subsection (1) of this section are filed by the Secretary of State.*

➔SECTION 66. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *The appropriate court may dissolve a statutory trust in a proceeding by a beneficial owner if it is established that:*
- (a) *It is not reasonably practicable to carry on the business of the statutory trust in conformity with the governing instrument; or*
 - (b) *The trust has been without a trustee for ninety (90) days and no successor trustee has been appointed or designated in accordance with the governing agreement.*
- (2) *The clerk of the court shall deliver a certified copy of the decree of dissolution to the Secretary of State, who shall file it. The dissolution shall be effective upon the latter of the date specified by the court or the filing of the decree of dissolution by the Secretary of State.*
- (3) *After entering the decree of dissolution, the appropriate court shall direct the winding up and liquidation of the business and affairs of the statutory trust in accordance with Sections 67 and 68 of this Act and the notification of claimants in accordance with Sections 69 and 70 of this Act.*

➔SECTION 67. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *After dissolution, a statutory trust continues its existence as a statutory trust, but may not carry on any activities except as is appropriate to wind up and liquidate its activities and affairs, including:*
- (a) *Collecting the assets of the trust;*
 - (b) *Disposing of the properties of the trust that will not be distributed in kind to beneficial owners of the trust;*
 - (c) *Discharging or making provision for discharging the liabilities of the trust, including entering into agreements with creditors for the satisfaction thereof;*
 - (d) *Distributing the remaining property of the trust in accordance with Section 71 of this Act; and*
 - (e) *Doing every other act necessary to wind up and liquidate the trust's activities and affairs.*
- (2) *In winding up a statutory trust's activities, a trust may:*
- (a) *Preserve the trust's activities and property as a going concern for a reasonable time;*
 - (b) *Prosecute, defend, or settle actions or proceedings whether civil, criminal, or administrative, including by mediation or arbitration; and*
 - (c) *Transfer the property of the trust.*
- (3) *The dissolution of a statutory trust does not:*
- (a) *Prevent the commencement of a proceeding by or against the trust in its name;*
 - (b) *Abate or suspend a proceeding by or against the trust pending on the effective date of dissolution;*
 - (c) *Transfer title to the trust's property;*
 - (d) *Terminate the authority of the registered agent of the statutory trust;*
 - (e) *Abate or suspend Section 19 of this Act; or*
 - (f) *Abate or suspend Section 23 of this Act.*

➔SECTION 68. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (3) of Section 66 of this Act, after dissolution of a statutory trust, the trustee or trustees shall wind up the trust's activities.*

- (2) *The appropriate court may order judicial supervision of the winding up of a statutory trust, including the appointment of a person to wind up the trust's activities:*
- (a) *On application of a beneficial owner, if the applicant establishes good cause; or*
 - (b) *In connection with a proceeding under Section 66 of this Act.*

➔SECTION 69. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Upon dissolution, a statutory trust may, and a series trust shall, dispose of the known claims against it by following the procedures described in this section.*
- (2) *The statutory trust shall notify its known claimants, as well as all known claimants of any series or against the assets of or associated with a series, in writing of the dissolution at any time after the effective date of dissolution. The written notice shall:*
 - (a) *Provide the name of the trust and, if a series trust, the name under which each series has transacted business;*
 - (b) *Describe the information that must be included in a claim;*
 - (c) *Provide a mailing address where a claim may be sent;*
 - (d) *State the deadline, which may not be fewer than one hundred twenty (120) days after the date of the written notice, by which the trust must receive the claim; and*
 - (e) *State that the claim against the trust, or in the case of a series trust a claim against a series or against the property of or associated with a series, will be barred if not received by the deadline.*
- (3) *A claim shall be barred:*
 - (a) *If a claimant who is given written notice under subsection (2) of this section does not deliver the claim to the trust by the deadline; or*
 - (b) *If a claimant whose claim was rejected by the trust does not commence a proceeding to enforce the claim within ninety (90) days after the date of the rejection notice.*
- (4) *For purposes of this section, "claim" shall not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.*

➔SECTION 70. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *A statutory trust may, and a series trust shall, publish notice of its dissolution pursuant to this section.*
- (2) *The notice shall:*
 - (a) *Be published once in a newspaper of general circulation in the county where the statutory trust's principal office, or, if none in this Commonwealth, its registered office, is or was last located;*
 - (b) *Provide the name of the statutory trust and, if a series statutory trust, the name or names under which each series has transacted business;*
 - (c) *Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and*
 - (d) *State that a claim against the trust, or in the case of a series trust a claim against a series or against the property of or associated with a series, will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.*
- (3) *If the statutory trust publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the claim within two (2) years after the publication date of the newspaper notice:*
 - (a) *A claimant who did not receive written notice under Section 69 of this Act;*
 - (b) *A claimant whose claim was timely sent to the trust but not acted on; and*
 - (c) *A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.*

- (4) *A claim may be enforced under this section:*
- (a) *Against the statutory trust, to the extent of the assets of the trust that remain undistributed;*
 - (b) *To the extent of assets of the statutory trust that have been distributed in liquidation, against a beneficial owner to the extent of a pro rata share of the claim, but the total liability of a beneficial owner for all claims under this section shall not exceed the total assets of the statutory trust, or the assets of or associated with a series dissolved with the statutory trust, distributed in liquidation to the beneficial owner; and*
 - (c) *For claims against a series or against the property of or associated with a series, as provided in subsection (4) of Section 31 of this Act.*
- (5) *A statutory trust that published a notice under this section may file an application with the appropriate court for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the trust or that are based on an event occurring after the effective date of the dissolution of the trust but that, based on the facts known to the trust, are reasonably estimated to arise after the effective date of the dissolution of the trust. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection (3) of this section.*
- (6) *Within ten (10) days after the filing of the application provided for in subsection (5) of this section, notice of the proceeding shall be given by the statutory trust to each claimant described in subsection (2) of Section 69 of this Act.*
- (7) *The appropriate court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section, including those claimants whose claims are contingent or based upon an event occurring after the effective date of dissolution. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the statutory trust.*
- (8) *Provision by the statutory trust for security in the amount and the form ordered by the appropriate court under subsection (5) of this section shall satisfy the trust's obligation with respect to claims that are contingent, have not been made known to the trust, or are based on an event occurring after the effective date of the trust's dissolution, and those claims may not be enforced against a beneficial owner to whom assets of the trust have been distributed.*

➔SECTION 71. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *Upon the winding up of a statutory trust, the assets of the trust shall be distributed as follows:*
- (a) *First, payment or adequate provisions for payment shall be made to creditors, including, to the extent permitted by law, beneficial owners who are creditors in satisfaction of liabilities of the trust;*
 - (b) *Second, unless otherwise provided in the governing instrument, to beneficial owners in satisfaction of liabilities for distributions declared but unpaid; and*
 - (c) *Third, unless otherwise provided in the governing instrument, to beneficial owners in proportion to their respective rights to share in distributions from the trust prior to dissolution.*
- (2) *Upon the winding up of a series statutory trust, the assets of or associated with a series shall be distributed in accordance with Section 32 of this Act.*

➔SECTION 72. SUBCHAPTER 9 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *The law of the jurisdiction of formation of a foreign statutory trust governs:*
- (a) *The internal affairs of the trust, including the liability of a beneficial owner as beneficial owner and trustee as trustee for a debt, obligation, or other liability of the trust or a series thereof and the right of a beneficial owner to inspect books and records; and*
 - (b) *The enforceability of a debt, obligation, or other liability of the foreign statutory trust or any series thereof against the property of the trust or the property of or associated with a series.*
- (2) *Each foreign statutory trust is subject to KRS Chapter 14A.*
- (3) *The Secretary of State may not deny a foreign statutory trust a certificate of authority because of any difference between the law of its jurisdiction of formation and the laws of this Commonwealth.*

- (4) *A certificate of authority does not authorize a foreign statutory trust to engage in any business or exercise any power that a statutory trust may not engage in or exercise in this Commonwealth.*

➔SECTION 73. SUBCHAPTER 10 OF KRS CHAPTER 386A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

➔SECTION 74. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

This chapter does modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. sec. 7003(b).

➔SECTION 75. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

This chapter does not affect an action commenced, proceeding brought, or right accrued before the effective date of this Act.

➔SECTION 76. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 386A IS CREATED TO READ AS FOLLOWS:

- (1) *This chapter does not limit, prohibit, or invalidate the existence, acts, or obligations of any common-law trust created or doing business in this Commonwealth before, on, or after the effective date of this Act.*
- (2) *A business trust formed under any statute of this Commonwealth prior to the effective date of this Act, until or unless it becomes a statutory trust under this chapter, shall continue to be governed by the provisions of the statute under which it was formed.*
- (3) *The enactment of this chapter shall not impair, or otherwise affect, the organization or the continued existence of a business trust existing on the effective date of this Act.*
- (4) *This chapter governs only:*
 - (a) *A statutory trust formed on or after the effective date of this Act; and*
 - (b) *A business trust formed before the effective date of this Act which elects, in the manner provided in its governing instrument or by law for amending the governing instrument, to be subject to this chapter.*
- (5) *A business trust formed under any statute or pursuant to the common law of this Commonwealth prior to the effective date of this Act may elect to become subject to this chapter by a consent sufficient to amend the declaration of trust or in the absence thereof by the unanimous consent of the beneficial owners. Thereafter, the business trust shall file an amended and restated certificate of trust which complies with Section 7 of this Act and that further sets forth:*
 - (a) *The name of the business trust as set forth on any declaration of trust filed pursuant to KRS 386.420 or predecessor law;*
 - (b) *The date of filing of any declaration of trust filed pursuant to KRS 386.420 or predecessor law;*
 - (c) *An affirmative election by the business trust to be subject to this chapter; and*
 - (d) *An affirmative statement that the election was approved as required by this subsection.*
- (6) *A business or statutory trust formed in a jurisdiction other than the Commonwealth of Kentucky may elect to be subject to this chapter by a consent sufficient to amend the declaration of trust and trust agreement or in the absence thereof by the unanimous consent of the beneficial owners. Thereafter the business or statutory trust shall file an amended and restated certificate of trust which complies with Section 7 of this Act and further sets forth:*
 - (a) *The name of the business or statutory trust;*
 - (b) *The previous jurisdiction of organization;*
 - (c) *An affirmative election by the trust to be subject to this chapter; and*

(d) *A statement that the election to be governed by this chapter is effective under the law and agreements governing the trust prior to becoming subject to this chapter.*

(7) *An election pursuant to subsection (5) or (6) of this section is effective upon the effective time and date of the amended and restated certificate of trust as provided in KRS 14A.2-070.*

➔Section 77. KRS 11A.010 is amended to read as follows:

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

- (1) "Business" means any corporation, limited liability ~~company~~~~corporation~~, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;
- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, executive directors, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Kentucky Occupational Safety and Health Review Commission, the Kentucky Board of Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;
- (9) "Public servant" means:
 - (a) The Governor;
 - (b) The Lieutenant Governor;
 - (c) The Secretary of State;
 - (d) The Attorney General;
 - (e) The Treasurer;
 - (f) The Commissioner of Agriculture;
 - (g) The Auditor of Public Accounts; and
 - (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;
- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative

purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;

- (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8);
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (g) of this section;
- (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;
- (15) "Public agency" means any governmental entity;
- (16) "Appointing authority" means the agency head or any person whom he has authorized by law to act on behalf of the agency with respect to employee appointments;
- (17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else;
- (18) "Directly involved" means to work on personally or to supervise someone who works on personally; and
- (19) "Sporting event" means any professional or amateur sport, athletic game, contest, event, or race involving machines, persons, or animals, for which admission tickets are offered for sale and that is viewed by the public.

➔Section 78. KRS 14A.1-070 is amended to read as follows:

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

- (1) "Business" includes every trade, occupation, and profession;
- (2) "Corporation" means a business corporation governed as to its internal affairs by KRS Chapter 271B, a cooperative or association governed as to its internal affairs by KRS Chapter 272, a nonprofit corporation governed as to its internal affairs by KRS Chapter 273, and a rural electric or rural telephone cooperative corporation governed as to its internal affairs by KRS Chapter 279;
- (3) "Business trust" means a business trust governed as to its internal affairs by KRS Chapter 386 *or a statutory trust governed as to its internal affairs by KRS Chapter 386A*;
- (4) "Debtor in bankruptcy" means a person who is the subject of:
 - (a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - (b) A comparable order under federal, state, or foreign law governing insolvency;
- (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) "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;
- (7) "Entity" means a corporation, business trust, partnership, limited partnership, or limited liability company, governed as to its internal affairs by the laws of the Commonwealth of Kentucky;
- (8) "Foreign business trust" means a business or statutory trust not governed as to its internal affairs by KRS Chapter 386 *or 386A*;
- (9) "Foreign corporation" means a corporation as defined in subsection (2) of this section that is not:
 - (a) Organized pursuant to the laws of the Commonwealth of Kentucky; or
 - (b) As to its internal affairs, governed by the laws of the Commonwealth of Kentucky;

- (10) "Foreign entity" means a corporation, not-for-profit corporation, cooperative, association, business or statutory trust, partnership, limited partnership, or limited liability company not:
 - (a) Organized pursuant to the laws of the Commonwealth of Kentucky; or
 - (b) As to its internal affairs, governed by the laws of the Commonwealth of Kentucky;
- (11) "Foreign limited liability partnership" means a partnership that:
 - (a) Is formed under laws other than the laws of this Commonwealth; and
 - (b) Has the status of a limited liability partnership under those laws;
- (12) "Foreign professional service corporation" has the same meaning as in KRS 274.005;
- (13) "Foreign rural electric cooperative" means a rural electric cooperative organized otherwise than under KRS 279.010 to 279.210;
- (14) "Foreign rural telephone cooperative" means a rural telephone cooperative organized otherwise than under KRS 279.310 to 279.990 excepting 279.570;
- (15) "Good standing" means that all annual reports which are required to be received from an entity or foreign entity have been delivered to and filed by the Secretary of State, that all other lawfully required statutory documentation has been received and filed, and that all fees, costs, and expenses, including penalties incurred in connection therewith, have been paid;
- (16) "Limited liability company" has the same meaning as in KRS 275.015;
- (17) "Limited liability partnership" means a partnership that has filed a statement of qualification under KRS 362.1-1001 or a registration as a registered limited liability partnership under KRS 362.555 and does not have a similar statement of registration in effect in any other jurisdiction;
- (18) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity or foreign entity;
- (19) "Nonprofit corporation," other than in the term "foreign nonprofit corporation," means a nonprofit corporation incorporated pursuant to and governed as to its internal affairs by KRS Chapter 273 or predecessor law;
- (20) "Organic act" means the law of a state or other jurisdiction governing the organization and internal affairs of an entity or foreign entity;
- (21) "Organized" means organized, incorporated, or formed;
- (22) "Organizational filing" means a filing made with the Secretary of State as a precondition to the formation, organization, or incorporation of an entity, including articles of incorporation, articles of organization, *certificates of trust*, and certificates of limited partnership. A statement of qualification filed pursuant to KRS 362.1-1101 or a registration as a limited liability partnership filed pursuant to KRS 362.555 is not an organizational filing;
- (23) "Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit formed under KRS 362.1-202, predecessor law, or comparable law of another jurisdiction;
- (24) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement;
- (25) "Person" means an individual, an entity, a foreign entity, or any other legal or commercial entity;
- (26) "Principal office" means the address required by this chapter or the organic act to be of record with the Secretary of State as the principal office, the principal place of business address, the designated office of a limited partnership, or the chief executive office of a limited liability partnership;
- (27) "Professional service corporation" has the same meaning as in KRS 274.005;
- (28) "Professional services" means 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;
- (29) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein;
- (30) "Qualified person" has the same meaning as in KRS 274.005;

- (31) "Registered agent" means a registered agent appointed in accordance with KRS 14A.4-010 or predecessor law, and is synonymous with agent for service of process;
- (32) "Regulatory board" means the agency that is charged by law with the licensing and regulation of the practice of the profession which the professional partnership is organized to provide;
- (33) "Rural electric cooperative" means a rural electric cooperative governed as to its internal affairs by KRS 279.010 to 279.210;
- (34) "Rural telephone cooperative" means a rural telephone cooperative governed as to its internal affairs by 279.310 to 279.990 excepting 279.570;
- (35) *"Series entity" means an entity or a foreign entity authorized and enabled by its organic act and organizational filing to create series having separate rights, powers, or duties with respect to specific property or obligations of the series entity, or the profits and losses associated with specific property or obligations;*
- (36) "Sign" or "signature" includes any manual, facsimile, conformed, or electronic signature;~~and~~
- (37)~~(36)~~ "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States; *and*
- (38) *"Statutory trust" means a trust governed as to its internal affairs by KRS Chapter 386A.*

➔Section 79. KRS 14A.2-040 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, one (1) exact or conformed copy of each of the following documents shall be filed with the county clerk of the county in which the entity or foreign entity maintains its registered office:
- (a) Articles of incorporation and all amendments thereto;
 - (b) Articles of organization and all amendments thereto;
 - (c) Certificate of limited partnership and all amendments thereto;
 - (d) Declaration of trust for a business trust *or certificate of trust for a statutory trust* and all amendments thereto;
 - (e) Application for a certificate of authority;
 - (f) Amendment to a certificate of authority;
 - (g) Withdrawal of a certificate of authority;
 - (h) Articles of merger;
 - (i) A statement of change of principal office address filed pursuant to KRS 14A.5-010 or predecessor law; and
 - (j) A statement of change of registered office or registered agent or both filed pursuant to KRS 14A.4-020 or predecessor law.
- (2) The articles of incorporation of a rural electric cooperative or a rural telephone cooperative, all amendments thereto, and all articles of merger involving a rural electric cooperative or rural telephone cooperative shall be filed with the county clerk in which is maintained the principal office address.
- (3) Annual reports filed with the Secretary of State pursuant to KRS 14A.6-010 or predecessor law need not be filed with the county clerk.
- (4) The county clerk shall receive a fee as provided in KRS 64.012 for each filing made pursuant to subsection (1) or (2) of this section.
- (5) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to an entity or foreign entity.
- (6) *Any amendment to articles of incorporation or a certificate of limited partnership that was itself not required to be filed with the Secretary of State under the law applicable at the time of incorporation or organization shall be filed by the county clerk notwithstanding the absence of a prior filing with the Secretary of State.*

➔Section 80. KRS 14A.2-130 is amended to read as follows:

- (1) Anyone may apply to the Secretary of State to furnish a certificate of existence for an entity.
- (2) A certificate of existence shall set forth:
 - (a) The entity's real name;
 - (b) That the entity was duly organized under the laws of this Commonwealth, the date of its organization, and the period of its duration if less than perpetual;
 - (c) That no articles of dissolution, statement of cancellation, or document of similar import is effective;
 - (d) That all fees, taxes, and penalties owed to this ~~Commonwealth~~~~state~~ have been paid, if:
 1. Payment is reflected in the records of the Secretary of State; and
 2. Nonpayment affects the existence of the entity;
 - (e) That its most recent annual report required by KRS 14A.6-010 or predecessor law has been filed by the Secretary of State; and
 - (f) Subject to KRS 14A.2-120(3), other facts of record in the office of the Secretary of State that may be requested by the applicant.
- (3) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State may be relied upon as conclusive evidence that the entity is in existence.
- (4) This section shall not apply to:
 - (a) Partnerships organized pursuant to KRS Chapter 362 or 362.1;
 - (b) Limited partnerships other than those subject to KRS Chapter 362.2;~~or~~
 - (c) Business trusts *governed as to their internal affairs by KRS Chapter 386; or*
 - (d) *An individual series of a series entity.*

➔Section 81. KRS 14A.2-140 is amended to read as follows:

- (1) Anyone may apply to the Secretary of State to furnish a certificate of authorization for a foreign entity.
- (2) A certificate of authorization shall set forth:
 - (a) The foreign entity's real name and, if applicable, its fictitious name as adopted for use in this Commonwealth;
 - (b) That the foreign entity is authorized to transact business in this Commonwealth;
 - (c) That all fees, taxes, and penalties owed to this Commonwealth have been paid, if:
 1. Payment is reflected in the records of the Secretary of State; and
 2. Nonpayment affects the authorization of the foreign entity to transact business in this Commonwealth;
 - (d) That its most recent annual report required by KRS 14A.6-010 or predecessor law has been filed by the Secretary of State;
 - (e) That no certificate of withdrawal or document of similar import under prior law has been filed; and
 - (f) Other facts of record in the office of the Secretary of State that may be requested by the applicant.
- (3) Subject to any qualification stated in the certificate, a certificate of authorization issued by the Secretary of State may be relied upon as conclusive evidence that the foreign entity is authorized to transact business in this Commonwealth.
- (4) This section shall not apply to:
 - (a) A foreign partnership *except as provided in subsection (5) of Section 85 of this Act*;~~or~~
 - (b) A foreign rural telephone cooperative or foreign rural electric cooperative not obligated to qualify to transact business by filing an application for a certificate of authority or document of similar import with the Secretary of State; *or*

(c) *An individual series of a series entity.*

➔Section 82. KRS 14A.3-010 is amended to read as follows:

- (1) Except as authorized by subsections (14), (15), and (23) of this section, the real name of an entity or foreign entity shall be distinguishable from any name of record with the Secretary of State.
- (2) The real name of a corporation or nonprofit corporation shall:
 - (a) 1. Contain the word "corporation," "company," or "limited" or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd." or words or abbreviations of like import in another language, provided, however, that if a nonprofit corporation's name includes the word "company" or the abbreviation "Co.," it may not be immediately preceded by the word "and" or the abbreviation "&"; or
 2. If a professional service corporation, shall contain the words "professional service corporation" or the abbreviation "P.S.C."; and
 - (b) Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by its organic act and its articles of incorporation.
- (3) The real name of a limited liability company shall contain the phrase "limited liability company" or "limited company" or the abbreviation "LLC" or "LC," provided, however, if the company is a professional limited liability company the name shall contain the phrase "professional limited liability company" or "professional limited company" or the abbreviation "PLLC" or "PLC." In the name of either a limited liability company or a professional limited liability company, the word "limited" may be abbreviated as "Ltd." and the word "Company" may be abbreviated as "Co."
- (4) The real name of a limited liability partnership registered pursuant to KRS 362.555 shall contain the phrase "Registered Limited Liability Partnership" or the abbreviation "LLP" as the last words or letters of its name.
- (5) The real name of a partnership subject to KRS 362.1-101 to 362.1-1205, the "Kentucky Revised Uniform Partnership Act (2006)":
 - (a) Shall not contain the word "corporation" or "incorporated" or the abbreviation "Corp." or "Inc."; and
 - (b) May contain the word "limited" or the abbreviation "Ltd." only if the partnership has filed a statement of qualification.
- (6) The real name of a limited liability partnership that has filed a statement of qualification pursuant to KRS 362.1-1001 shall end with the phrase "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."
- (7) The real name of a limited partnership subject to KRS 362.401 to 362.525, the "Kentucky Revised Uniform Limited Partnership Act," shall:
 - (a) Contain the word "Limited" or the abbreviation "Ltd." unless the limited partnership was formed under any statute of the Commonwealth prior to the adoption of the Kentucky Revised Uniform Limited Partnership Act; and
 - (b) Not contain the name of a limited partner unless:
 1. That name is also the name of a general partner; or
 2. The business of the limited partnership had been carried on under that name before the admission of that limited partner.
- (8) The real name of a limited partnership subject to KRS 362.2-102 to 362.2-1207, the "Kentucky Uniform Limited Partnership Act (2006)," that is not a limited liability limited partnership may contain the name of any partner and shall:
 - (a) Contain the phrase "limited partnership" or "limited" or the abbreviation "L.P.," "LP," or "Ltd."; and
 - (b) Not contain the phrase "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP."
- (9) The real name of a limited partnership subject to KRS 362.2-102 to 362.2-1207, the "Kentucky Uniform Limited Partnership Act (2006)," that is a limited liability limited partnership may contain the name of any partner and shall:
 - (a) Contain the phrase "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP"; and

- (b) Not contain only the phrase "limited partnership" or the abbreviation "L.P." or "LP."
- (10) Subject to KRS 362.2-1204, subsections (8) and (9) of this section shall not apply to a limited partnership formed under any statute of this Commonwealth prior to July 15, 1988.
- (11) The real name of a rural telephone cooperative corporation:
 - (a) Shall contain the word "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 that 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 there from by reason of the inclusion of such words or either thereof in its name; and
 - (b) May include the word "Cooperative."
- (12) The phrase "Rural Electric Cooperative" may not be used in the name of any entity or foreign entity except for one formed under KRS Chapter 279.
- (13) Except as otherwise provided in this section, the word "cooperative" may not be used in the name of any entity doing business for profit in this Commonwealth unless it has complied with the provisions of KRS 272.020 to 272.050.
- (14) ***There are no required identifiers for a business trust or a statutory trust, but the name of a business or statutory trust may include "Limited" or "Ltd." and may not include any of "incorporated," "corporation," "Inc.," "Corp.," "partnership," or "cooperative."***~~[An entity 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 entity; 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.]~~
- (15) An entity may use the name, including the fictitious name, of another entity that is used in this Commonwealth if the other entity is organized or authorized to transact business in this Commonwealth, and the proposed user 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 business name of the other entity.
- (16) This chapter does not control the use of assumed names.
- (17) The filing of articles of incorporation, articles of organization, a statement of qualification, a certificate of limited partnership, a declaration *or certificate* of trust, an application to transact authority in the Commonwealth, a statement of foreign qualification, a name registration, or name reservation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.
- (18) The provisions of subsection (2)(a) of this section shall not affect the right of any nonprofit corporation existing on June 13, 1968, to continue the use of its name as then in effect.
- (19) The assumption of a nonprofit corporate name in violation of this section shall not affect or vitiate the corporate existence, but the courts of this Commonwealth having equity jurisdiction may, upon the application of the Commonwealth 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.
- (20) This section shall not apply to any domestic or foreign telephone cooperative which became subject to KRS 279.310 to 279.600 by complying with the provisions of KRS 279.470 or which does business in this

Commonwealth pursuant to KRS 279.570 and which elects to retain a name which does not comply with this section.

- (21) Nothing in this section shall limit the ability of a professional regulatory board to promulgate rules governing entities and foreign entities under its jurisdiction.
- (22) The real name of a foreign entity will be determined according to KRS 365.015. For entities not covered by that statute, the real name of the foreign entity will be the real name of the entity as so recognized in the jurisdiction of its origination.
- (23) The real name of a partnership, other than that of a limited liability partnership as set forth on a statement of qualification or a registration as a limited liability partnership filed pursuant to KRS 362.555 or that of a foreign limited liability partnership as set forth on a statement of foreign qualification, need not be distinguishable from any name of record with the Secretary of State.

➔Section 83. KRS 14A.7-030 is amended to read as follows:

- (1) An entity administratively dissolved under KRS 14A.7-020 or predecessor law may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:
 - (a) Recite the name of the entity and the effective date of its administrative dissolution;
 - (b) State that the ground or grounds for dissolution either did not exist or have been eliminated;
 - (c) State that the entity's name satisfies the requirements of KRS 14A.3-010;
 - (d) Contain a certificate from the Department of Revenue reciting that all taxes owed by the entity have been paid;
 - (e) Contain a representation that the entity has taken no steps to wind up and liquidate its business and affairs and notify claimants;
 - (f) If a business corporation, 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
 - (g) Be accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report as provided for in this chapter.
- (2) If the Secretary of State determines that the application satisfies the requirement of subsection (1) of this section, he or she shall cancel the certificate of dissolution and prepare a certificate of existence that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and notify the entity of that filing, which notification may be accomplished electronically.
- (3) When the reinstatement is effective:~~{,}~~
 - (a) It shall relate back to and take effect as of the effective date of the administrative dissolution:~~{and}~~
 - (b) The entity shall *continue*~~{resume}~~ carrying on its business as if the administrative dissolution or revocation had never occurred; *and*
 - (c) ***The liability of any agent shall be determined as if the administrative dissolution or revocation had never occurred.***
- (4) Notwithstanding any other provision to the contrary, any entity which was administratively dissolved and has taken the action necessary to wind up and liquidate its business and affairs and notify claimants shall be prohibited from reinstatement.

➔Section 84. KRS 14A.9-010 is amended to read as follows:

- (1) A foreign entity shall not transact business in this *Commonwealth*~~{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, shareholders, partners, members, managers, beneficial owners, or trustees or carrying on other activities concerning the internal affairs of the foreign entity;

- (c) Maintaining bank accounts;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign entity'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, 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, personal, or intangible 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; and
 - (k) Transacting business in interstate commerce.
- (3) The list of activities in subsection (2) of this section is not exhaustive.
- (4) ***Except as provided in subsection (6) of this section, this section shall not apply to foreign general partnerships. Whether a foreign limited liability partnership is transacting business in this Commonwealth shall be determined under subsection (2) of this section. A foreign limited liability partnership that is transacting business in this Commonwealth shall file a statement of foreign qualification pursuant to Section 120 of this Act.*** ~~This section shall not apply to:~~
- ~~(a) Foreign limited liability partnerships; and~~
 - ~~(b) Foreign general partnerships.~~
- (5) This section shall not apply in determining the contacts or activities that may subject a foreign entity to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.
- (6) Notwithstanding any other law to the contrary, a foreign entity, ***in order*** ~~exempt under subsection (2)(j) or (4) of this section shall obtain a certificate of authority from the Secretary of State under KRS 14A.9-030~~ to be eligible for award of a state contract under KRS Chapter 45A or 176, ***shall have a certificate of authority or a statement of foreign qualification.***

➔Section 85. KRS 14A.9-030 is amended to read as follows:

- (1) A foreign entity 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 real name of the foreign entity and, if its real name is unavailable for use in this Commonwealth, a name that satisfies the requirements of KRS 14A.3-010;
 - (b) The name of the state or country under whose law it is organized;
 - (c) Its form of organization;
 - (d) Its date of organization;
 - (e) Its period of duration or a statement that its duration is perpetual;
 - (f) The street address of its principal office;
 - (g) The address of its registered office in this Commonwealth and the name of its registered agent at that office;
 - (h) The names and usual business addresses of:
 1. The secretary, the other principal officers, and the directors, if the entity is a foreign corporation;
 2. Each of the general partners, if the entity is a foreign limited partnership;
 3. Each of the managers, if the entity is a foreign limited liability company with managers; or
 4. Each of the trustees, if the entity is a foreign business trust;

- (i) If the foreign entity is a foreign limited partnership, whether it is a foreign limited liability limited partnership; and
 - (j) If the foreign entity is a foreign professional service corporation, a representation that all of the shareholders, not less than one-half (1/2) of the directors, and all officers other than the secretary and treasurer would be qualified persons with respect to the corporation were it incorporated in this Commonwealth.
- (2) The execution of a certificate of authority shall constitute a representation by that person that the foreign entity validly exists under the laws of its jurisdiction of organization.
 - (3) Unless the registered agent signs the application, the foreign entity shall deliver with the application for certificate of authority the registered agent's written consent to the appointment.
 - (4) A certificate of authority or document of similar import of record with the Secretary of State as of the date immediately preceding January 1, 2011, including a statement of foreign qualification, shall remain effective, but its amendment shall be governed by KRS 14A.9-040.
 - (5) ***A foreign general partnership, being a general partnership not governed as to its internal affairs by Subchapter 1 of KRS Chapter 362, or predecessor law, may for purposes of complying with Sections 86 and 87 of this Act apply for and receive a certificate of authority. The application for the certificate of authority shall satisfy the requirements of subsection (1) of this section and as well list the names and usual business addresses of each partner in the partnership.***

➔Section 86. KRS 45A.480 is amended to read as follows:

- (1) (a) No state contract for building, construction, reconstruction, renovation, demolition, or maintenance, or for any activity related to building, construction, reconstruction, renovation, demolition, or maintenance shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person assures, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.
- (b) An agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity ***unless that foreign entity, on the records of the Secretary of State, holds a certificate of authority or a statement of foreign qualification*** ~~required by KRS 14A.9-010 to obtain a certificate of authority from the Secretary of State under KRS 14A.9-030 unless the person produces the required certificate of authority within fourteen (14) days of the bid or proposal opening~~.
- (2) Any person who fails to comply with ***the requirements of subsection (1) of this section during the term of the state contract*** ~~the assurances or to produce the certificate of authority from the Secretary of State required under subsection (1) of this section~~, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.
- (3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

➔Section 87. KRS 176.085 is amended to read as follows:

- (1) (a) No contract for building, construction, reconstruction, renovation, demolition, or other type work on any state road, waterway, or aviation-related work, shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person ***assures*** ~~shall assure~~, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.
- (b) An agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a contract to a person that is a foreign entity ***unless that foreign entity, on the records of the Secretary of State, holds a certificate of authority or a statement of foreign qualification*** ~~required by~~

~~KRS 14A.9-010 to obtain a certificate of authority from the Secretary of State under KRS 14A.9-030 unless the person produces the required certificate of authority within fourteen (14) days of the bid or proposal opening.~~

- (2) Any person who fails to comply with the **requirements of subsection (1) of this section during the term of the state contract**~~assurances or to produce the certificate of authority from the Secretary of State required under subsection (1) of this section~~, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.
- (3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

➔Section 88. KRS 271B.6-220 is amended to read as follows:

- (1) A purchaser from a corporation of its own shares shall not be liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.
- (2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation shall not be personally liable for the acts or debts of the corporation except that he **or she** may become personally liable by reason of his own acts or conduct.
- (3) ***That a corporation has a single shareholder is not a basis for setting aside the rule recited in subsection (2) of this section.***

➔Section 89. KRS 271B.8-030 is amended to read as follows:

- (1) A board of directors shall consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
- (2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent (30%) or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent (30%) the number of directors last approved by the shareholders.
- (3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.
- (4) Directors shall be elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under KRS 271B.8-060.
- (5) ***Every director of a corporation, by acceptance of election or appointment as a director, including by service, shall be deemed to have consented to the jurisdiction of the courts of the Commonwealth of Kentucky for any action by, in the name of, or on behalf of the corporation.***

➔Section 90. KRS 271B.8-400 is amended to read as follows:

- (1) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.
- (2) A duly appointed officer may appoint one (1) or more officers or assistant officers if authorized by the bylaws or the board of directors.
- (3) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.
- (4) The same individual may simultaneously hold more than one (1) office in a corporation.
- (5) ***Every officer of a corporation, by acceptance of election or appointment as an officer, including by service, shall be deemed to have consented to the jurisdiction of the courts of the Commonwealth of Kentucky for any action by, in the name of, or on behalf of the corporation.***

➔Section 91. KRS 271B.11-060 is amended to read as follows:

- (1) When a merger takes effect:
- (a) Every other corporation party to the merger shall merge into the surviving corporation and the separate existence of every corporation, except the surviving corporation, shall cease;
 - (b) The title to all ~~real estate and other~~ property, **whether real, personal, or intangible**, owned by each corporation party to the merger shall be vested in the surviving corporation without reversion or impairment;
 - (c) The surviving corporation shall have all liabilities of each corporation party to the merger;
 - (d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;
 - (e) The articles of incorporation of the surviving corporation shall be amended to the extent provided in the plan of merger; and
 - (f) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property shall be converted, and the former holders of the shares shall be entitled only to the rights provided in the articles of merger or to their rights under Subtitle 13.
- (2) 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 or to their rights under Subtitle 13.

➔Section 92. KRS 271B.12-030 is amended to read as follows:

- (1) A corporation may be converted to a limited liability company as provided in KRS 275.376.
- (2) ***A corporation may be converted to a statutory trust as provided in Section 61 of this Act.***

➔Section 93. KRS 271B.13-020 is amended 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 ***into a limited liability company or statutory trust***~~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 94. KRS 271B.14-040 is amended to read as follows:

- (1) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.
- (2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.
- (3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:
 - (a) The name of the corporation;
 - (b) The effective date of the dissolution that was revoked;
 - (c) The date that the revocation of dissolution was authorized;
 - (d) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
 - (e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
 - (f) If shareholder action was required to revoke the dissolution, the information required by subsection (1)(c) or (1)(d) of KRS 271B.14-030.
- (4) Revocation of dissolution shall be effective upon the effective date of the articles of revocation of dissolution.
- (5) When the revocation of dissolution is effective, it shall ***have the effect provided in subsection (3) of Section 83 of this Act***~~relate back to and take effect as of the effective date of the dissolution and the corporation shall resume carrying on its business as if dissolution had never occurred~~.

➔Section 95. KRS 271B.14-050 is amended 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, ***including as appropriate, entering into agreements with creditors for the satisfaction thereof***;
 - (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 96. KRS 271B.14-330 is amended to read as follows:

- (1) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in KRS 271B.14-300 exist, it may enter a decree dissolving the corporation ~~and specifying the effective date of the dissolution~~, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it. ***The dissolution shall be effective upon the latter of the filing of the decree by the Secretary of State or such later date as is specified in the decree.***
- (2) The effect of the dissolution shall be as set forth in KRS 271B.14-050.
- (3) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs, including as provided in KRS 271B.14-320, and the notification of claimants in accordance with KRS 271B.14-060 and 271B.14-070.

➔Section 97. KRS 272.171 is amended to read as follows:

- (1) The affairs of the association shall be managed by a board of not less than five (5) directors, elected by the members from their own number or from the members of any member-association except as provided in subsection (3) of this section.
- (2) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to these districts, either directly or by district delegates elected by the members in that district. In that case the bylaws shall specify the number of directors to be elected by each district, the method of apportioning the directors and of districting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to elect the directors and that the result of primary elections may be ratified by the next regular meeting of the members of the association or may be considered final as to the association.
- (3) The bylaws may provide that one or more directors may be appointed by any public official or commission or by the other directors selected by the members or their delegates. These directors shall represent primarily the interest of the general public in the association. The director appointed need not be a member of the association, but shall have the same rights as other directors. Such directors shall not number more than one-fifth (1/5) of the entire number of directors.
- (4) When a vacancy on the board occurs other than by expiration of term, the remaining members of the board shall fill the vacancy for the unexpired term or until the next regular or special meeting of the members, whichever occurs first, by an affirmative vote of not less than a majority of those members present and voting at a duly called regular or special meeting. If the bylaws provide for an election of directors by district, the board shall immediately call a special meeting of the members in that district to fill the vacancy.
- (5) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service, and for the service of the members of its executive committee. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members of the association or others, or differing from terms generally current in that district.
- (6) The bylaws may provide for an executive committee and may allot to it all the functions and powers of the board, subject to the general direction and control of the board.

- (7) Unless otherwise restricted by the articles of incorporation, or bylaws, any action required or permitted to be taken at any meeting of the board or any committee thereof may be taken without a meeting if a written consent thereto is signed by all members of the board or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the board or committee.
- (8) ***Every director of a corporation, by acceptance of election or appointment as a director, including by service, shall be deemed to have consented to the jurisdiction of the courts of the Commonwealth of Kentucky for any action by, in the name of, or on behalf of the corporation.***

→Section 98. KRS 272.181 is amended to read as follows:

The board shall elect from their number a president and one (1) or more vice presidents. They shall also elect a secretary and a treasurer, who need not be directors or members of the association. The two (2) offices of secretary and treasurer may be combined in one (1) person. The treasurer may be a bank or other depository, and as such shall not be considered as an officer but as a function of the board and the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as authorized by the board. The bylaws of the association may authorize the creation and fix the responsibilities of any other office. ***Every officer of a corporation, by acceptance of election or appointment as an officer, including by service, shall be deemed to have consented to the jurisdiction of the courts of the Commonwealth of Kentucky for any action by, in the name of, or on behalf of the corporation.***

→Section 99. KRS 272.325 is amended to read as follows:

- (1) An association may discontinue its operations, settle its affairs, and voluntarily dissolve upon the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by its members present in person, or by proxy (if permitted by the bylaws), and voting, or if the association has adopted a delegate plan of voting, upon the affirmative vote of not less than two-thirds (2/3) of the delegates present in person and voting, at any annual or special meeting duly called and convened.
- (2) An association so determining to dissolve and wind up, shall designate a committee of three (3) of its members, who shall, on behalf of the association and within the time fixed in their designation, or any extension thereof, liquidate the association's assets, pay its debts and expenses, ***including as appropriate entering into agreements with creditors for the satisfaction thereof***, and divide its net assets among the members and stockholders pursuant to its articles of incorporation, bylaws, or contracts with members; upon final settlement by such committee, the association shall be dissolved. The committee shall prepare a report of the proceedings had under this section. The report shall be subscribed by the committee members and acknowledged by them before an officer authorized by the law of this state to 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 report, 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 dissolution of such association. A copy of the report, 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, Department of Agriculture.
- (3) After the payment of the association's debts and after provision has been made for the retirement of its capital stock outstanding, if any, at par and accruals thereon, and other fixed obligations, if any, held by members, the net assets remaining if no provision is made in the association's articles of incorporation, bylaws, or contracts with members may be distributed to members and other patrons by distribution based on dollar volume of purchases by such members and patrons or other unit of measure or on products marketed as shown by the association books over the preceding five (5) fiscal years or if the estimated cost of making such distribution, in the opinion of the committee approximate more than fifty percent (50%) of the amount available for distribution, the association may dispose of its net assets by converting them to cash and paying the money over to the College of Agriculture of the University of Kentucky, or to any nonprofit farm organization operating within the areas served by the cooperative.

→Section 100. KRS 273.211 is amended to read as follows:

- (1) The number of directors of a corporation shall not be less than three (3). Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number

shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

- (2) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one (1) year, and until his successor is elected and has accepted his election.
- (3) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.
- (4) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.
- (5) ***Every director of a corporation, by acceptance of election or appointment as a director, including by service, shall be deemed to have consented to the jurisdiction of the courts of the Commonwealth of Kentucky for any action by, in the name of, or on behalf of the corporation.***

➔Section 101. KRS 273.227 is amended to read as follows:

- (1) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.
- (2) A duly appointed officer may appoint one (1) or more officers or assistant officers if authorized by the bylaws or the board of directors.
- (3) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.
- (4) The same individual may simultaneously hold more than one (1) office in a corporation.
- (5) Each officer shall be elected or appointed at such time and in such manner and for such terms not exceeding three (3) years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors.
- (6) The articles of incorporation or the bylaws may provide that any one (1) or more officers of the corporation shall be ex officio members of the board of directors.
- (7) ***Every officer of a corporation, by acceptance of election or appointment as a director, including by service, shall be deemed to have consented to the jurisdiction of the courts of the Commonwealth of Kentucky for any action by, in the name of, or on behalf of the corporation.***

➔Section 102. KRS 273.333 is amended to read as follows:

- (1) In ***a proceeding***~~proceedings~~ to liquidate the assets and affairs of a corporation, the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite~~;~~ with such powers and duties as the court~~;~~ from time to time~~;~~ may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and to carry on the affairs of the corporation until a full hearing can be had.
- (2) After a hearing had upon such 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 corporation ***and, as appropriate, to enter into agreements with creditors for the satisfaction of the corporation's liabilities.*** Such 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 corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.
- (3) The assets of the corporation 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 corporation shall be paid, satisfied and discharged, or adequate provisions shall be made therefor;

- (b) Assets held by the corporation 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 such requirements;
 - (c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, 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 corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;
 - (d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or by the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others;
 - (e) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in KRS 273.161 to 273.390, or where 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 corporation or the proceeds of any sale or disposition of such assets.
- (5) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

➔Section 103. KRS 273.347 is amended to read as follows:

- (1) In *a proceeding*~~[proceedings]~~ to liquidate the assets and affairs of a corporation, when the costs and expenses of such *proceeding*~~[proceedings]~~ and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of KRS 273.161 to 273.390, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation~~[, whereupon the existence of the corporation shall cease]~~.
- (2) *The clerk of the court shall cause a certified copy of a decree entered under subsection (1) of this section to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof. The dissolution shall be effective upon the latter of the date of filing of the decree by the Secretary of State or such later date as is specified in the decree.*

➔Section 104. KRS 275.003 is amended to read as follows:

- (1) It shall be the policy of the General Assembly through this chapter to give maximum effect to the principles of freedom of contract and the enforceability of operating agreements. Unless displaced by particular provisions of this chapter, the principles of law and equity shall supplement this chapter. Although this chapter is in derogation of common law, the rules of construction that require strict construction of statutes which are in derogation of common law shall not apply to its provisions. This chapter shall not be construed to impair the obligations of any contract existing when this chapter, or any amendment of it, becomes effective, nor to affect any action or proceeding begun or right accrued before the chapter or amendment takes effect.
- (2) A written operating agreement may provide that the limited liability company interest of any member who fails to make any contribution that the member is obligated to make or who otherwise violates an obligation undertaken in the operating agreement shall be subject to specified penalties for, or specified consequences, such failure. Such penalty or consequence may take the form of:
- (a) Reducing or eliminating the defaulting member's proportionate interest in the limited liability company;
 - (b) Subordinating the member's interest to that of nondefaulting members;
 - (c) A forced sale of that limited liability company interest;
 - (d) Forfeiture of his or her limited liability company interest;
 - (e) The lending by other members of the amount necessary to meet the defaulting member's commitment;

- (f) A fixing of the value of his or her limited liability company interest by appraisal or by formula and redemption or sale of the limited liability company interest at such; or
 - (g) Other penalty or consequence.
- (3) A written operating agreement may provide rights to any person, including a person who is not a member or not otherwise a party to the operating agreement, to the extent set forth therein.
 - (4) Except to the extent set forth in a written operating agreement, a limited liability company is bound by and a party to the operating agreement.
 - (5) Action validly taken pursuant to one (1) provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.
 - (6) No member or other person shall have a vested property right resulting from any provision of the operating agreement which may not be modified by its amendment or as otherwise permitted by law.
 - (7) Each member and manager and any other party to an operating agreement shall discharge all duties and exercise all rights consistently with the obligation of good faith and fair dealing. The obligation of good faith and fair dealing may not be eliminated in the operating agreement, but it may prescribe the standards by which the performance of the obligation is to be measured provided the standards are not manifestly unreasonable.
 - (8) ***To the extent the articles of organization and the operating agreement do not otherwise provide, the Kentucky Limited Liability Company Act shall govern relations among the limited liability company, the members, the managers, and the assignees.***

➔Section 105. KRS 275.150 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section or as otherwise specifically set forth in other sections in this chapter, no member, manager, employee, or agent of a limited liability company, including a professional limited liability company, shall be personally liable by reason of being a member, manager, employee, or agent of the limited liability company, under a judgment, decree, or order of a court, agency, or tribunal of any type, or in any other manner, in this or any other state, or on any other basis, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise. The status of a person as a member, manager, employee, or agent of a limited liability company, including a professional limited liability company, shall not subject the person to personal liability for the acts or omissions, including any negligence, wrongful act, or actionable misconduct, of any other member, manager, agent, or employee of the limited liability company. ***That a limited liability company has a single member or a single manager is not a basis for setting aside the rule otherwise recited in this subsection.***
- (2) Notwithstanding the provisions of subsection (1) of this section, under a written operating agreement or under another written agreement, a member or manager may agree to be obligated personally for any of the debts, obligations, and liabilities of the limited liability company.
- (3) Subsection (1) of this section shall not affect the liability of a member, manager, employee, or agent of a limited liability company for his or her own negligence, wrongful acts, or misconduct.

➔Section 106. KRS 275.170 is amended to read as follows:

Unless otherwise provided in a written operating agreement:

- (1) With respect to any claim for breach of the duty of care, 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) The duty of loyalty applicable to each member and manager shall be to 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 or her 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. ***That a transaction was fair to the limited liability company shall not constitute a defense to the failure to request and receive the required consent of the disinterested managers or members.***
- (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 107. KRS 275.230 is amended to read as follows:

- (1) A member or manager who votes for or assents to a distribution in violation of an operating agreement or KRS 275.225 shall be personally liable to the limited liability company for the amount of the distribution that exceeds the amount that could have been distributed without violating KRS 275.225 or an operating agreement if it is established that the member or manager did not comply with KRS 275.170.
- (2) Each member or manager held liable under subsection (1) of this section for an unlawful distribution shall be entitled to contribution:
- From each other member or manager who could be held liable under subsection (1) of this section for the unlawful distribution; and
 - From each member, ***assignee, or other recipient*** for the amount~~[-the member]~~ received in violation of KRS 275.225 or an operating agreement.
- (3) A proceeding under this section shall be barred unless it is commenced within two (2) years after the date on which the effect of the distribution is measured under KRS 275.225(3).

➔Section 108. KRS 275.275 is amended to read as follows:

- (1) Subject to subsection (2) of this section, a person may become a member in a limited liability company:
- In the case of the person acquiring a limited liability company interest directly from a limited liability company, upon compliance with an operating agreement or, if an operating agreement does not so provide in writing, upon the written consent of all members; and
 - In the case of an assignee of the limited liability company interest, as provided in KRS 275.255 and 275.265.
- (2) The effective time of admission of a member to a limited liability company shall be the later of:
- The date the limited liability company is formed;
 - The time provided in the operating agreement or, if no time is provided, when the person's admission is reflected in the records of the limited liability company; or
 - The time the member is admitted under KRS 275.285(4).
- (3) ***Upon becoming a member in a limited liability company, the member is bound by and a party to the operating agreement.***

➔Section 109. KRS 275.280 is amended to read as follows:

- (1) A person shall disassociate from and cease to be a member of a limited liability company upon the occurrence of one (1) or more of the following events:
- Subject to the provisions of subsection (3) of this section, the member withdraws by voluntary act from the limited liability company;
 - The member ceases to be a member of the limited liability company as provided in KRS 275.265;
 - The member is removed as a member:
 - In accordance with a written operating agreement;

2. Unless otherwise provided in a written operating agreement, if after an assignment there is at least one (1) other member, when the member assigns all of the member's limited liability company interest *that may be unilaterally assigned*, upon receipt of the written consent of a majority-in-interest of the members who have not assigned their interest;
 3. If after the assignment there are no other members, upon the effective time and date of the assignment; or
 4. Upon resignation as a member;
- (d) Unless otherwise provided in a written operating agreement or by written consent of majority-in-interest of the members, at the time the member:
1. Makes an assignment for the benefit of creditors;
 2. Files a voluntary petition in bankruptcy;
 3. Is adjudicated bankrupt or insolvent;
 4. Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
 5. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature; or
 6. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's property;
- (e) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, if within one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within one hundred twenty (120) days after the appointment without the member's consent or acquiescence of a trustee, receiver, or liquidator of the member, or of all or any substantial part of the member's properties, the appointment is not vacated or stayed or within one hundred twenty (120) days after the expiration of any stay, the appointment is not vacated;
- (f) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is an individual:
1. The member's death; or
 2. The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage his or her person or estate;
- (g) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;
- (h) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;
- (i) Unless otherwise provided in a written operating agreement or by written consent of the majority-in-interest of the members remaining at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the revocation of its articles of incorporation and the lapse of ninety (90) days after notice to the corporation of revocation without a reinstatement of its articles of incorporation; or
- (j) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.
- (2) The members may provide in a written operating agreement for other events the occurrence of which shall result in a person ceasing to be a member of the limited liability company.

- (3) Unless otherwise provided in a written operating agreement:
- (a) In a member-managed limited liability company a member may resign from a limited liability company upon thirty (30) days' prior written notice to the limited liability company; and
 - (b) In a manager-managed limited liability company, a member may not resign without the consent of all other members.
- (4) Upon the effective date of the resignation, the resigning member shall be dissociated from and cease to be a member of the limited liability company and shall be with respect to the resigning member's limited liability company interest an assignee thereof.
- (5) The successor-in-interest of a disassociated member shall be an assignee.
- ➔Section 110. KRS 275.290 is amended to read as follows:
- (1) The Circuit Court~~{,}~~ for the county in which the principal office of the limited liability company is located, or, if none, in the county of the registered office, may dissolve a limited liability company in a proceeding by a member if it is established that it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement.
 - (2) ***If after a hearing the court determines that one (1) or more grounds for judicial dissolution exist, it may enter a decree of dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it. The dissolution shall be effective upon the filing of the decree by the Secretary of State or a later date as is specified in the decree.***~~{Any decree dissolving the limited liability company pursuant to subsection (1) of this section shall specify the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.}~~
 - (3) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the limited liability company's business and affairs in accordance with KRS 275.300 and the notification of claimants in accordance with KRS 275.320 and 275.325.
 - (4) The effect of dissolution under this section shall be as provided in KRS 275.300(2) and (3).
- ➔Section 111. KRS 275.300 is amended to read as follows:
- (1) Except as otherwise provided in a written operating agreement 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, ***including as appropriate entering into agreements with creditors for the satisfaction thereof;***
 - (d) Distributing its remaining property among its members and assignees in proportion to their rights to share therein; and
 - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
 - (3) Except as otherwise provided in a written operating agreement, 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) Amend the operating agreement or otherwise change quorum or voting requirements for its members or managers, provisions for selection, resignation, or removal of its members or managers, or provisions for amending the operating agreement, or terminate contribution obligations.
- (4) Dissolution of a limited liability company shall not:
- (a) Prevent commencement of a proceeding by or against the limited liability company in its name;
 - (b) Abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution;
 - (c) Terminate the authority of the registered agent of the limited liability company;
 - (d) 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
 - (e) Abate or suspend KRS 275.150(1).

➔Section 112. KRS 275.335 is amended to read as follows:

- (1) Unless otherwise provided in a written operating agreement, a suit on behalf of the limited liability company may be brought in the name of the limited liability company only by:
- (a)~~{(1)}~~ One (1) or more members of a limited liability company, whether or not the operating agreement vests management of the limited liability company in one (1) or more managers, who are authorized to sue by the vote of more than one half (1/2) of the number of members eligible to vote thereon, unless the vote of all members shall be required pursuant to KRS 275.175(1). In determining the vote required under KRS 275.175, the vote of any member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded; or
 - (b)~~{(2)}~~ One (1) or more managers of the limited liability company, if an operating agreement vests management of the limited liability company in one (1) or more managers, who are authorized to do so by the vote required pursuant to KRS 275.175 of the managers eligible to vote thereon. In determining the required vote, the vote of any manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.
- (2) ***Every member and manager of a limited liability company shall be deemed to have consented to the jurisdiction of the courts of the Commonwealth of Kentucky for any action by, in the name of, or on behalf of the limited liability company or for any violation of a duty owed the limited liability company or a member thereof.***

➔Section 113. KRS 275.365 is amended to read as follows:

A merger shall have the following effects:

- (1) The constituent business entities that are parties to the merger shall be a single entity, which shall be the entity designated in the plan of merger as the surviving business entity.
- (2) Each party to the merger, except the surviving business entity, shall cease to exist.
- (3) The surviving business entity shall possess all the rights, privileges, immunities, and powers of each constituent business entity and shall be subject to all the restrictions, disabilities, and duties of each of the constituent entities to the extent the rights, privileges, immunities, powers, restrictions, disabilities, and duties are applicable to the type of business entity that is the surviving business entity.
- (4) All property, ***whether*** real, personal, ***or intangible***~~{and mixed}~~, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other choses in action, and all and every other interest of, belonging to, or due to each of the constituent business entities shall be vested in the surviving business entity without further act or deed.
- (5) The title to all real estate and any interest therein, vested in any constituent business entity shall not revert or be in any way impaired by reason of the merger.
- (6) The surviving entity shall thenceforth be liable for all liabilities and obligations of each of the constituent business entities merged, and any claim existing or action or proceeding pending by or against any constituent

business entity may be prosecuted as if the merger had not taken place, or the surviving business entity may be substituted in the action.

- (7) Neither the rights of creditors nor any liens on the property of any constituent business entity shall be impaired by the merger.
- (8) The interests in a limited liability company or other business entities that are to be converted or exchanged into interests, other securities, cash, obligations, or other property under the terms of the plan of merger are so converted and the former holders thereof are entitled only to the rights provided in the plan of merger or the rights otherwise provided by law.
- (9) 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 merger, as the case may be, shall remain liable as a partner or general partner for an obligation incurred by the partnership or limited partnership before the merger takes effect. The partner's or general partner's liability for all other obligations of the limited liability company incurred after the merger 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 merger shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the merger takes effect.
- (10) If the surviving business entity is a limited liability company, such amendments to the articles of organization and the operating agreement thereof set forth in the plan of merger or the articles of merger, subject to KRS 275.200, shall be effective.
- (11) If the surviving business entity is a limited liability company, the written operating agreement provided for in the plan of merger, if any, shall be binding upon each member in that limited liability company, but any provision thereof obligating a member to make a contribution to the limited liability company is subject to KRS 275.200.

➔Section 114. KRS 275.372 is amended to read as follows:

- (1) A limited liability company may convert into a limited partnership as provided in KRS 362.2-1102(4).
- (2) ***A limited liability company may convert into a limited liability partnership as provided in Section 118 of this Act.***
- (3) ***A limited liability company may convert into a limited liability partnership as provided in Section 118 of this Act.***
- (4) 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 115. KRS 362.1-306 is amended to read as follows:

- (1) Except as otherwise provided in subsections (2) and (3) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.
- (2) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.
- (3) An obligation of a partnership ***arising out of or related to circumstances or events occurring or*** incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under KRS 362.1-1001(2).
- (4) Subsection (3) of this section shall not affect the liability of a partner in a limited liability partnership for his own negligence, wrongful acts, or misconduct.

➔Section 116. KRS 362.1-404 is amended to read as follows:

- (1) The fiduciary duties a partner owes to the partnership and the other partners include the duty of loyalty and the duty of care set forth in subsections (2) and (3) of this section.
- (2) A partner's duty of loyalty to the partnership and the other partners includes, but is not limited to, the following:

- (a) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
 - (b) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
 - (c) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.
- (3) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business includes, but is not limited to, acting with the care that a reasonable person in a like position would exercise under similar circumstances and in a manner that the partner believes to be in the best interests of the partnership.
- (4) A partner shall discharge the duties to the partnership and the other partners under this subchapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.
- (5) A partner does not violate a duty or obligation under this subchapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest. ***That a transaction was fair to the partnership shall not constitute a defense to the breach of the obligation in subsection (2) of this section.***
- (6) A partner may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume one (1) or more specific obligations of, provide collateral for and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.
- (7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

➔Section 117. KRS 362.1-901 is amended to read as follows:

As used in KRS 362.1-901 to 362.1-908:

- (1) ***"Converted organization" means the entity resulting from a conversion;***
- (2) ***"Converting organization" means the entity undertaking a conversion;***
- (3) "General partner" means a partner in a partnership and a general partner in a limited partnership;
- (4) ***"Limited liability company" means a limited liability company organized under the Kentucky Limited Liability Company Act or comparable law of another jurisdiction;***
- (5) ***"Limited liability partnership" means a limited liability partnership as provided for in KRS 362.1-1001;***
- ~~(6)(2)~~ "Limited partner" means a limited partner in a limited partnership;
- ~~(7)(3)~~ "Limited partnership" means a limited partnership created under the Kentucky Uniform Limited Partnership Act (2006), predecessor law, or comparable law of another jurisdiction; and
- ~~(8)(4)~~ "Partner" includes both a general partner and a limited partner.

➔Section 118. KRS 362.1-903 is amended to read as follows:

- (1) A limited partnership may be converted to a partnership pursuant to this ~~subsection~~~~section~~.
- ~~(a)(2)~~ Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership shall be approved by all of the partners.
- ~~(b)(3)~~ After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership and any certificate of assumed name filed with the Secretary of State.
- ~~(c)(4)~~ The conversion takes effect when the certificate of limited partnership is canceled.
- ~~(d)(5)~~ A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in KRS 362.1-306, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

- (2) (a) *A limited liability company may be converted to a limited liability partnership pursuant to this subsection.*
- (b) *Notwithstanding a provision to the contrary in the operating agreement, the terms and conditions of a conversion of a limited liability company to a limited liability partnership shall be approved by all of the members.*
- (c) *After the conversion is approved by the members, the limited liability company shall file with the Secretary of State a statement of qualification satisfying the requirements of KRS 362.1-1001(3) and including as well the name of the predecessor limited liability company and a statement that the predecessor limited liability company was converted to a limited liability partnership.*
- (d) *The conversion takes effect upon the effective time and date of the statement of qualification as provided for in KRS 14A.2-070.*
- (e) *A member who becomes a general partner as a result of a conversion remains liable only as a member for an obligation incurred by the limited liability company before the conversion takes effect. Except as otherwise provided in Section 115 of this Act, a partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.*

➔Section 119. KRS 362.1-904 is amended to read as follows:

- (1) A **converted organization** ~~[partnership or limited partnership]~~ that has been converted pursuant to KRS 362.1-901 to 362.1-908 is for all purposes the same entity that existed before the conversion.
- (2) When a conversion takes place:
 - (a) All property and contract rights owned by, and all rights, privileges, and immunities of, the converting organization shall remain vested in the converted organization without assignment, reversions, or impairment and without the converting organization having been dissolved;
 - (b) All obligations of the converting partnership organization shall continue as obligations of the converted organization;
 - (c) An action or proceeding pending against the converting partnership organization may be continued as if the organization had not occurred, and the name of the converted organization may be substituted in any pending action or proceeding for the name of the converting organization;
 - (d) Any written partnership agreement of the converted partnership or limited partnership shall be binding upon each person who becomes a partner in the converted partnership or limited partnership; and
 - (e) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.
- (3) Unless otherwise provided in the partnership agreement, a partner has no right to dissent from a conversion.

➔Section 120. KRS 362.1-1102 is amended to read as follows:

- (1) Before transacting business in this Commonwealth, a foreign limited liability partnership shall file a statement of foreign qualification. The statement shall contain:
 - (a) The name of the foreign limited liability partnership which satisfies the requirements of KRS 14A.3-010;
 - (b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this Commonwealth, if any;
 - (c) The partnership's registered office and the name of its registered agent at that office, which shall comply with KRS 14A.4-010; and
 - (d) Its jurisdiction of organization.
- (2) The status of a partnership as a foreign limited liability partnership remains effective, regardless of changes in the partnership, until it is canceled pursuant to KRS 362.1-105(4) or revoked pursuant to KRS 14A.9-080.
- (3) If the name of a foreign limited liability partnership is not distinguishable upon the records of the Secretary of State, then it may file a statement of foreign qualification using a fictitious name that is distinguishable upon the records of the Secretary of State, in which instance the statement of foreign qualification shall be filed

under the fictitious name, shall recite that the partnership has filed the statement of foreign qualification under a fictitious name, and shall include in the statement its real name in its jurisdiction of organization.

- (4) ***Whether a foreign limited liability partnership is transacting business in the Commonwealth shall be determined under subsection (2) of Section 84 of this Act.***
- (5) ***The consequences to a foreign limited liability partnership transacting business without a statement of foreign qualification shall be as set forth in KRS 14A.9-020.***
- (6) A statement of foreign qualification shall authorize the foreign limited liability partnership to transact business in this Commonwealth subject to the right of the Commonwealth to revoke the statement.
- (7)~~(5)~~ A foreign limited liability partnership, having filed a statement of foreign qualification, shall have the same as, but no greater rights than, and shall have the same, but no greater privileges than, and except as otherwise provided by this subchapter, shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a limited liability partnership.

➔Section 121. KRS 362.2-404 is amended to read as follows:

- (1) Except as otherwise provided in subsections (2) and (3) of this section, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.
- (2) A person admitted as a general partner into an existing limited partnership is not personally liable for any limited partnership obligation incurred before the person's admission as a general partner.
- (3) An obligation of a limited partnership ***arising out of or related to circumstances or events occurring or*** incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under KRS 362.2-406(2)(b).
- (4) Subsection (3) of this section shall not affect the liability of a general partner for his or her own negligence, wrongful acts, or misconduct.

➔Section 122. KRS 362.2-408 is amended to read as follows:

- (1) The fiduciary duties that a general partner has to the limited partnership and the other partners include the duties of loyalty and care under subsections (2) and (3) of this section.
- (2) A general partner's duty of loyalty to the limited partnership and the other partners includes, but it not limited to, the following:
 - (a) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;
 - (b) To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and
 - (c) To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.
- (3) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities includes, but it not limited to, acting with the care that a reasonable person in a like position would exercise under similar circumstances and in a manner that the partner believes to be in the best interests of the limited partnership.
- (4) A general partner shall discharge the duties to the limited partnership and the other partners under this subchapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.
- (5) A general partner does not violate a duty or obligation under this subchapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest. ***That a***

transaction was fair to the limited partnership shall not constitute a defense to the breach of the obligation in subsection (2) of this section.

➔Section 123. KRS 362.2-802 is amended to read as follows:

- (1) On application by a partner, the Circuit Court of the county in which the limited partnership maintains its registered agent may decree dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.
- (2) *If after a hearing the court determines that one (1) or more grounds for judicial dissolution exist, it may enter a decree dissolving the limited partnership and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it. The dissolution shall be effective upon the filing of the decree by the Secretary of State or such later date as is specified in the decree.*

➔Section 124. KRS 362.250 is amended to read as follows:

- (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.
- (2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.
- (3) *That a transaction was fair to the partnership shall not constitute a defense to the breach of the obligation in subsection (1) of this section.*

➔Section 125. KRS 365.015 is amended 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 *or statutory 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 14A.3-010 to 14A.3-050 or predecessor law;
 4. Business trust *or statutory 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 *or statutory trust* or the fictitious name adopted for use in this Commonwealth under *Subchapter 3 of KRS Chapter 14A*~~[386.4432]~~;
 5. Corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in this Commonwealth under KRS 14A.3-010 to 14A.3-050 or predecessor law; 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 14A.3-010 to 14A.3-050 or predecessor law.
- (2) (a) No individual, general partnership, limited partnership, business *or statutory* trust, corporation, or limited liability company shall conduct or transact business in this Commonwealth under an assumed name or any style other than his, her, or its real name, as defined in subsection (1) of this section, unless such individual, general partnership, limited partnership, business *or statutory* 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, general partnership, limited partnership, business *or statutory* trust, corporation, or limited liability company and his, or her 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 *or statutory* 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 *or statutory* 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 *or statutory* 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 certificate 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 *or statutory* 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.
- (12) ***A series entity, as defined in Section 78 of this Act, may on behalf of any series thereof file a certificate of assumed name. The certificate shall provide that the assumed name is adopted on behalf of a series of the series entity and not on behalf of the series entity itself, but the certificate of assumed name shall be recorded on the records of the Secretary of State as being that of the series entity.***

➔Section 126. KRS 446.010 is amended to read as follows:

As used in the statute laws of this state, unless the context requires otherwise:

- (1) "Action" includes all proceedings in any court of this state;
- (2) "Animal" includes every warm-blooded living creature except a human being;
- (3) "Attorney" means attorney-at-law;
- (4) "Bequeath" and "devise" mean the same thing;
- (5) "Bequest" and "legacy" mean the same thing, and embrace either real or personal estate, or both;
- (6) ***"Business trust" includes, except when utilized in KRS Chapter 386, a "statutory trust" as organized under KRS Chapter 386A;***
- (7) "Case plan" means an individualized accountability and behavior change strategy for supervised individuals that:
 - (a) Targets and prioritizes the specific criminal risk factors of the individual based upon his or her assessment results;
 - (b) Matches the type and intensity of supervision and treatment conditions to the individual's level of risk, criminal risk factors, and individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;
 - (c) Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations; and
 - (d) Specifies positive and negative actions that will be taken in response to the supervised individual's behaviors;
- ~~(8)(7)~~ "Cattle" includes horse, mule, ass, cow, ox, sheep, hog, or goat of any age or sex;
- ~~(9)(8)~~ "Company" may extend and be applied to any corporation, company, person, partnership, joint stock company, or association;
- ~~(10)(9)~~ "Corporation" may extend and be applied to any corporation, company, partnership, joint stock company, or association;
- ~~(11)(10)~~ "Criminal risk factors" are characteristics and behaviors that, when addressed or changed, affect a person's risk for committing crimes. The characteristics may include but are not limited to the following risk and criminogenic need factors: antisocial behavior; antisocial personality; criminal thinking; criminal associates; dysfunctional family; low levels of employment or education; poor use of leisure and recreation; and substance abuse;

- (12)~~(11)~~ "Cruelty" as applied to animals includes every act or omission whereby unjustifiable physical pain, suffering, or death is caused or permitted;
- (13)~~(12)~~ "Directors," when applied to corporations, includes managers or trustees;
- (14)~~(13)~~ "Domestic," when applied to a corporation, partnership, business trust, or limited liability company, means all those incorporated or formed by authority of this state;
- (15)~~(14)~~ "Domestic animal" means any animal converted to domestic habitat;
- (16)~~(15)~~ "Evidence-based practices" means policies, procedures, programs, and practices proven by scientific research to reliably produce reductions in recidivism when implemented competently;
- (17)~~(16)~~ "Federal" refers to the United States;
- (18)~~(17)~~ "Foreign," when applied to a corporation, partnership, *limited partnership*, business trust, *statutory trust*, or limited liability company, includes all those incorporated or formed by authority of any other state;
- (19)~~(18)~~ "Generally accepted accounting principles" are those uniform minimum standards of and guidelines to financial accounting and reporting as adopted by the National Council on Governmental Accounting, under the auspices of the Municipal Finance Officers Association and by the Financial Accounting Standards Board, under the auspices of the American Institute of Certified Public Accountants;
- (20)~~(19)~~ "Graduated sanction" means any of a wide range of accountability measures and programs for supervised individuals, including but not limited to electronic monitoring; drug and alcohol testing or monitoring; day or evening reporting centers; restitution centers; disallowance of future earned compliance credits; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to probation and parole officers; community service or work crews; secure or unsecure residential treatment facilities or halfway houses; and short-term or intermittent incarceration;
- (21)~~(20)~~ "Humane society," "society," or "Society for the Prevention of Cruelty to Animals," means any nonprofit corporation, organized under the laws of this state and having as its primary purpose the prevention of cruelty to animals;
- (22)~~(21)~~ "Issue," as applied to the descent of real estate, includes all the lawful lineal descendants of the ancestors;
- (23)~~(22)~~ "Land" or "real estate" includes lands, tenements, and hereditaments and all rights thereto and interest therein, other than a chattel interest;
- (24)~~(23)~~ "Legatee" and "devisee" convey the same idea;
- (25)~~(24)~~ "May" is permissive;
- (26)~~(25)~~ "Month" means calendar month;
- (27)~~(26)~~ "Oath" includes "affirmation" in all cases in which an affirmation may be substituted for an oath;
- (28)~~(27)~~ "Owner" when applied to any animal, means any person having a property interest in such animal;
- (29)~~(28)~~ "Partnership" includes both general and limited partnerships;
- (30)~~(29)~~ "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests;
- (31)~~(30)~~ "Penitentiary" includes all of the state penal institutions except the houses of reform;
- (32)~~(31)~~ "Person" may extend and be applied to bodies-politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies, and limited liability companies;
- (33)~~(32)~~ "Personal estate" includes chattels, real and other estate that passes to the personal representative upon the owner dying intestate;
- (34)~~(33)~~ "Pretrial risk assessment" means an objective, research-based, validated assessment tool that measures a defendant's risk of flight and risk of anticipated criminal conduct while on pretrial release pending adjudication;
- (35)~~(34)~~ "Regular election" means the election in even-numbered years at which members of Congress are elected and the election in odd-numbered years at which state officers are elected;

- ~~(36)~~~~(35)~~ "Risk and needs assessment" or "validated risk and needs assessment" means an actuarial tool scientifically proven to determine a person's risk to reoffend and criminal risk factors, that when properly addressed, can reduce that person's likelihood of committing future criminal behavior;
- ~~(37)~~~~(36)~~ "Shall" is mandatory;
- ~~(38)~~~~(37)~~ "State" when applied to a part of the United States, includes territories, outlying possessions, and the District of Columbia; "any other state" includes any state, territory, outlying possession, the District of Columbia, and any foreign government or country;
- ~~(39)~~~~(38)~~ "State funds" or "public funds" means sums actually received in cash or negotiable instruments from all sources unless otherwise described by any state agency, state-owned corporation, university, department, cabinet, fiduciary for the benefit of any form of state organization, authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization whether or not the money has ever been paid into the Treasury and whether or not the money is still in the Treasury if the money is controlled by any form of state organization, except for those funds the management of which is to be reported to the Legislative Research Commission pursuant to KRS 42.600, 42.605, and 42.615;
- ~~(40)~~~~(39)~~ "Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail;
- ~~(41)~~~~(40)~~ "Sworn" includes "affirmed" in all cases in which an affirmation may be substituted for an oath;
- ~~(42)~~~~(41)~~ "Treatment" when used in a criminal justice context, means targeted interventions that focus on criminal risk factors in order to reduce the likelihood of criminal behavior. Treatment options may include but shall not be limited to community-based programs that are consistent with evidence-based practices; cognitive-behavioral programs; faith-based programs; inpatient and outpatient substance abuse or mental health programs; and other available prevention and intervention programs that have been scientifically proven to produce reductions in recidivism when implemented competently. "Treatment" does not include medical services;
- ~~(43)~~~~(42)~~ "United States" includes territories, outlying possessions, and the District of Columbia;
- ~~(44)~~~~(43)~~ "Vacancy in office," or any equivalent phrase, means such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law; it applies whether the vacancy is occasioned by death, resignation, removal from the state, county or district, or otherwise;
- ~~(45)~~~~(44)~~ "Violate" includes failure to comply with;
- ~~(46)~~~~(45)~~ "Will" includes codicils; "last will" means last will and testament;
- ~~(47)~~~~(46)~~ "Year" means calendar year;
- ~~(48)~~~~(47)~~ "City" includes town;
- ~~(49)~~~~(48)~~ Appropriation-related terms are defined as follows:
- (a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in KRS Chapter 48;
 - (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by KRS Chapter 48 and which authorizes the expenditure of public funds other than by a general appropriation bill;
 - (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in a branch budget bill as provided for in KRS Chapter 48;
- ~~(50)~~~~(49)~~ "Mediation" means a nonadversarial process in which a neutral third party encourages and helps disputing parties reach a mutually acceptable agreement. Recommendations by mediators are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations;
- ~~(51)~~~~(50)~~ "Biennium" means the two (2) year period commencing on July 1 in each even-numbered year and ending on June 30 in the ensuing even-numbered year;

(52)~~(51)~~ "Branch budget bill" or "branch budget" means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan for the judicial branch, the legislative branch, and the executive branch, which shall include a separate budget bill for the Transportation Cabinet; and

(53)~~(52)~~ "AVIS" means the automated vehicle information system established and maintained by the Transportation Cabinet to collect titling and registration information on vehicles and boats and information on holders of motor vehicle operator's licenses and personal identification cards.

➔Section 127. The following KRS section is repealed:

273.350 Filing of decree of dissolution.

Signed by Governor April 11, 2012.