

### **292.370 Registration by qualification.**

- (1) Any security may be registered by qualification.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:
  - (a) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
  - (b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within ninety (90) days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any subsidiary effected within the past three (3) years or proposed to be effected by him or any of his associates as defined in the rules promulgated under the Securities Exchange Act of 1934;
  - (c) With respect to persons covered in paragraph (b): the remuneration paid to all such persons in the aggregate during the past twelve (12) months, and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries), and the amount paid and to be paid to each of those who received or are to receive more than fifteen thousand dollars (\$15,000);
  - (d) With respect to any person not named in paragraph (b), owning of record, or beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in paragraphs (b) and (c) other than his occupation;
  - (e) With respect to every promoter, not named in paragraphs (b) and (d), if the issuer was organized within the past three (3) years: the information specified in paragraphs (b) and (c), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;
  - (f) The capitalization and long-term debt (on both a current and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, good will, or anything else) for which the issuer or

any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;

- (g) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price or the method by which it is to be computed; and any variation therefrom at which any portion of the offering is to be made to any persons or class of persons, other than the underwriters, with a specification of such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering); the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
- (h) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including good will) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the cost basis or book value of the assets in the hands of the vendors (if they are officers, directors, partners, or controlling shareholders of the issuer), the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commissions and any other expenses in connection with the acquisition (including the cost of borrowing money to finance the acquisition);
- (i) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (b), (c), (d), (e), (g), or (h) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;
- (j) The dates of, parties to, and general effect, concisely stated, of every management, employment, or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer or any of its significant subsidiaries is a party and which may materially affect its

business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

- (k) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
- (l) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;
- (m) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;
- (n) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;
- (o) A signed or conformed copy of an opinion of counsel, as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state, in addition to such matters as the commissioner may request whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer, and whether or not the offering, as contemplated in the registration statement will comply with the requirements of any claimed exemption from the registration provisions of the Securities Act of 1933;
- (p) Financial statements of the issuer that meet the following requirements:
  1. If the maximum proceeds to be received from the offering do not exceed two million dollars (\$2,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income for the last fiscal year preceding the date of the most recent balance sheet filed and for the period, if any, between the close of such fiscal year and the date of the most recent balance sheet filed. The balance sheet and income statement for the most recent fiscal year shall be audited if the financial statements have previously been audited for other purposes. Otherwise, all financial statements may be unaudited;
  2. If the maximum proceeds to be received from the offering do not exceed five million dollars (\$5,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income, cash flows, and changes in stockholders equity for each of the two (2) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of the fiscal years and the date of the most recent balance sheet filed. The balance sheet and statements of income, cash flows, and changes in stockholders equity for the most

recent fiscal year shall be audited; all other financial statements may be unaudited;

3. If the maximum proceeds to be received from the offering exceed five million dollars (\$5,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income, cash flows, and changes in stockholders equity for each of the three (3) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of the fiscal years and the date of the most recent balance sheet filed. The balance sheet and statements of income, cash flows, and changes in stockholders equity for the most recent fiscal year shall be audited; all other financial statements may be unaudited;
  4. Notwithstanding the provisions of this paragraph, if the issuer has been in existence for less than one (1) fiscal year, the balance sheet shall be as of a date not more than four (4) months prior to the date of filing of the registration statement, and the statements of income, cash flows, and changes in stockholders equity shall be for the period from inception through the date of the balance sheet filed;
  5. If any part of the proceeds of the offering is to be applied to the purchase of any business whose annual sales or revenues for its most recent fiscal year are in excess of twenty percent (20%) of the issuer's sales or revenues for its most recent fiscal year or involves the acquisition of assets in excess of twenty percent (20%) of the issuer's assets as of its most recent fiscal year end, except as specifically exempted by the commissioner, the same financial statements which would be required if that business were the issuer shall be filed;
  6. The commissioner, where necessary or appropriate in the public interest or for the protection of investors, may permit the omission of one (1) or more of the financial statements or the substitution of appropriate statements of comparable character, and may waive the requirement that the financial statements be audited; and
  7. The financial statements required by this subsection shall be prepared as to form and content in accordance with generally accepted accounting principles;
- (q) The written consent of an accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if the person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement; and
- (r) Such additional information as the commissioner requires by rule or order.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 865, effective July 15, 2010. -- Amended 1998 Ky. Acts ch. 20, sec. 8, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 165, sec. 8, effective July 15, 1994. -- Amended 1972 Ky. Acts ch. 265, sec. 7. -- Created 1960 Ky. Acts ch. 110, sec. 6, effective January 1, 1961.