

**CHAPTER 106****( SB 69 )**

AN ACT relating to business entities.

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

➔Section 1. 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, 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, **whether or not** 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, Kentucky Teachers' Retirement System 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; *and*
- (20) ***"Person" means an individual, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business or statutory trust, donative trust, estate, company, corporation, limited liability company, association, club, committee, organization, or group of persons acting in concert.***

➔Section 2. KRS 11A.201 is amended to read as follows:

As used in KRS 11A.201 to 11A.246 and KRS 11A.990:

- (1) "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;
- (2) (a) "Expenditure" means any of the following that is made to, or for the benefit of an elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or a member of the staff of any of the officials listed in this paragraph:
1. A payment, distribution, loan, advance, deposit, reimbursement, or gift of money, real estate, or anything of value, including, but not limited to, food and beverages, entertainment, lodging, transportation, or honoraria;
  2. A contract, promise, or agreement to make an expenditure; or
  3. The purchase, sale, or gift of services or any other thing of value.
- (b) "Expenditure" does not include a contribution, gift, or grant to a foundation or other charitable organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. "Expenditure" does not include the purchase, sale, or gift of services or any other thing of value that is available to the general public on the same terms as it is available to the persons listed in this subsection. "Expenditure" does not include a payment, contribution, gift, purchase, or any other thing of value that is made to or on behalf of any elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or any member of the staff of any of the officials listed in this paragraph who works for a state agency for which the executive agency lobbyist is not registered to influence;
- (3) "Employer" means any person who engages an executive agency lobbyist;

- (4) "Engage" means to make any arrangement, and "engagement" means arrangement, whereby an individual is employed or retained for compensation to act for or on behalf of an employer to influence executive agency decisions or to conduct any executive agency lobbying activity;
- (5) (a) "Financial transaction" means a transaction or activity that is conducted or undertaken for profit and arises from the joint ownership, or the ownership, or part ownership in common of any real or personal property or any commercial or business enterprise of whatever form or nature between the following:
1. An executive agency lobbyist, his employer, a real party in interest, or a member of the immediate family of the executive agency lobbyist, his employer, or a real party in interest; and
  2. Any elected executive official, the secretary of a cabinet listed in KRS 12.250, an executive agency official, or any member of the staff of any of the officials listed in this subparagraph.
- (b) "Financial transaction" does not include any transaction or activity described in paragraph (a) of this subsection if it is available to the general public on the same terms;
- (6) "Executive agency" means the office of an elected executive official, a cabinet listed in KRS 12.250, or any other state agency, department, board, or commission controlled or directed by an elected executive official or otherwise subject to his authority. "Executive agency" does not include any court or the General Assembly;
- (7) "Executive agency decision" means a decision of an executive agency regarding the expenditure of funds of the state or of an executive agency with respect to the award of a contract, grant, lease, or other financial arrangement under which those funds are distributed or allocated;
- (8) (a) "Executive agency lobbyist" means any person engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one (1) of his main purposes on a substantial basis. The term "executive agency lobbyist" shall also include placement agents and unregulated placement agents.
- (b) "Executive agency lobbyist" does not include an elected or appointed officer or employee of a federal or state agency, state college, state university, or political subdivision who attempts to influence or affect executive agency decisions in his fiduciary capacity as a representative of his agency, college, university, or political subdivision;
- (9) (a) "Executive agency lobbying activity" means contacts made to promote, oppose, or otherwise influence the outcome of an executive agency decision by direct communication with an elected executive official, the secretary of any cabinet listed in KRS 12.250, any executive agency official, or a member of the staff of any one of the officials listed in this paragraph.
- (b) "Executive agency lobbying activity" does not include any of the following:
1. The action of any person having a direct interest in executive agency decisions, if the person acting under Section 1 of the Kentucky Constitution, assembles together with other persons for their common good, petitions any person listed in paragraph (a) of this subsection for the redress of grievances or other proper purposes;
  2. Contacts made for the sole purpose of gathering information contained in a public record; or
  3. Appearances before public meetings of executive agencies;
- (10) "Executive agency official" means an officer or employee of an executive agency whose principal duties are to formulate policy or to participate directly or indirectly in the preparation, review, or award of contracts, grants, leases, or other financial arrangements with an executive agency;
- (11) "Aggrieved party" means a party entitled to resort to a remedy;
- (12) "Elected executive official" means the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, and Commissioner of Agriculture;
- (13) "Person" means an individual, proprietorship, firm, partnership, limited~~liability~~ partnership, joint venture, joint stock company, syndicate, business *or statutory trust, donative* trust, estate, company, corporation, limited liability *company*~~corporation~~, association, club, committee, organization, or group of persons acting in concert;
- (14) "Staff" means any employee of the office of the Governor, or a cabinet listed in KRS 12.250, whose official duties are to formulate policy and who exercises administrative or supervisory authority, or who authorizes the expenditure of state funds;

- (15) "Real party in interest" means the person or entity on whose behalf an executive agency lobbyist is acting, if that person or entity is not the employer of the executive agency lobbyist;
- (16) "Substantial basis" means contacts which are intended to influence a decision that involves one or more disbursements of state funds in an amount of at least five thousand dollars (\$5,000) per year;
- (17) "Placement agent" means an individual or firm who is compensated or hired by an employer or other real party in interest for the purpose of influencing an executive agency decision regarding the investment of the Kentucky Retirement Systems or the Kentucky Teachers' Retirement System assets; and
- (18) "Unregulated placement agent" means a placement agent who is prohibited by federal securities laws and regulations promulgated thereunder from receiving compensation for soliciting a government agency.

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

- (1) Except as authorized by subsection (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. **End with**~~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 **end with**~~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 **end with**~~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 **end with**~~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) ~~End with~~~~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) ~~End with~~~~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.
- (14) The name of a limited cooperative association shall ~~end with~~~~contain~~ the words "limited cooperative association" or "limited cooperative" or the abbreviation "L.C.A." or "LCA." "Limited" may be abbreviated as "Ltd.," "Cooperative" may be abbreviated as "Co-op" or "Coop," and "Association" may be abbreviated as "Assoc." or "Assn."
- (15) 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."
- (16) This chapter does not control the use of assumed names.
- (17) The filing of articles of incorporation, articles of organization, *articles of association*, 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 4. KRS 14A.9-050 is amended to read as follows:

- (1) A certificate of authority shall authorize the foreign entity to which it is issued the authority to transact business in this Commonwealth subject, however, to the right of the Commonwealth to revoke the certificate as provided in this chapter.
- (2) A foreign entity with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic entity of like character.
- (3) This chapter shall not authorize this Commonwealth to regulate the organization or internal affairs, including the inspection of books, records, and documents, of a foreign entity *transacting*~~authorized to transact~~ business in this Commonwealth.
- (4) Nothing in this section shall be interpreted or construed to limit the capacity and authority of a professional regulatory board to regulate the terms and manner by which professional services are rendered in the Commonwealth of Kentucky through or on behalf of a foreign entity.

➔Section 5. KRS 271B.1-410 is amended to read as follows:

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

- (6) Oral notice shall be effective when communicated, if communicated in a comprehensible manner.
- (7) If this chapter prescribes notice requirements for particular circumstances, those requirements, shall govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements shall govern.

➔Section 6. KRS 275.175 is amended to read as follows:

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

➔Section 7. KRS 275.185 is amended to read as follows:

- (1) A limited liability company shall keep at its principal office or other location as set forth in a written operating agreement, the following:
  - (a) A current list, and all past lists, setting forth the full name and last known mailing address of each member and, if any, each manager;
  - (b) A copy of the articles of organization and all amendments thereto, together with executed copies of any power of attorney pursuant to which any articles of amendment have been executed;
  - (c) Copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state, and local tax returns for those years;
  - (d) Copies of any effective written operating agreements and all amendments thereto, and copies of any written operating agreements no longer in effect; and
  - (e) Unless contained in writing in an operating agreement:
    - 1. A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each member and the times at which or events upon the happening of which any additional contributions are to be made;
    - 2. A writing stating events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up; and
    - 3. Other writings, if any, prepared pursuant to a requirement, if any, in an operating agreement.
- (2) **Subject to subsection (5) of this section**, upon reasonable written request *to the limited liability company*, a member may, at the member's own expense, inspect and copy during ordinary business hours any limited liability company record, where the record is located or at a reasonable location.

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

➔Section 8. KRS 281.6251 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 13B.050, any person, partnership, *limited partnership*, corporation, limited liability *company*~~corporation~~, or any other entity applying for a certificate in accordance with KRS 281.625 shall advertise his or her intention to apply for a certificate by using one (1) of the following methods:
  - (a) Publication of a public notice under KRS 424.130(1)(b). The applicant shall cause the notice to be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the proposed territory, the first publication to be made within seven (7) days of the filing of the application with the cabinet; or
  - (b) Correspondence by electronic mail with every existing certificate holder affected by the application giving notice of the intention to apply for a certificate.
- (2) The notice required under this section shall conform in all material respects to the following requirements:
  - (a) The notice shall state:
    1. The name and address of the applicant if the applicant is an individual;
    2. The name and address of each partner and the name and address of the business if the applicant is a partnership *or limited partnership*;
    3. The name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation; or
    4. The name and address of each member *and each manager* if the applicant is a limited liability *company*~~corporation~~;
  - (b) The notice shall specifically describe the proposed route or territory for which the certificate is sought and the type of certificate being requested; and
  - (c) The notice shall state the date the application will be filed and shall contain the following statement: "Any person~~, association, corporation, or LLC~~ who has an interest in the granting of a certificate in the territory sought to be served may protest the granting of the certificate by writing the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, within thirty (30) days of the date of legal publication."

➔Section.9 KRS 386A.3-050 is amended 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 KRS 386A.3-040(3) or (4).



- (6) *The death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner or of a trustee does not result in the termination or dissolution of the statutory trust or any series with which the beneficial owner or trustee has been associated.*

➔Section 10. KRS 386A.6-030 is amended 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.
- (2)~~(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.
- (3)~~(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.
- (4)~~(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 11. KRS 386A.6-040 is amended to read as follows:

- (1) *Any distribution by a statutory trust before dissolution shall be made in proportion to the beneficial interests.*
- (2) 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.
- (3)~~(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.
- (4)~~(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 12. KRS 433.900 is amended to read as follows:

As used in KRS 433.900 to 433.906, unless the context otherwise requires:

- (1) "Applicant" means a secondary metals recycler seeking an application for a certificate of registration with the Office of Occupations and Professions of the Public Protection Cabinet, as provided in KRS 433.902. If the secondary metals recycler is owned by a corporation, limited liability ~~company~~~~corporation~~, *partnership*, limited~~liability~~ partnership, incorporated association, or any other entity organized for the purpose of engaging in business as a secondary metals recycler, "applicant" means the officers of these entities;
- (2) "Ferrous metals" means any metal containing significant quantities of iron or steel;
- (3) "Nonferrous metals" means metal not containing significant quantities of iron, including but not limited to copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof;

- (4) "Name-based background check" means a statewide search of the centralized criminal history record information system by the Department of Kentucky State Police, utilizing the name, date of birth, and Social Security number of the applicant;
- (5) "Restricted metals" means any of the following metal items:
- (a) Manhole covers;
  - (b) Electric light poles or other utility poles;
  - (c) Guardrails;
  - (d) Street signs, traffic signs, or traffic signals;
  - (e) Whole road tiles;
  - (f) Funeral markers or funeral vases;
  - (g) Railroad equipment, including but not limited to a tie plate, signal house, control box, switch plate, e-clip, or rail tie junction;
  - (h) Condensing or evaporating coils made from copper, aluminum, or aluminum-copper, including the tubing or rods from a heating or air conditioning unit that is not from a window air conditioning unit or automobile air conditioning unit;
  - (i) Stainless steel beer kegs;
  - (j) A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a vehicle; or
  - (k) Storm drain covers; and
- (6) (a) "Secondary metals recycler" means:
- 1. Any person who is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential monetary value;
  - 2. Any person who has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential monetary value, other than by the exclusive use of hand tools, by methods including but not limited to processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof; or
  - 3. Any recycler, dealer in junk or metals, dealer in secondhand articles, vendor of bottles or rags, or collector of or dealer in articles found in ashes, garbage, or other refuse, whether a dealer, collector, or vendor operates an established place of business or an itinerant business.
- (b) "Secondary metals recycler" shall not include a municipal solid waste department or any entity which has been issued a municipal solid waste transporter license by the Kentucky Transportation Cabinet and which gathers or obtains ferrous or nonferrous metals in a vehicle registered in Kentucky to transport solid waste.

➔Section 13. KRS 433.902 is amended to read as follows:

- (1) (a) Each secondary metals recycler shall submit to a name-based background check as provided in subsection (2) of this section and obtain a certificate of registration from the Office of Occupations and Professions of the Public Protection Cabinet within sixty (60) days of the effective date of administrative regulations promulgated pursuant to this section.
- (b) The application for certificate of registration shall be in a form and format determined by the Office of Occupations and Professions of the Public Protection Cabinet and shall contain at a minimum the following:
- 1. The name of the secondary metals recycling business;
  - 2. The name or names of each applicant;

3. The address of each secondary metals recycling business owned by the applicant; and
  4. Contact information for the purposes of KRS 433.906.
- (c) Any person listed on an application for a certificate of registration shall be at least eighteen (18) years of age prior to the date that the application is submitted.
  - (d) Any corporation, limited liability *company* [~~corporation~~], *partnership*, limited [~~liability~~] partnership, incorporated association, or any other entity engaged in business as, or organized for the purpose of engaging in business as, a secondary metals recycler submitting an application must be organized and qualified to do business in the Commonwealth.
  - (e) The Office of Occupations and Professions of the Public Protection Cabinet shall charge each applicant a reasonable fee established by administrative regulation equal to the actual administrative costs of processing an application for a certificate of registration.
  - (f) If an applicant is the owner of more than one (1) secondary metals recycling location, the Office of Occupations and Professions of the Public Protection Cabinet shall charge a fee for each location that is no greater than the actual administrative costs of processing the application for certificate of registration. Upon approval of the application, the Office of Occupations and Professions of the Public Protection Cabinet shall issue a certificate of registration for each location.
  - (g) Each applicant that receives a certificate of registration from the Office of Occupations and Professions of the Public Protection Cabinet as provided in this section shall be required to pay an annual renewal fee equal to the actual administrative costs of processing the renewal of the certificate for registration.
  - (h) The list of secondary metals recyclers registered with the Office of Occupations and Professions of the Public Protection Cabinet as provided in this section shall be public information and available upon written request to the Office of Occupations and Professions of the Public Protection Cabinet.
- (2) (a) Prior to approval of the application, the Office of Occupations and Professions of the Public Protection Cabinet shall require a name-based background check on each applicant.
  - (b) Each applicant shall provide written authorization to the Department of Kentucky State Police to perform a name-based background check and release the results to the Office of Occupations and Professions of the Public Protection Cabinet.
  - (c) Any request for a name-based background check shall be on a form or through a process approved by the Department of Kentucky State Police, which may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.
  - (d) The Office of Occupations and Professions of the Public Protection Cabinet shall not issue a certificate of registration to an applicant if the name-based background check results reveal that the applicant has been convicted of, or entered a plea of guilty, an Alford plea, or a plea of nolo contendere to, a felony involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, or obtaining property by false pretenses, any felony drug offense, or knowingly and intentionally violating the laws of the Commonwealth relating to registration as a secondary metals recycler.
- (3) A secondary metals recycler's certificate of registration shall be conspicuously displayed at the location of the secondary metals recycler listed on the application for certificate of registration or at each location if the secondary metals recycler owns more than one (1) business location.
  - (4) The Office of Occupations and Professions of the Public Protection Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of this section.
  - (5) The Office of Occupations and Professions of the Public Protection Cabinet shall not be responsible for any disciplinary action against any secondary metals recycler seeking an application for certificate of registration.

➔SECTION 14. A NEW SECTION OF SUBTITLE 11 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "Registry" means the State Regulatory Registry, LLC, or its successor organization.*
- (2) *When an application, report, or approval request is required by this subtitle to be filed with the commissioner, the commissioner may by rule or order require the filing of the application, report, or approval request, including the applicable fees, be submitted to:*
  - (a) *The State Regulatory Registry, LLC, or its successor organization;*

- (b) The Registry's parent, affiliate, or operating subsidiary; or*
  - (c) Other agencies or authorities, as part of a nationwide licensing system; which may act as an agent for receiving, requesting, and distributing information to and from any source directed by the commissioner.*
- (3) (a) The commissioner is authorized to establish relationships or contracts with other governmental agencies, the Registry, or entities affiliated with the Registry that he or she deems necessary to carry out the purpose of this section.*
- (b) The commissioner may report violations of this subtitle, enforcement actions, and other relevant information to governmental agencies, the Registry, or affiliated entities with which the commissioner has established a relationship or contract, notwithstanding any provision to the contrary in this subtitle.*
- (4) For purposes of this section and to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this subtitle, the commissioner may use other governmental agencies, the Registry, or entities affiliated with the Registry, as an agent for requesting information from and distributing information to the United States Department of Justice or other governmental agencies.*

**Signed by Governor March 22, 2013.**