

1 AN ACT relating to directors of corporations.

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

3 ➔Section 1. KRS 271B.8-300 is amended to read as follows:

- 4 (1) A director shall discharge his duties as a director, including his ***or her*** duties as a  
5 member of a committee:
- 6 (a) In good faith;
- 7 (b) On an informed basis; and
- 8 (c) In a manner he ***or she*** honestly believes to be in the best interests of the  
9 corporation.
- 10 (2) A director shall be considered to discharge his ***or her*** duties on an informed basis if  
11 he ***or she*** makes, with the care an ordinarily prudent person in a like position would  
12 exercise under similar circumstances, inquiry into the business and affairs of the  
13 corporation, or into a particular action to be taken or decision to be made.
- 14 (3) In discharging his ***or her*** duties a director shall be entitled to rely on information,  
15 opinions, reports, or statements, including financial statements and other financial  
16 data, if prepared or presented by:
- 17 (a) One (1) or more officers or employees of the corporation whom the director  
18 honestly believes to be reliable and competent in the matters presented;
- 19 (b) Legal counsel, public accountants, or other persons as to matters the director  
20 honestly believes are within the person's professional or expert competence; or
- 21 (c) A committee of the board of directors of which he ***or she*** is not a member, if  
22 the director honestly believes the committee merits confidence.
- 23 (4) A director shall not be considered to be acting in good faith if he ***or she*** has  
24 knowledge concerning the matter in question that makes reliance otherwise  
25 permitted by subsection (3) of this section unwarranted.
- 26 (5) In addition to any other limitation on a director's liability for monetary damages  
27 contained in any provision of the corporation's articles of incorporation adopted in

1 accordance with subsection (2)(d) of KRS 271B.2-020, any action taken as a  
2 director, or any failure to take any action as a director, shall not be the basis for  
3 monetary damages or injunctive relief unless:

4 (a) The director has breached or failed to perform the duties of the director's  
5 office in compliance with this section; and

6 (b) In the case of an action for monetary damages, the breach or failure to perform  
7 constitutes willful misconduct or wanton or reckless disregard for the best  
8 interests of the corporation and its shareholders.

9 (6) A person bringing an action for monetary damages under this section shall have the  
10 burden of proving by clear and convincing evidence the provisions of subsection  
11 (5)(a) and (b) of this section, and the burden of proving that the breach or failure to  
12 perform was the legal cause of damages suffered by the corporation.

13 (7) Nothing in this section shall eliminate or limit the liability of any director for any  
14 act or omission occurring prior to July 15, 1988.

15 (8) In a public benefit corporation:

16 (a) The board of directors shall manage or direct the business and affairs of the  
17 public benefit corporation in a manner that balances the pecuniary interests of  
18 the stockholders, the best interests of those materially affected by the  
19 corporation's conduct, and the specific public benefit or public benefits  
20 identified in its articles of incorporation;

21 (b) A director of the public benefit corporation shall not, by virtue of the public  
22 benefit provisions set forth in the corporation's articles of incorporation, have  
23 any duty to any person on account of any interest of the person in the public  
24 benefit or public benefits identified in the articles of incorporation or on  
25 account of any interest materially affected by the corporation's conduct;

26 (c) With respect to a decision implicating the balance requirement in paragraph  
27 (a) of this subsection, a director shall act in conformity with subsection (1) of

1           this section; and  
2           (d) The articles of incorporation of a public benefit corporation may include a  
3           provision that any disinterested failure to satisfy this subsection shall not  
4           constitute an act or omission not in good faith or a breach of the duty of  
5           loyalty.