

**271B.7-400 Procedure in derivative proceedings -- Shareholders of a public benefit corporation.**

- (1) A person shall not commence a proceeding in the right of a domestic or foreign corporation unless he was a shareholder of the corporation when the transaction complained of occurred or unless he became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding shall not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.
- (2) A complaint in a proceeding brought in the right of a corporation shall be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why he did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.
- (3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.
- (4) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.
- (5) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on his behalf.
- (6) In any derivative proceedings in the right of a foreign corporation, the matters covered by this section shall be governed by the laws of the jurisdiction of incorporation.
- (7) The articles of incorporation of the corporation may provide that proper venue for a derivative action or an action to compel the production of books and records is in or only is in the appropriate court.
- (8) Shareholders of a public benefit corporation owning individually or collectively, as of the date of instituting a derivative proceeding, at least two percent (2%) of the corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of that percentage or shares of at least two million dollars (\$2,000,000) in market value, may maintain a derivative proceeding to enforce the requirements set forth in KRS 271B.8-300(8).

**Effective:** June 29, 2017

**History:** Amended 2017 Ky. Acts ch. 28, sec. 6, effective June 29, 2017. -- Amended 2015 Ky. Acts ch. 34, sec. 7, effective June 24, 2015. -- Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 64, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 64, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 67, effective January 1, 1989.

**Legislative Research Commission Note** (7/15/2010). 2010 Ky. Acts ch. 51, sec.

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