

CHAPTER 193

(HB 443)

AN ACT relating to nonprofit corporations.

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

➔Section 1. KRS 273.167 is amended to read as follows:

Except as otherwise prohibited by law, corporations may be organized under KRS 273.161 to 273.390 for any lawful purpose or purposes, including ~~[-]~~ without being limited to ~~[-]~~ any one (1) or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; governmental; religious; social; recreational; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, or trade association ~~[-]; but labor unions, cooperative organizations, and organizations subject to any of the provisions of the insurance laws or banking laws of this state may not be organized under KRS 273.161 to 273.390.~~

➔Section 2. KRS 273.211 is amended to read as follows:

- (1) (a) ***The board of directors shall consist of three (3) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws, except as to the number of the first board of directors which shall be fixed by the articles of incorporation.***
- (b) ***The articles of incorporation or bylaws may establish a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed by the board of directors, within the minimum and maximum, in the manner provided in the articles of incorporation or the bylaws.***
- (c) ***No decrease in number shall have the effect of shortening the term of any incumbent director.***~~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 ***removal*** procedure ~~[-]~~ provided in the articles of incorporation ***or bylaws***.
- (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 3. KRS 273.221 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) ***Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one (1) or more committees of the board and appoint directors to serve on the committee or committees. Each committee shall have two (2) or more directors, and all committee members shall serve at the pleasure of the board of directors. The board may delegate to one (1) or more directors the authority to appoint or***

remove the members of the committee. An individual who is not a director may serve on a committee of the board, but may not vote on any matter that binds the corporation.

- (2) *To the extent specified by the board of directors or in the articles of incorporation or bylaws, a committee may exercise the powers of the board of directors under this chapter, except as limited by subsection (3) of this section.*
- (3) *A committee shall not:*
 - (a) *Authorize distributions;*
 - (b) *In the case of a membership corporation, authorize the repurchase or redemption of a member's membership in the corporation;*
 - (c) *In the case of a membership corporation, authorize or propose to members any action that this chapter requires be approved by members;*
 - (d) *Fill vacancies on the board of directors;*
 - (e) *Adopt, amend, or repeal bylaws;*
 - (f) *Elect, appoint, or remove any officer of the corporation;*
 - (g) *Establish a board committee or establish or alter the manner in which committee members are appointed to these committees;*
 - (h) *Amend or restate articles of incorporation;*
 - (i) *Adopt a plan of merger or consolidation;*
 - (j) *Authorize the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the corporation;*
 - (k) *Authorize the voluntary dissolution of the corporation or revoke proceedings therefor; or*
 - (l) *Amend, alter, or repeal any resolution of the board of directors.*
- (4) *Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one (1) or more advisory committees, whose members need not be directors. The board of directors may appoint and remove, or may designate any director or officer of the corporation to appoint and remove, the members of an advisory committee. An advisory committee may not act on behalf of the corporation or bind the corporation to any action but may make recommendations to the board of directors, to any board committee, or to the officers of the corporation.*
- (5) *The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in KRS 273.215.*

➔Section 4. KRS 273.237 is repealed, reenacted, and amended to read as follows:

- (1) *A corporation shall not have or issue shares of stock. Except as authorized by subsection (2) of this section, no dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers*~~[No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by KRS 273.161 to 273.390, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit].~~
- (2) *A corporation may:*
 - (a) *Pay reasonable compensation to its members, directors, or officers for services rendered to the corporation;*
 - (b) *Reimburse reasonable expenses to its members, directors, or officers in connection with services rendered to the corporation;*
 - (c) *Confer benefits upon its members in conformity with its purposes;*
 - (d) *Apply income or profit so as to reduce or eliminate dues, fees, or contributions that otherwise would be payable to the corporation by its members;*

- (e) *Make distributions, subject to subsection (3) of this section, upon dissolution or final liquidation to its members as permitted by KRS 273.161 to 273.390, and no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit;*
 - (f) *Make distributions, subject to subsection (3) of this section, to any entity:*
 - 1. *That is exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, or any successor section; or*
 - 2. *That is a state, a possession of the United States, or any political subdivision of a state or a possession of the United States, or the United States or the District of Columbia, but only if the distribution under this subparagraph is made exclusively for public purposes; and*
 - (g) *Make distributions, subject to subsection (3) of this section and only by a corporation other than a charitable or religious corporation to purchase its memberships.*
- (3) *A corporation shall not make any distribution under subsection (2)(e), (f), or (g) of this section if at the time of, or as a result of, the distribution:*
- (a) *The corporation would not be able to pay its debts as they become due in the usual course of business; or*
 - (b) *The corporation's total assets would be less than the sum of its total liabilities.*

➔SECTION 5. KRS 273.219 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction shall not be the subject of equitable relief on the ground of the director's interest in the transaction if:*
 - (a) *The material facts of the transaction and the director's interest were disclosed or known to the board of directors, or a committee of the board duly constituted under Section 3 of this Act, and the board of directors or the committee authorized, approved, or ratified the transaction; or*
 - (b) *The transaction was fair to the corporation.*
- (2) *For purposes of this section, a director of the corporation has an indirect interest in a transaction if:*
 - (a) *Another entity in which he or she has a material financial interest is a party to the transaction; or*
 - (b) *Another entity of which he or she is a director, officer, general partner, manager, trustee, or person in a similar position is a party to the transaction, and the transaction is or should be considered by the board of directors of the corporation.*
- (3) *For purposes of subsections (1)(a) and (2)(b) of this section, director authorization, approval, or ratification is effective if done by a majority vote of the directors who do not have a direct or indirect interest in the transaction within the meaning of this section, even if the majority is less than a quorum, but a transaction may not be authorized, approved, or ratified by a single director. Director authorization may be delegated to a committee under Section 3 of this Act, provided that no director appointed to the committee has a direct or indirect interest within the meaning of this section. Director action under this section shall be done by a higher number than a majority, if the articles of incorporation or bylaws so provide.*
- (4) *For purposes of subsection (1) of this section, a director who has a direct or indirect interest in a transaction with the corporation shall bear the burden of proving that the transaction was fair to the corporation.*

➔Section 6. KRS 273.217 is amended to read as follows:

- (1) A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws.
- (2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously *communicate with*~~hear~~ each other during this meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.

- (3) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by KRS 273.161 to 273.390, the articles of incorporation or the bylaws.
- (4) Irrespective of whether or not the corporation has members, a director may not vote by proxy.

➔Section 7. KRS 273.233 is amended to read as follows:

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected and copied by any member, or the member's agent or attorney, for any proper purpose at any reasonable time. The member's right of inspection ~~may~~^{shall not} be abolished or limited by the corporation's articles of incorporation or bylaws.

Signed by Governor April 26, 2018.