

CHAPTER 131**(HB 453)**

AN ACT relating to business entities.

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

➔Section 1. KRS 273.161 is amended to read as follows:

As used in KRS 273.161 to 273.390, unless the context otherwise requires:

- (1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of KRS 273.161 to 273.390, except a foreign corporation, **and for the purposes of KRS 273.277 to 273.293, the term "corporation" also means domestic nonprofit limited liability companies;**
- (2) "Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States;
- (3) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state;
- (4) "Nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its members, directors or officers;
- (5) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;
- (6) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;
- (7) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws;
- (8) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which group is designated;
- (9) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs;
- (10) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;
- (11) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility for custody of the minutes of the meetings of the board of directors and the members and for authenticating records of the corporation;
- (12) "Individual" includes the estate of an incompetent or deceased individual;
- (13) "Entity" includes a domestic or foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business or statutory trust, estate, partnership, limited partnership, limited liability company, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government;
- (14) "Person" includes individual and entity.
- (15) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity;
- (16) "Real name" shall have the meaning set forth in KRS 365.015;
- (17) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;
- (18) "Effective date of notice" means notice when effective under KRS 273.162(3);

- (19) "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;
- (20) "Notice" means notice as described in KRS 273.162;~~and~~
- (21) "Sign" or "signature" includes any manual, facsimile, or conformed or electronic signature; *and*
- (22) **"Limited liability company" or "LLC" means a domestic nonprofit limited liability company.**

➔Section 2. KRS 273.277 is amended to read as follows:

Any two (2) or more domestic corporations *or a domestic corporation and a limited liability company* may merge into one (1) of such corporations pursuant to a plan of merger approved in the manner provided in KRS 273.161 to 273.390. Each corporation *or limited liability company* shall adopt a plan of merger setting forth:

- (1) The names of the corporations *or limited liability companies* proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.
- (2) The terms and conditions of the proposed merger.
- (3) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.
- (4) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

➔Section 3. KRS 273.293 is amended to read as follows:

- (1) One (1) or more domestic corporations, *a domestic corporation and a domestic limited liability company*, and one (1) or more foreign corporations of the type that may be organized under KRS 273.161 to 273.390 *or KRS Chapter 275* may be merged into one (1) of such domestic corporations, or consolidated into a new corporation to be formed under KRS 273.161 to 273.390, provided that the foreign corporation or corporations are authorized by the laws of the government under which they were formed to effect such merger or consolidation. Each domestic corporation *or limited liability company* shall comply with the provisions of KRS 273.161 to 273.390 with respect to the merger or consolidation, as the case may be, of domestic corporations, *limited liability companies* and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized and of this state.
- (2) After approval by the members, or if there be no members entitled to vote thereon, by the board of directors, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

➔Section 4. KRS 275.345 is amended to read as follows:

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

Signed by Governor March 26, 2019.