

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

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

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

4 **(1) Except as provided in subsection (2) of this section,** corporations may be organized  
5 under KRS 273.161 to 273.390 for any lawful purpose or purposes, including[~~]~~  
6 without being limited to[~~]~~ any one **(1)** or more of the following purposes:  
7 charitable; benevolent; eleemosynary; educational; civic; patriotic; political;  
8 governmental; religious; social; recreational; fraternal; literary; cultural; athletic;  
9 scientific; agricultural; horticultural; animal husbandry; and professional,  
10 commercial, industrial, or trade association[~~]; but labor unions, cooperative~~  
11 ~~organizations, and organizations subject to any of the provisions of the insurance~~  
12 ~~laws or banking laws of this state may not be organized under KRS 273.161 to~~  
13 ~~273.390].~~

14 **(2) A corporation engaging in an activity that is subject to regulation under another**  
15 **statute of this Commonwealth may incorporate under KRS 273.161 to 273.390**  
16 **only if incorporating under KRS 273.161 to 273.390 is not prohibited by the other**  
17 **statute. The corporation shall be subject to all the limitations of such other**  
18 **statute.**

19 ➔Section 2. KRS 273.171 is amended to read as follows:

20 Each corporation shall have power:

- 21 (1) To have perpetual succession by its corporate name unless a limited period of  
22 duration is stated in its articles of incorporation.
- 23 (2) To sue and be sued, complain and defend, in its corporate name.
- 24 (3) To have a corporate seal and alter it at pleasure, provided, however, that the  
25 presence or absence of a corporate seal on or from a writing shall neither add to nor  
26 detract from the legality thereof nor affect its validity in any manner or respect.
- 27 (4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise

- 1           acquire, own, hold, improve, use and otherwise deal in and with real or personal  
2           property, or any interest therein, wherever situated.
- 3       (5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose  
4           of all or any part of its property and assets.
- 5       (6) To lend money to its employees, other than its officers and directors, and otherwise  
6           assist its employees, officers and directors.
- 7       (7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use,  
8           employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and  
9           deal in and with, shares or other interests in, or obligations of, other domestic or  
10           foreign corporations, whether for profit or not for profit, associations, partnerships  
11           or individuals, or direct or indirect obligations of the United States, or of any other  
12           government, state, territory, governmental district or municipality or of any  
13           instrumentality thereof.
- 14       (8) To make contracts and incur liabilities, borrow money at such rates of interest as the  
15           corporation may determine, issue its notes, bonds, and other obligations, and secure  
16           any of its obligations by mortgage or pledge of all or any of its property, franchises  
17           and income.
- 18       (9) To lend money for its corporate purposes, invest and reinvest its funds, and take and  
19           hold real and personal property as security for the payment of funds so loaned or  
20           invested.
- 21       (10) To conduct its affairs, carry on its operations, and have offices and exercise the  
22           powers granted by KRS 273.161 to 273.390 in any state, territory, district, or  
23           possession of the United States, or in any foreign country.
- 24       (11) To elect or appoint officers and agents of the corporation, who may be directors or  
25           members, and define their duties and fix their compensation.
- 26       (12) To make and alter bylaws, not inconsistent with its articles of incorporation or with  
27           the laws of this state, for the administration and regulation of the affairs of the

1 corporation.

2 (13) Unless otherwise provided in the articles of incorporation, to make donations for the  
3 public welfare or for charitable, scientific or educational purposes; and in time of  
4 war to make donations in aid of war activities.

5 (14) To indemnify any director, *officer, employee, or agent of the corporation in*  
6 *accordance with Sections 7 to 15 of this Act* ~~or officer or former director or officer~~  
7 ~~of the corporation, or any person who may have served at its request as a director or~~  
8 ~~officer of another corporation in which it owns shares of capital stock or of which it~~  
9 ~~is a creditor, against expenses actually and reasonably incurred by him in~~  
10 ~~connection with the defense of any action, suit or proceeding, civil or criminal, in~~  
11 ~~which he is made a party by reason of being or having been such director or officer,~~  
12 ~~except in relation to matters as to which he shall be adjudged in such action, suit or~~  
13 ~~proceeding to be liable for negligence or misconduct in the performance of duty to~~  
14 ~~the corporation; and to make any other indemnification that shall be authorized by~~  
15 ~~the articles of incorporation or bylaws, or resolution adopted after notice to the~~  
16 ~~members entitled to vote].~~

17 (15) To pay pensions and establish pension plans or pension trusts for any or all of its  
18 directors, officers and employees.

19 (16) To cease its corporate activities and surrender its corporate franchise.

20 (17) To have and exercise all powers necessary or convenient to effect any or all of the  
21 purposes for which the corporation is organized.

22 ➔Section 3. KRS 273.211 is amended to read as follows:

23 (1) *The board of directors shall consist of three (3) or more individuals, with the*  
24 *number specified in or fixed in accordance with the articles of incorporation or*  
25 *bylaws, except as to the number of the first board of directors which shall be fixed*  
26 *by the articles of incorporation. The articles of incorporation or bylaws may*  
27 *establish a variable range for the size of the board of directors by fixing a*

1 minimum and maximum number of directors. If a variable range is established,  
2 the number of directors may be fixed or changed from time to time by the board  
3 of directors, within the minimum and maximum, in the manner provided in the  
4 articles of incorporation or the bylaws, but may never number fewer than three  
5 (3) individuals. No decrease in number shall have the effect of shortening the  
6 term of any incumbent director [The number of directors of a corporation shall not

7 be less than three (3). Subject to such limitation, the number of directors shall be  
8 fixed by the bylaws, except as to the number of the first board of directors which  
9 number shall be fixed by the articles of incorporation. The number of directors may  
10 be increased or decreased from time to time by amendment to the bylaws, unless the  
11 articles of incorporation provide that a change in the number of directors shall be  
12 made only by amendment of the articles of incorporation. No decrease in number  
13 shall have the effect of shortening the term of any incumbent director. In the  
14 absence of a bylaw fixing the number of directors, the number shall be the same as  
15 that stated in the articles of incorporation].

16 (2) The directors constituting the first board of directors shall be named in the articles  
17 of incorporation and shall hold office until the first annual election of directors or  
18 for such other period as may be specified in the articles of incorporation or the  
19 bylaws. Thereafter, directors shall be elected or appointed in the manner and for the  
20 terms provided in the articles of incorporation or the bylaws. In the absence of a  
21 provision fixing the term of office, the term of office of a director shall be one (1)  
22 year, and until his successor is elected and has accepted his election.

23 (3) Directors may be divided into classes and the terms of office of the several classes  
24 need not be uniform. Each director shall hold office for the term for which he is  
25 elected or appointed and until his successor shall have been elected or appointed  
26 and qualified.

27 (4) (a) A director may be removed from office pursuant to any removal procedure

1           ~~therefor~~ provided in the articles of incorporation, bylaws, or as otherwise  
 2           provided in paragraph (b) of this subsection.

3           **(b) Except as otherwise provided in the articles of incorporation or bylaws, if a**  
 4           **director is elected by a voting group, which may consist of one (1) or more**  
 5           **persons, as specified in the articles of incorporation or bylaws, then only**  
 6           **that voting group may participate in the vote to remove that director. In the**  
 7           **following limited circumstances, the board of directors may remove a**  
 8           **director who:**

9           **1. Has been declared of unsound mind by a final order of court;**

10          **2. Has been convicted of a felony;**

11          **3. Has been found by a final court order to have breached a duty as a**  
 12          **director under KRS 273.215;**

13          **4. Has missed the number of board meetings specified in the articles of**  
 14          **incorporation or bylaws, if the articles or bylaws at the beginning of**  
 15          **the director's current term provided that a director may be removed for**  
 16          **missing the specified number of board meetings; or**

17          **5. At the time of removal, does not satisfy one (1) or more of the**  
 18          **qualifications for directors set forth in the articles of incorporation or**  
 19          **bylaws at the beginning of the director's current term, if the decision**  
 20          **that the director fails to satisfy a qualification is made by the vote of a**  
 21          **majority of the directors who meet all of the required qualifications.**

22          (5) Every director of a corporation, by acceptance of election or appointment as a  
 23          director, including by service, shall be deemed to have consented to the jurisdiction  
 24          of the courts of the Commonwealth of Kentucky for any action by, in the name of,  
 25          or on behalf of the corporation.

26          ➔SECTION 4. KRS 273.221 IS REPEALED AND REENACTED TO READ AS  
 27          FOLLOWS:

- 1 (1) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise,  
2 a board of directors may create one (1) or more committees of the board and  
3 appoint directors to serve on the committee or committees. Each committee shall  
4 have two (2) or more directors, and all committee members shall serve at the  
5 pleasure of the board of directors. The board may delegate to one (1) or more  
6 directors the authority to appoint or remove the members of the committee. An  
7 individual who is not a director may serve on a committee of the board, but may  
8 not vote on any matter that binds the corporation.
- 9 (2) The creation of a committee of the board and the manner of appointment of the  
10 members of such a committee must be approved by the greater of:  
11 (a) A majority of all the directors in office when the action is taken; or  
12 (b) The number of directors required by the articles of incorporation or bylaws  
13 to take action under Section 16 of this Act.
- 14 (3) The provisions of this chapter governing voting and procedural matters  
15 applicable to boards of directors and directors shall also apply to committees of  
16 the board and to members of such committees.
- 17 (4) To the extent specified by the board of directors or in the articles of incorporation  
18 or bylaws, a committee may exercise the powers of the board of directors under  
19 this chapter except as limited by subsection (5) of this section.
- 20 (5) A committee shall not:  
21 (a) Authorize distributions;  
22 (b) Authorize the repurchase or redemption of a member's membership in the  
23 corporation;  
24 (c) In the case of a membership corporation, authorize or propose to members  
25 any action that this chapter requires be approved by members;  
26 (d) Fill vacancies on the board of directors or, subject to subsection (7) of this  
27 section, on any of its committees;

- 1        (e) Adopt, amend, or repeal bylaws;
- 2        (f) Elect, appoint, or remove any officer of the corporation;
- 3        (g) Establish a board committee or establish or alter the manner in which
- 4                committee members are appointed to such committees;
- 5        (h) Amend or restate articles of incorporation;
- 6        (i) Adopt a plan of merger or consolidation;
- 7        (j) Authorize the sale, lease, exchange, or mortgage of all or substantially all of
- 8                the property and assets of the corporation;
- 9        (k) Authorize the voluntary dissolution of the corporation or revoke
- 10                proceedings therefor; or
- 11        (l) Amend, alter, or repeal any resolution of the board of directors.
- 12        (6) The creation of, delegation of authority to, or action by a committee does not
- 13                alone constitute compliance by a director with the standards of conduct described
- 14                in KRS 273.215.
- 15        (7) The board of directors or one (1) or more directors authorized by the board to
- 16                appoint the members of a committee, may appoint one (1) or more directors or
- 17                such other persons as they may designate as alternate members of any committee
- 18                to replace any absent or disqualified member during the member's absence or
- 19                disqualification.
- 20        (8) The board of directors may create one (1) or more advisory committees, whose
- 21                members need not be directors. The board of directors may appoint and remove,
- 22                or may designate any director or officer of the corporation to appoint and
- 23                remove, the members of an advisory committee. An advisory committee may not
- 24                act on behalf of the corporation or bind the corporation to any action but may
- 25                make recommendations to the board of directors, to any board committee, or to
- 26                the officers of the corporation.

27        ➔Section 5. KRS 273.237 is repealed, reenacted, and amended to read as follows:

1 (1) A corporation shall not have or issue shares of stock. Except as authorized by  
2 subsection (2) or (3) of this section, no dividend shall be paid and no part of the  
3 income or profit of a corporation shall be distributed to its members, directors, or  
4 officers[ No dividend shall be paid and no part of the income or profit of a  
5 corporation shall be distributed to its members, directors or officers. A corporation  
6 may pay compensation in a reasonable amount to its members, directors, or officers  
7 for services rendered, may confer benefits upon its members in conformity with its  
8 purposes, and upon dissolution or final liquidation may make distributions to its  
9 members as permitted by KRS 273.161 to 273.390, and no such payment, benefit or  
10 distribution shall be deemed to be a dividend or a distribution of income or profit].

11 (2) A corporation may:

12 (a) Pay reasonable compensation to its members, directors, or officers for  
13 services rendered to the corporation;

14 (b) Reimburse reasonable expenses to its members, directors, or officers in  
15 connection with services rendered to the corporation;

16 (c) Confer benefits upon its members in conformity with its purposes;

17 (d) Apply income or profit so as to reduce or eliminate dues, fees, or  
18 contributions that otherwise would be payable to the corporation by its  
19 members;

20 (e) Make distributions, subject to the provisions of subsection (3) of this  
21 section, upon dissolution or final liquidation to its members as permitted by  
22 KRS 273.161 to 273.390, and no such payment, benefit, or distribution shall  
23 be deemed to be a dividend or a distribution of income or profit;

24 (f) Make distributions, subject to the provisions of subsection (3) of this  
25 section, to any entity:

26 1. That is exempt under Section 501(c)(3) of the Internal Revenue Code  
27 of 1986 or any successor section; or



1           2. That is a state, a possession of the United States, or any political  
2           subdivision of any of the foregoing, or the United States or the District  
3           of Columbia, but only if such distribution under this subparagraph is  
4           made exclusively for public purposes; and

5           (g) Make distributions, subject to the provisions of subsection (3) of this section  
6           and only by a corporation other than a charitable or religious corporation,  
7           to purchase its memberships.

8           (3) A corporation shall not make any distribution under subsection (2)(e), (f), or (g)  
9           of this section if at the time of, or as a result of, such distribution:

10          (a) The corporation would not be able to pay its debts as they become due in the  
11          usual course of business; or

12          (b) The corporation's total assets would be less than the sum of its total  
13          liabilities.

14          ➔SECTION 6. KRS 273.219 IS REPEALED AND REENACTED TO READ AS  
15          FOLLOWS:

16          (1) A conflict of interest transaction is a transaction with the corporation in which a  
17          director of the corporation has a direct or indirect interest. A conflict of interest  
18          transaction shall not be the subject of equitable relief on the ground of the  
19          director's interest in the transaction if any one (1) of the following is true:

20          (a) The material facts of the transaction and the director's interest were  
21          disclosed or known to the board of directors, or a committee of the board  
22          duly constituted under Section 4 of this Act, and the board of directors or  
23          the committee authorized, approved, or ratified the transaction;

24          (b) If member approval of the transaction is required by the articles of  
25          incorporation or bylaws, the material facts of the transaction and the  
26          director's interest were disclosed or known to the members entitled to vote  
27          thereon, and those members authorized, approved, or ratified the

1           transaction; or

2           (c) The transaction was fair to the corporation.

3           (2) For purposes of this section, a director of the corporation has an indirect interest  
4           in a transaction if:

5           (a) Another entity in which he or she has a material financial interest is a party  
6           to the transaction; or

7           (b) Another entity of which he or she is a director, officer, general partner,  
8           manager, trustee, or person in a similar position is a party to the  
9           transaction, and the transaction is or should be considered by the board of  
10           directors of the corporation.

11           (3) For purposes of subsections (1)(a) and (2)(b) of this section, director  
12           authorization, approval, or ratification is effective if done by a majority vote of  
13           the directors who do not have a direct or indirect interest in the transaction  
14           within the meaning of this section, even if less than a quorum, but a transaction  
15           may not be authorized, approved, or ratified by a single director. Director  
16           authorization may be delegated to a committee under Section 4 of this Act,  
17           provided that no director appointed to the committee has a direct or indirect  
18           interest within the meaning of this section. Director action under this section  
19           must be done by a higher number than a majority if the articles of incorporation  
20           or bylaws so provide.

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

1 articles of incorporation or bylaws so provide.

2 (5) For purposes of subsection (1)(c) of this section, a director who has a direct or  
3 indirect interest in a transaction with the corporation shall bear the burden of  
4 proving that the transaction was fair to the corporation.

5 ➔SECTION 7. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED  
6 TO READ AS FOLLOWS:

7 As used in Sections 7 to 15 of this Act:

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

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

20 (b) "Director" or "officer" includes the estate or personal representative of a  
21 director or officer;

22 (3) "Disinterested director" means a director who, at the time of a vote or selection  
23 referred to in subsection (2) of Section 12 of this Act, is not:

24 (a) A party to the proceeding; or

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

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

3 (4) "Expenses" includes counsel fees;

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

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

8 1. When used with respect to a director, the office of a director of a  
9 corporation; and

10 2. When used with respect to an individual other than a director, as  
11 contemplated in Section 15 of this Act, the office in a corporation held  
12 by the officer or the employment or agency relationship undertaken by  
13 the employee or agent on behalf of the corporation.

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

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

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

22 ➔SECTION 8. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED  
23 TO READ AS FOLLOWS:

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

27 (a) The individual:

- 1           1. Conducted himself or herself in good faith; and
- 2           2. Honestly believed:
- 3                 a. In the case of conduct in his or her official capacity with the
- 4                         corporation, that his or her conduct was in its best interests; or
- 5                 b. In all other cases, that his or her conduct was at least not
- 6                         opposed to its best interests; and
- 7           3. In the case of any criminal proceeding, he or she had no reasonable
- 8                         cause to believe his or her conduct was unlawful; or
- 9           (b) The individual engaged in conduct for which broader indemnification has
- 10                         been made permissible or obligatory under a provision of the articles of
- 11                         incorporation, except that a corporation may not indemnify a director in
- 12                         connection with any transaction described in KRS 273.248(1)(a) or (c), or in
- 13                         connection with any act or omission of such director described in KRS
- 14                         273.248(1)(b).
- 15   (2) A director's conduct with respect to an employee benefit plan for a purpose he or
- 16                         she reasonably believed to be in the interests of the participants in and
- 17                         beneficiaries of the plan shall be conduct that satisfies the requirement of
- 18                         subsection (1)(a)2.b. of this section.
- 19   (3) The termination of a proceeding by judgment, order, settlement, conviction, or
- 20                         upon a plea of nolo contendere or its equivalent shall not be, of itself,
- 21                         determinative that the director did not meet the standard of conduct described in
- 22                         this section.
- 23   (4) Unless ordered by a court under subsection (2) of Section 11 of this Act, a
- 24                         corporation may not indemnify a director under this section:
- 25                         (a) In connection with a proceeding by or in the right of the corporation in
- 26                         which the director was adjudged liable to the corporation; or
- 27                         (b) In connection with any other proceeding charging improper personal

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

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

7           ➔SECTION 9. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED  
8 TO READ AS FOLLOWS:

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

14          ➔SECTION 10. A NEW SECTION OF KRS 273.161 TO 273.390 IS CREATED  
15 TO READ AS FOLLOWS:

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

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

22          (b) A determination is made that the facts then known to those making the  
23          determination would not preclude indemnification under Sections 7 to 15 of  
24          this Act.

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

1        repayment.

2        (3) Determinations and authorizations of payments under this section shall be made  
3        in the manner specified in Section 12 of this Act.

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

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

11       (1) The director is entitled to mandatory indemnification under Section 9 of this Act,  
12       in which case the court shall also order the corporation to pay the director's  
13       reasonable expenses incurred to obtain court-ordered indemnification; or

14       (2) The director is fairly and reasonably entitled to indemnification in view of all the  
15       relevant circumstances, whether or not he or she met the standard of conduct set  
16       forth in Section 8 of this Act or was adjudged liable as described in subsection (4)  
17       of Section 8 of this Act, but if he or she was adjudged so liable his or her  
18       indemnification shall be limited to reasonable expenses incurred.

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

21       (1) A corporation shall not indemnify a director under Section 8 of this Act unless  
22       authorized in the specific case after a determination has been made that  
23       indemnification of the director is permissible in the circumstances because he or  
24       she has met the standard of conduct set forth in Section 8 of this Act.

25       (2) The determination shall be made:

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

1       **(b) If a quorum cannot be obtained under paragraph (a) of this subsection, by**  
2       **majority vote of a committee duly designated by the board of directors, in**  
3       **which designation directors who are parties may participate, consisting**  
4       **solely of two (2) or more disinterested directors; or**

5       **(c) By special legal counsel:**

6           **1. Selected by the board of directors or its committee in the manner**  
7           **prescribed in paragraphs (a) and (b) of this subsection; or**

8           **2. If a quorum of the board of directors cannot be obtained under**  
9           **paragraph (a) of this subsection and a committee cannot be designated**  
10          **under paragraph (b) of this subsection, selected by majority vote of the**  
11          **full board of directors, in which selection directors who do not qualify**  
12          **as disinterested directors may participate.**

13       **(3) Authorization of indemnification and evaluation as to reasonableness of**  
14       **expenses shall be made in the same manner as the determination that**  
15       **indemnification is permissible, except that if the determination is made by special**  
16       **legal counsel, authorization of indemnification and evaluation as to**  
17       **reasonableness of expenses shall be made by those entitled under subsection**  
18       **(2)(c) of this section to select counsel.**

19       **(4) The articles of incorporation or bylaws may establish additional conditions,**  
20       **including but not limited to voting member approval, that must be met in order**  
21       **for a director to be indemnified.**

22       **(5) This section shall not apply to mandatory indemnification pursuant to Section 9**  
23       **of this Act or court-ordered indemnification pursuant to Section 11 of this Act.**

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

26       **Unless a corporation's articles of incorporation provide otherwise:**

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



1 indemnification under Section 9 of this Act, and is entitled to apply for court-  
2 ordered indemnification under Section 11 of this Act, in each case to the same  
3 extent as a director;

4 (2) The corporation may indemnify and advance expenses under Sections 7 to 15 of  
5 this Act to an officer, employee, or agent of the corporation who is not a director  
6 to the same extent as to a director; and

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

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

13 A corporation may purchase and maintain insurance on behalf of an individual who is  
14 or was a director, officer, employee, or agent of the corporation, or who, while a  
15 director, officer, employee, or agent of the corporation, is or was serving at the request  
16 of the corporation as a director, officer, manager, partner, trustee, employee, or agent  
17 of another entity, or of an employee benefit plan or other enterprise, against liability  
18 asserted against or incurred in that capacity or arising from the status as a director,  
19 officer, manager, employee, or agent, whether or not the corporation would have  
20 power to indemnify against the same liability under Section 8 or 9 of this Act.

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

23 (1) The indemnification and advancement of expenses provided by or granted  
24 pursuant to Sections 7 to 15 of this Act shall not be deemed exclusive of any other  
25 rights to which those seeking indemnification or advancement of expenses may  
26 be entitled under any bylaw, agreement, vote of members or disinterested  
27 directors, or otherwise, both as to action in his or her official capacity and as to

1 *action in another capacity while holding the office.*

2 *(2) Sections 7 to 15 of this Act shall not limit a corporation's power to pay or*  
 3 *reimburse expenses incurred by a director or officer in connection with his or her*  
 4 *appearance as a witness at a proceeding at a time when he or she has not been*  
 5 *made a named defendant or responded to the proceeding.*

6 *(3) Sections 7 to 15 of this Act shall not limit a corporation's power to indemnify,*  
 7 *advance expenses to, or provide or maintain insurance on behalf of an employee,*  
 8 *agent, or volunteer.*

9 ➔Section 16. KRS 273.217 is amended to read as follows:

10 (1) A majority of the number of directors fixed by the bylaws, or in the absence of a  
 11 bylaw fixing the number of directors, then of the number stated in the articles of  
 12 incorporation, shall constitute a quorum for the transaction of business, unless  
 13 otherwise provided in the articles of incorporation or the bylaws.

14 (2) Unless the articles of incorporation or bylaws provide otherwise, the board of  
 15 directors may permit any or all directors to participate in a regular or special  
 16 meeting by, or conduct the meeting through the use of, any means of  
 17 communication by which all directors participating may simultaneously  
 18 *communicate with*~~hear~~ each other during this meeting. A director participating in  
 19 a meeting by this means shall be deemed to be present in person at the meeting.

20 (3) The act of the majority of the directors present at a meeting at which a quorum is  
 21 present shall be the act of the board of directors, unless the act of a greater number  
 22 is required by KRS 273.161 to 273.390, the articles of incorporation or the bylaws.

23 (4) Irrespective of whether or not the corporation has members, a director may not vote  
 24 by proxy.

25 ➔Section 17. KRS 273.233 is amended to read as follows:

26 Each corporation shall keep correct and complete books and records of account and shall  
 27 keep minutes of the proceedings of its members, board of directors and committees

1 having any of the authority of the board of directors; and shall keep at its registered office  
2 or principal office in this state a record of the names and addresses of its members  
3 entitled to vote. All books and records of a corporation may be inspected and copied by  
4 any member, or the member's agent or attorney, for any proper purpose at any reasonable  
5 time. The member's right of inspection ~~may~~<sup>shall not</sup> be abolished or limited by the  
6 corporation's articles of incorporation or bylaws.

7 ➔Section 18. KRS 275.015 is amended to read as follows:

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

- 9 (1) "Articles of organization" means the articles filed in conformity with the provisions  
10 of KRS 275.020 and 275.025, and those articles as amended or restated;
- 11 (2) "Business entity" means a domestic or foreign limited liability company,  
12 corporation, partnership, limited partnership, business or statutory trust, and not-for-  
13 profit unincorporated association;
- 14 (3) "Corporation" means a profit or nonprofit corporation formed under the laws of any  
15 state or a foreign country;
- 16 (4) "Court" means every court having jurisdiction in the case;
- 17 (5) "Deliver" or "delivery" means any method of delivery used in conventional  
18 commercial practice, including delivery by hand, mail, commercial delivery, and  
19 electronic transmission;
- 20 (6) "Dissent" means a right to object to a proposed action or transaction and, in  
21 connection therewith, to demand a redemption of a limited liability company  
22 interest;
- 23 (7) "Electronic transmission" or "electronically transmitted" means any process of  
24 communication not directly involving the physical transfer of paper that is suitable  
25 for the retention, retrieval, and reproduction of information by the recipient;
- 26 (8) "Event of disassociation" means an event that causes a person to cease to be a  
27 member as provided in KRS 275.280;

- 1 (9) "Foreign limited liability company" means an organization that is:
- 2 (a) An unincorporated association;
- 3 (b) Organized under laws of a state other than the laws of this Commonwealth, or
- 4 under the laws of any foreign country; and
- 5 (c) Organized under a statute pursuant to which an association may be formed
- 6 that affords to each of its members limited liability with respect to the
- 7 liabilities of the entity;
- 8 (10) "Foreign nonprofit corporation" means a corporation incorporated for a nonprofit
- 9 purpose under the laws of a state other than the Commonwealth or under the laws of
- 10 a foreign country;
- 11 (11) "Knowledge" means actual knowledge of a fact;
- 12 (12) "Limited liability company" or "domestic limited liability company" means a
- 13 limited liability company formed under this chapter and, except with respect to a
- 14 nonprofit limited liability company, having one (1) or more members;
- 15 (13) "Limited liability company interest" or "interest in the limited liability company"
- 16 means the interest that may be issued in accordance with KRS 275.195;
- 17 (14) "Limited partnership" means a limited partnership formed under the laws of the
- 18 Commonwealth or any other state or a foreign country;
- 19 (15) "Majority-in-interest of the members" means those members entitled to cast a
- 20 majority of the votes to be cast by the members on any matter under the terms of the
- 21 operating agreement described in KRS 275.175(3);
- 22 (16) "Manager" or "managers" means, with respect to a limited liability company that
- 23 has set forth in its articles of organization that it is to be managed by managers, the
- 24 person or persons designated in accordance with KRS 275.165;
- 25 (17) "Member" or "members" means a person or persons who have been admitted to
- 26 membership in a limited liability company as provided in KRS 275.275 and who
- 27 have not ceased to be members as provided in KRS 275.280;

- 1 (18) "Name of record with the Secretary of State" means any real, fictitious, reserved,  
2 registered, or assumed name of a business entity;
- 3 (19) "Nonprofit limited liability company" means a limited liability company formed for  
4 a nonprofit purpose **that has designated in its articles of organization that it is a**  
5 **nonprofit limited liability company as required in KRS 275.025(6)**~~[having one (1)~~  
6 ~~or more or no members]~~;
- 7 (20) "Nonprofit purpose" includes any purpose authorized under KRS 273.167;
- 8 (21) "Operating agreement" means any agreement, written or oral, among all of the  
9 members, as to the conduct of the business and affairs of a limited liability  
10 company. If a limited liability company has only one (1) member, an operating  
11 agreement shall be deemed to include:
- 12 (a) A writing executed by the member that relates to the affairs of the limited  
13 liability company and the conduct of its business regardless of whether the  
14 writing constitutes an agreement; or
- 15 (b) If the limited liability company is managed by a manager, any other agreement  
16 between the member and the limited liability company as it relates to the  
17 limited liability company and the conduct of its business, regardless of  
18 whether the agreement is in writing;
- 19 (22) "Person" means an individual, a partnership, a domestic or foreign limited liability  
20 company, a trust, an estate, an association, a corporation, or any other legal entity;
- 21 (23) "Principal office" means the office, in or out of the Commonwealth, so designated  
22 in writing with the Secretary of State where the principal executive offices of a  
23 domestic or foreign limited liability company are located;
- 24 (24) "Proceeding" means civil suit and criminal, administrative, and investigative action;
- 25 (25) "Professional limited liability company" means a limited liability company  
26 organized under this chapter or the laws of another state or foreign country for  
27 purposes that include, but are not limited to, the providing of one (1) or more

1 professional services. Except as otherwise expressly provided in this chapter, all  
2 provisions of this chapter governing limited liability companies shall be applicable  
3 to professional limited liability companies;

4 (26) "Professional services" mean the personal services rendered by physicians,  
5 osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists,  
6 psychologists, occupational therapists, veterinarians, engineers, architects,  
7 landscape architects, certified public accountants, public accountants, physical  
8 therapists, and attorneys;

9 (27) "Real name" shall have the meaning set forth in KRS 365.015;

10 (28) "Regulating board" means the governmental agency which is charged by law with  
11 the licensing and regulation of the practice of the profession which the professional  
12 limited liability company is organized to provide; and

13 (29) "State" means a state, territory, or possession of the United States, the District of  
14 Columbia, or the Commonwealth of Puerto Rico.