

AN ACT relating to entities registered with the Secretary of State.

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

➔Section 1. 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 cooperative association" means a limited cooperative association 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;
- (12) "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;
- (13) "Foreign professional service corporation" has the same meaning as in KRS 274.005;
- (14) "Foreign rural electric cooperative" means a rural electric cooperative organized otherwise than under KRS 279.010 to 279.210;
- (15) "Foreign rural telephone cooperative" means a rural telephone cooperative organized otherwise than under KRS 279.310 to 279.990 excepting 279.570;
- (16) "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;

- (17) "Limited cooperative association" means a limited cooperative association governed as to its affairs by KRS Chapter 272A;
- (18) "Limited liability company" has the same meaning as in KRS 275.015;
- (19) "Limited liability partnership" means a partnership that has filed a statement of qualification under KRS 362.1-931 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;
- (20) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity or foreign entity;
- (21) "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;
- (22) "Organic act" means the law of a state or other jurisdiction governing the organization and internal affairs of an entity or foreign entity;
- (23) "Organized" means organized, incorporated, or formed;
- (24) "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, articles of association, certificates of trust, and certificates of limited partnership. A statement of qualification filed pursuant to KRS 362.1-931 or a registration as a limited liability partnership filed pursuant to KRS 362.555 is not an organizational filing;
- (25) "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;
- (26) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement;
- (27) "Person" means an individual, an entity, a foreign entity, or any other legal or commercial entity;
- (28) "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;
- (29) "Professional service corporation" has the same meaning as in KRS 274.005;
- (30) "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;
- (31) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein;
- (32) "Qualified person" has the same meaning as in KRS 274.005;
- (33) "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;
- (34) "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;
- (35) "Rural electric cooperative" means a rural electric cooperative governed as to its internal affairs by KRS 279.010 to 279.210;
- (36) "Rural telephone cooperative" means a rural telephone cooperative governed as to

its internal affairs by KRS 279.310 to 279.990 excepting KRS 279.570;

- (37) "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;
- (38) "Sign" or "signature" includes any manual, facsimile, conformed, or electronic signature;
- (39) "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~~
- (40) "Statutory trust" means a trust governed as to its internal affairs by KRS Chapter 386A;

(41) "Veteran" means any person who served in the United States Armed Forces, Reserves, or National Guard and was separated or released therefrom with an honorable discharge, discharge under honorable conditions, or a general discharge under honorable conditions; and

(42) "Veteran-owned business" means a business:

(a) That is at least fifty-one percent (51%) unconditionally owned by one (1) or more veterans; or

(b) In the case of a publicly owned business, in which at least fifty-one percent (51%) of the stock is unconditionally owned by one (1) or more veterans.

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

Any veteran-owned business that is initiated after August 1, 2016, is exempt from paying the filing fees for:

(1) Articles of incorporation, an amendment of articles of incorporation, amended and restated articles of incorporation, or a restatement of articles of

incorporation under KRS Chapter 271B for a corporation or under KRS Chapter 273 for a nonprofit corporation;

(2) Articles of organization, an amendment of articles of organization, a restatement of articles of organization, or an amendment and restatement of articles of organization under KRS Chapter 275 for a limited liability company;

(3) A statement or renewal of statement of partnership under KRS Chapter 362;

(4) A statement of partnership authority under Subchapter 1 of KRS Chapter 362;

(5) A certificate of limited partnership under Subchapter 2 of KRS Chapter 362; or

(6) A declaration of trust under KRS Chapter 386 for a business trust.

➔Section 3. KRS 14A.2-060 is amended to read as follows:

(1) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

- (a) Application for use of indistinguishable name\$ 20
- (b) Application or renewal of application for reserved name\$ 15
- (c) Cancellation of application for reserved name\$ 10
- (d) Notice of transfer of reserved name\$ 15
- (e) Application for registered name\$ 36
- (f) Application for renewal of registered name\$ 36
- (g) Statement of change of registered office or registered agent, or both\$ 10
- (h) Statement of change of principal office address\$ 10
- (i) Agent's statement of change of registered office for each affected entity or foreign entity\$ 10
not to exceed a total of\$2,000
- (j) Reinstatement penalty following administrative dissolution\$ 100
- (k) Application for certificate of authority\$ 90
- (l) Application for amended certificate of authority\$ 40
- (m) Certificate of withdrawal\$ 40

- (n) Certificate of existence\$ 10
 - (o) Certificate of authorization\$ 10
 - (p) Any other document required or permitted to be filed by this chapter\$ 15
 - (q) Agent's statement of resignation No fee
 - (r) Certificate of administrative dissolution No fee
 - (s) Certificate of reinstatement No fee
 - (t) Certificate of revocation of authority to transact business No fee
- (2) **(a)** The Secretary of State shall collect a fee of fifteen dollars (\$15) with respect to each annual report or amendment thereto.

(b) Notwithstanding paragraph (a) of this subsection, a veteran-owned business initiated after August 1, 2016, is exempt from paying the fee for filing an annual report or amendment thereto for the first four (4) years after its initial registration, but is not exempt from any filing requirement or deadline for filing an annual report.

- (3) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on him or her under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if he prevails in the proceeding.
- (4) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign entity:
- (a) Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50) a page for each page thereafter; and
 - (b) Five dollars (\$5) for the certificate.

➔Section 4. KRS 273.167 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, corporations may be organized under KRS 273.161 to 273.390 for any lawful purpose or purposes, including, without being limited to, any one 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].

(2) Labor unions and cooperative organizations shall not be organized under KRS 273.161 to 273.390. A corporation engaging in an activity that is subject to regulation under another statute of this Commonwealth may incorporate under KRS 273.161 to 273.390 only if incorporating under KRS 273.161 to 273.390 is not prohibited by the other statute. The corporation shall be subject to all the limitations of such other statute.

➔Section 5. KRS 273.171 is amended to read as follows:

Each corporation shall have power:

- (1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.
- (2) To sue and be sued, complain and defend, in its corporate name.
- (3) To have a corporate seal and alter it at pleasure, provided, however, that the presence or absence of a corporate seal on or from a writing shall neither add to nor detract from the legality thereof nor affect its validity in any manner or respect.
- (4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.
- (5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (6) To lend money to its employees, other than its officers and directors, and otherwise assist its employees, officers and directors.

- (7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.
- (8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
- (9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.
- (10) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by KRS 273.161 to 273.390 in any state, territory, district, or possession of the United States, or in any foreign country.
- (11) To elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation.
- (12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.
- (13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.
- (14) To indemnify any director, *officer, employee, or agent of the corporation in accordance with Sections 10 to 18 of this Act* ~~or officer or former director or~~

~~officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that shall be authorized by the articles of incorporation or bylaws, or resolution adopted after notice to the members entitled to vote].~~

- (15) To pay pensions and establish pension plans or pension trusts for any or all of its directors, officers and employees.
- (16) To cease its corporate activities and surrender its corporate franchise.
- (17) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

➔Section 6. KRS 273.211 is amended to read as follows:

- (1) *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. 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 by the board of directors, within the minimum and maximum, in the manner provided in the articles of incorporation or the bylaws, but may never number fewer than three (3) individuals. 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) A director may be removed from office pursuant to any ***removal*** procedure ~~[therefor]~~ provided in the articles of incorporation, ***bylaws, or as otherwise provided in paragraph (b) of this subsection.***
(b) ***Except as otherwise provided in the articles of incorporation or bylaws, if a director is elected by a voting group, which may consist of one (1) or more persons, as specified in the articles of incorporation or bylaws, then only that voting group may participate in the vote to remove that director. In the***

following limited circumstances the board of directors may remove a director who:

1. Has been declared of unsound mind by a final order of court;
2. Has been convicted of a felony;
3. Has been found by a final order of court to have breached a duty as a director under KRS 273.215;
4. Has missed the number of board meetings specified in the articles of incorporation or bylaws, if the articles or bylaws at the beginning of the director's current term provided that a director may be removed for missing the specified number of board meetings; or
5. At the time of removal, does not satisfy one (1) or more of the qualifications for directors set forth in the articles of incorporation or bylaws at the beginning of the director's current term, if the decision that the director fails to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications.

(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 7. 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, or such other persons as the board of directors designates, to serve on the committee or committees. Each committee shall have two (2) or more directors, a majority of the committee's membership shall be 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.
- (2) Unless this chapter provides otherwise, the creation of a committee of the board and the manner of appointment of the members of such a committee must be approved by the greater of:
- (a) A majority of all the directors in office when the action is taken; or
- (b) The number of directors required by the articles of incorporation or bylaws to take action under Section 19 of this Act.
- (3) The provisions of Section 19 of this Act, KRS 273.223, 273.373, and 273.375 shall apply both to committees of the board and to members of such committees. Notwithstanding the foregoing, a majority of the director members of the committee must be present at a meeting in order for the committee to have a quorum, and no action of a committee shall be effective unless approved by a majority of the director members of the committee who are present and voting at a meeting of the committee at which a quorum is present.
- (4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under this chapter except as limited by subsection (5) of this section.
- (5) A committee shall not:
- (a) Authorize distributions;
- (b) 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 or, subject to subsection (7) of this section, on any of its committees;
- (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 such 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.
- (6) 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.
- (7) Subject to the requirements of subsection (1) of this section, the board of directors or one (1) or more directors authorized by the board may appoint one (1) or more directors or such other persons as they may designate as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification.
- (8) The 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.

➔ Section 8. 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) or (3) 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 or other value received by 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 the provisions of 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 the provisions of 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 any of the foregoing, or the United States or the District of Columbia, but only if such distribution under this subparagraph is made exclusively for public purposes; and
- (g) Make distributions, subject to the provisions of 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, such 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 9. 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 any one (1) of the following is true:
- (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 KRS 273.221, and the board of directors or the committee authorized, approved, or ratified the transaction;
- (b) If member approval of the transaction is required by the articles of incorporation or bylaws, the material facts of the transaction and the director's interest were disclosed or known to the members entitled to vote thereon, and those members authorized, approved, or ratified the

transaction; or

(c) 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 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 KRS 273.221, 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 must be done by a higher number than a majority if the articles of incorporation or bylaws so provide.

(4) For purposes of subsection (1)(b) of this section, member authorization, approval, or ratification is effective if done by a majority of the votes entitled to be counted under this subsection, even if there are fewer than required for a quorum. Votes cast by or under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or under the control of an entity described in subsection (2) of this section, may not be counted. Member action under this section must be done by a higher number than a majority if the

articles of incorporation or bylaws so provide.

(5) For purposes of subsection (1)(c) 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 10. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

As used in Sections 10 to 18 of this Act:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or an individual who, while a director or officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director or officer shall be considered to be serving an employee benefit plan at the corporation's request if his or her duties to the corporation also impose duties on, or otherwise involve services by, him or her to the plan or to participants in or beneficiaries of the plan.

(b) "Director" or "officer" includes the estate or personal representative of a director or officer.

(3) "Disinterested director" means a director who, at the time of a vote or selection referred to in subsections (2) and (3) of Section 15 of this Act, is not:

(a) A party to the proceeding; or

(b) An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship

would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made;

(4) "Expenses" includes counsel fees;

(5) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax assessed with respect to an employee benefit plan, or other reasonable expenses incurred pursuant to a proceeding;

(6) (a) "Official capacity" means:

1. When used with respect to a director, the office of a director of a corporation; or

2. When used with respect to an individual other than a director, as contemplated in Section 16 of this Act, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise;

(7) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding; and

(8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

➔SECTION 11. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

(1) Except as provided in subsection (4) of this section, a corporation may indemnify an individual made a party to a proceeding because he or she is or was a director against whom liability occurred in the proceeding if:

(a) The individual:

1. Conducted himself or herself in good faith; and
2. Honestly believed:
 - a. In the case of conduct in his or her official capacity with the corporation, that his or her conduct was in its best interests; or
 - b. In all other cases, that his or her conduct was at least not opposed to its best interests; and
3. In the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful; or
 - (b) The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, provided that a corporation may not indemnify a director in connection with any transaction described in KRS 273.248(1)(a) or (c), or in connection with any act or omission of such director described in KRS 273.248(1)(b).
- (2) A director's conduct with respect to an employee benefit plan for a purpose he or she reasonably believed to be in the interests of the participants in and beneficiaries of the plan shall be conduct that satisfies the requirement of subsection (1)(a)2.b. of this section.
- (3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not be, of itself, determinative that the director did not meet the standard of conduct described in this section.
- (4) Unless ordered by a court under subsection (2) of Section 14 of this Act, a corporation may not indemnify a director under this section:
 - (a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
 - (b) In connection with any other proceeding charging improper personal

benefit to him or her, whether or not involving action in his or her official capacity, in which he or she was adjudged liable on the basis that personal benefit was improperly received by him or her.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation shall be limited to reasonable expenses incurred in connection with the proceeding.

→SECTION 12. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a director of the corporation against reasonable expenses incurred by him or her in connection with the proceeding.

→SECTION 13. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

(1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes the corporation a written undertaking, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct; and

(b) A determination is made that the facts then known to those making the determination would not preclude indemnification under Sections 10 to 18 of this Act.

(2) The undertaking required by subsection (1)(a) of this section shall be an unlimited general obligation of the director but shall not be required to be secured and may be accepted without reference to financial ability to make

repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 15 of this Act.

➔SECTION 14. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court deems necessary may order indemnification if it determines:

(1) The director is entitled to mandatory indemnification under Section 12 of this Act, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the standard of conduct set forth in Section 11 of this Act or was adjudged liable as described in subsection (4) of Section 11 of this Act, but if he or she was so adjudged liable his or her indemnification shall be limited to reasonable expenses incurred.

➔SECTION 15. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

(1) A corporation shall not indemnify a director under Section 11 of this Act unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he or she has met the standard of conduct set forth in Section 11 of this Act.

(2) The determination shall be made:

(a) By the board of directors, by majority vote of a quorum consisting of disinterested directors;

- (b) If a quorum cannot be obtained under paragraph (a) of this subsection, by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two (2) or more disinterested directors; or
- (c) By special legal counsel:
1. Selected by the board of directors or its committee in the manner prescribed in paragraphs (a) and (b) of this subsection; or
 2. If a quorum of the board of directors cannot be obtained under paragraph (a) of this subsection and a committee cannot be designated under paragraph (b) of this subsection, selected by majority vote of the full board of directors (in which selection directors who do not qualify as disinterested directors may participate).
- (3) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (2)(c) of this section to select counsel.
- (4) The articles of incorporation or bylaws may establish additional conditions, including but not limited to voting member approval, that must be met in order for a director to be indemnified.
- (5) This section shall not apply to mandatory indemnification pursuant to Section 12 of this Act or court-ordered indemnification pursuant to Section 14 of this Act.

➔SECTION 16. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

Unless a corporation's articles of incorporation provide otherwise:

- (1) An officer of the corporation who is not a director shall be entitled to mandatory

indemnification under Section 12 of this Act, and is entitled to apply for court-ordered indemnification under Section 14 of this Act, in each case to the same extent as a director;

(2) The corporation may indemnify and advance expenses under Sections 10 to 18 of this Act to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

→SECTION 17. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, manager, partner, trustee, employee, or agent of another entity, or of an employee benefit plan or other enterprise, against liability asserted against or incurred in that capacity or arising from the status as a director, officer, manager, employee, or agent, whether or not the corporation would have power to indemnify against the same liability under Section 11 or 12 of this Act.

→SECTION 18. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

(1) The indemnification and advancement of expenses provided by or granted pursuant to Sections 10 to 18 of this Act shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of members or disinterested directors, or otherwise, both as to action in his or her official capacity and as to

action in another capacity while holding the office.

(2) Sections 10 to 18 of this Act shall not limit a corporation's power to pay or reimburse expenses incurred by a director or officer in connection with his or her appearance as a witness at a proceeding at a time when he or she has not been made a named defendant or responded to the proceeding.

(3) Sections 10 to 18 of this Act shall not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee, agent, or volunteer.

➔Section 19. 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 20. KRS 273.233 is repealed, reenacted, and amended to read as follows:

(1) 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 shall not be abolished or limited by the corporation's articles of incorporation or bylaws.]~~

(2) A voting member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in this subsection if the voting member delivers to the corporation a signed notice specifying the records requested at least five (5) business days before the date on which the voting member wishes to inspect and copy any of the following:

(a) Its articles of incorporation, including restated articles of incorporation and any amendments to them currently in effect;

(b) Its bylaws, including restated bylaws and any amendments to them currently in effect;

(c) Minutes of all meetings of the corporation's members held during the past three (3) years, and a record of all actions taken by the members;

(d) All written communications to members generally within the past three (3) years;

(e) A list of names and business addresses to its current directors and officers; and

(f) Its most recent annual report delivered to the Secretary of State.

(3) A voting member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the voting member meets the requirements

of subsection (4) of this section and delivers to the corporation a signed notice specifying the records requested at least five (5) business days before the date on which the member wishes to inspect and copy any of the following:

(a) Financial accounting records of the corporation for the most recent three

(3) fiscal years;

(b) Subject to Section 22 of this Act, the membership list; and

(c) Any other information or documents authorized for member inspection under the corporation's articles of incorporation or bylaws.

(4) A voting member may inspect and copy the records described in subsection (3) of this section only if:

(a) The voting member's demand is made in good faith and for a proper purpose;

(b) The voting member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(c) The records are directly connected with this purpose.

(5) The right of inspection granted by this section may be expanded, abolished, or limited by a nonprofit corporation's articles of incorporation or bylaws.

(6) For the purposes of this section and Sections 21, 22, and 23 of this Act, a "Voting member" means a member that has the right to vote in the election of one (1) or more members of the board of directors or in the election or appointment of any officer, or who has the right to vote to approve any action of the corporation, including without limitation amendment of the corporation's articles or bylaws.

(7) This section shall not affect:

(a) A member who is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court to compel the production of corporate records for examination.

➔SECTION 21. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

- (1) A voting member's agent or attorney has the same inspection and copying rights as the voting member represented.
- (2) The right to copy records under Section 20 of this Act includes, if reasonable, the right to receive copies. Copies may be provided through an electronic transmission if available and so requested by the voting member.
- (3) The corporation may comply at its expense with a voting member's demand to inspect the record of members under Section 20 of this Act by providing the voting member with a list of members that was compiled no earlier than the date of the member's demand.
- (4) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the voting member. The charge may not exceed the estimated cost of production, reproduction, or transmission of the records.

➔SECTION 22. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

- (1) If a corporation does not permit a voting member who complies with Sections 20 and 21 of this Act to inspect and copy any records required by those sections to be available for inspection, a court of competent jurisdiction in the county where the corporation's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the voting member.
- (2) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the voting member's costs including reasonable counsel fees incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt as to

the right of the member to inspect the records demanded.

(3) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding voting member.

➔SECTION 23. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED TO READ AS FOLLOWS:

Without consent of the board of directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without the consent of the board, a membership list or any part thereof shall not be:

(1) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;

(2) Used for any commercial purpose; or

(3) Sold to or purchased by any person.

➔Section 24. KRS 275.015 is amended to read as follows:

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

- (1) "Articles of organization" means the articles filed in conformity with the provisions of KRS 275.020 and 275.025, and those articles as amended or restated;
- (2) "Business entity" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;
- (3) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;
- (4) "Court" means every court having jurisdiction in the case;
- (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) "Dissent" means a right to object to a proposed action or transaction and, in connection therewith, to demand a redemption of a limited liability company interest;
- (7) "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;
- (8) "Event of disassociation" means an event that causes a person to cease to be a member as provided in KRS 275.280;
- (9) "Foreign limited liability company" means an organization that is:
- (a) An unincorporated association;
 - (b) Organized under laws of a state other than the laws of this Commonwealth, or under the laws of any foreign country; and
 - (c) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity;
- (10) "Foreign nonprofit corporation" means a corporation incorporated for a nonprofit purpose under the laws of a state other than the Commonwealth or under the laws of a foreign country;
- (11) "Knowledge" means actual knowledge of a fact;
- (12) "Limited liability company" or "domestic limited liability company" means a limited liability company formed under this chapter and, except with respect to a nonprofit limited liability company, having one (1) or more members;
- (13) "Limited liability company interest" or "interest in the limited liability company" means the interest that may be issued in accordance with KRS 275.195;
- (14) "Limited partnership" means a limited partnership formed under the laws of the Commonwealth or any other state or a foreign country;

- (15) "Majority-in-interest of the members" means those members entitled to cast a majority of the votes to be cast by the members on any matter under the terms of the operating agreement described in KRS 275.175(3);
- (16) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with KRS 275.165;
- (17) "Member" or "members" means a person or persons who have been admitted to membership in a limited liability company as provided in KRS 275.275 and who have not ceased to be members as provided in KRS 275.280;
- (18) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;
- (19) "Nonprofit limited liability company" means a limited liability company formed for a nonprofit purpose *that has designated in its articles of organization that it is a nonprofit limited liability company as required in KRS 275.025(6)*~~[having one (1) or more or no members]~~;
- (20) "Nonprofit purpose" includes any purpose authorized under KRS 273.167;
- (21) "Operating agreement" means any agreement, written or oral, among all of the members, as to the conduct of the business and affairs of a limited liability company. If a limited liability company has only one (1) member, an operating agreement shall be deemed to include:
- (a) A writing executed by the member that relates to the affairs of the limited liability company and the conduct of its business regardless of whether the writing constitutes an agreement; or
 - (b) If the limited liability company is managed by a manager, any other agreement between the member and the limited liability company as it relates to the limited liability company and the conduct of its business, regardless of whether the agreement is in writing;

- (22) "Person" means an individual, a partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal entity;
- (23) "Principal office" means the office, in or out of the Commonwealth, so designated in writing with the Secretary of State where the principal executive offices of a domestic or foreign limited liability company are located;
- (24) "Proceeding" means civil suit and criminal, administrative, and investigative action;
- (25) "Professional limited liability company" means a limited liability company organized under this chapter or the laws of another state or foreign country for purposes that include, but are not limited to, the providing of one (1) or more professional services. Except as otherwise expressly provided in this chapter, all provisions of this chapter governing limited liability companies shall be applicable to professional limited liability companies;
- (26) "Professional services" mean 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;
- (27) "Real name" shall have the meaning set forth in KRS 365.015;
- (28) "Regulating board" means the governmental agency which is charged by law with the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide; and
- (29) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

➔Section 25. KRS 423.010 is amended to read as follows:

- (1) The Secretary of State may appoint as many notaries public as he or she deems necessary, who shall hold office for four (4) years. Any resident of the Commonwealth of Kentucky desiring to be appointed a notary public shall make

written application to the Secretary of State. The application shall be approved by the Circuit Judge, circuit clerk, county judge/executive, county clerk, justice of the peace, or a member of the General Assembly of the county of the residence of the applicant or in the county in which the applicant's principal place of employment is located. A person who is not a resident of Kentucky but who is employed in Kentucky may become a notary public by making an application to the Secretary of State which has been approved by an officer specified in this section from the county in which the applicant is principally employed in Kentucky. No officer shall charge or accept any fee for approving the application. *An applicant for a commission as a notary public must:*

- (a) Be at least eighteen (18) years of age;*
- (b) Be a citizen or permanent legal resident of the United States;*
- (c) Be a resident of the county from which he or she makes his or her application or be principally employed in the county from which he or she makes his or her application;*
- (d) Be able to read and write;*
- (e) Be capable of discharging the duties imposed upon him or her by this chapter; and*
- (f) Possess the endorsement of the officer approving the application.*

~~[A notary public shall be eighteen (18) years of age, a resident of the county from which he or she makes his or her application or be principally employed in the county from which he or she makes his or her application, of good moral character, and capable of discharging the duties imposed upon him or her by this chapter, and the endorsement of the officer approving the application shall so state.]~~

- (2) The Secretary of State, in his or her certificate of appointment to the applicant, shall designate the limits within which the notary is to act. Before a notary acts, he or she shall take an oath before any person authorized to administer an oath as set forth in

KRS 62.020 that he or she will honestly and diligently discharge the duties of his or her office. He or she shall in the same court give an obligation with good security, which shall be proven by a notarized statement from, and not the personal appearance of, the person providing the security, for the proper discharge of the duties of his or her office. Every certificate of a notary public shall state the date of the expiration of his or her commission. The Secretary of State shall give to each notary appointed a certificate of his or her appointment under the seal of the Commonwealth of Kentucky in lieu of a commission heretofore required to be issued to the notary by the Governor of Kentucky, and receive a fee of ten dollars (\$10) for the certificate.

(3)~~(2)~~ A county clerk shall have the powers of a notary public in the exercise of the official functions of the office of clerk within his or her county, and the official actions of the county clerk shall not require the witness or signature of a notary appointed pursuant to subsection (1) of this section.