

1 AN ACT relating to public benefit corporations.

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

3 ➔Section 1. KRS 14A.3-010 is amended to read as follows:

4 (1) Except as authorized by subsection (24) of this section, the real name of an entity or
5 foreign entity shall be distinguishable from any name of record with the Secretary of
6 State.

7 (2) The real name of a corporation or nonprofit corporation ~~shall~~:

8 (a) 1. ***Shall*** end with the word "corporation," "company," or "limited" or the
9 abbreviation "Corp.," "Inc.," "Co.," or "Ltd." or words or abbreviations
10 of like import in another language, provided, however, that if a nonprofit
11 corporation's name includes the word "company" or the abbreviation
12 "Co.," it may not be immediately preceded by the word "and" or the
13 abbreviation "&"; ~~or~~

14 2. If a professional service corporation, shall end with the words
15 "professional service corporation" or the abbreviation "P.S.C."; ***or***

16 ***3. If a public benefit corporation, shall end with the words "public***
17 ***benefit corporation" or "benefit corporation" or the abbreviation***
18 ***"P.B.C." or "PBC";*** and

19 (b) Shall not contain language stating or implying that the corporation is
20 organized for a purpose other than that permitted by its organic act and its
21 articles of incorporation.

22 (3) The real name of a limited liability company shall end with the phrase "limited
23 liability company" or "limited company" or the abbreviation "LLC" or "LC,"
24 provided, however, if the company is a professional limited liability company the
25 name shall end with the phrase "professional limited liability company" or
26 "professional limited company" or the abbreviation "PLLC" or "PLC." In the name
27 of either a limited liability company or a professional limited liability company, the

- 1 word "limited" may be abbreviated as "Ltd." and the word "Company" may be
2 abbreviated as "Co."
- 3 (4) The real name of a limited liability partnership registered pursuant to KRS 362.555
4 shall contain the phrase "Registered Limited Liability Partnership" or the
5 abbreviation "LLP" as the last words or letters of its name.
- 6 (5) The real name of a partnership subject to KRS 362.1-101 to 362.1-975, the
7 "Kentucky Revised Uniform Partnership Act (2006)":
- 8 (a) Shall not contain the word "corporation" or "incorporated" or the abbreviation
9 "Corp." or "Inc."; and
- 10 (b) May contain the word "limited" or the abbreviation "Ltd." only if the
11 partnership has filed a statement of qualification.
- 12 (6) The real name of a limited liability partnership that has filed a statement of
13 qualification pursuant to KRS 362.1-931 shall end with the phrase "Registered
14 Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation
15 "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."
- 16 (7) The real name of a limited partnership subject to KRS 362.401 to 362.525, the
17 "Kentucky Revised Uniform Limited Partnership Act," shall:
- 18 (a) Contain the word "Limited" or the abbreviation "Ltd." unless the limited
19 partnership was formed under any statute of the Commonwealth prior to the
20 adoption of the Kentucky Revised Uniform Limited Partnership Act; and
- 21 (b) Not contain the name of a limited partner unless:
- 22 1. That name is also the name of a general partner; or
23 2. The business of the limited partnership had been carried on under that
24 name before the admission of that limited partner.
- 25 (8) The real name of a limited partnership subject to KRS 362.2-102 to 362.2-977, the
26 "Kentucky Uniform Limited Partnership Act (2006)," that is not a limited liability
27 limited partnership may contain the name of any partner and shall:

- 1 (a) End with the phrase "limited partnership" or "limited" or the abbreviation
2 "L.P.," "LP," or "Ltd."; and
- 3 (b) Not contain the phrase "limited liability limited partnership" or the
4 abbreviation "L.L.L.P." or "LLLP."
- 5 (9) The real name of a limited partnership subject to KRS 362.2-102 to 362.2-977, the
6 "Kentucky Uniform Limited Partnership Act (2006)," that is a limited liability
7 limited partnership may contain the name of any partner and shall:
- 8 (a) End with the phrase "limited liability limited partnership" or the abbreviation
9 "L.L.L.P." or "LLLP"; and
- 10 (b) Not contain only the phrase "limited partnership" or the abbreviation "L.P." or
11 "LP."
- 12 (10) Subject to KRS 362.2-974, subsections (8) and (9) of this section shall not apply to
13 a limited partnership formed under any statute of this Commonwealth prior to July
14 15, 1988.
- 15 (11) The real name of a rural telephone cooperative corporation:
- 16 (a) Shall contain the word "Telephone," "Telecommunications," "Company," or
17 "Corporation" and the abbreviation "Inc.," unless in an affidavit made by its
18 president or vice president, and filed with the Secretary of State, or in an
19 affidavit made by a person signing articles of incorporation, consolidation,
20 merger, or conversion which relate to that cooperative, and filed, together with
21 any such articles, with the Secretary of State, it shall appear that the
22 cooperative desires to do business in another state and is or would be
23 precluded there from by reason of the inclusion of such words or either thereof
24 in its name; and
- 25 (b) May include the word "Cooperative."
- 26 (12) The phrase "Rural Electric Cooperative" may not be used in the name of any entity
27 or foreign entity except for one formed under KRS Chapter 279.

- 1 (13) Except as otherwise provided in this section, the word "cooperative" may not be
2 used in the name of any entity doing business in this Commonwealth.
- 3 (14) The name of a limited cooperative association shall end with the words "limited
4 cooperative association" or "limited cooperative" or the abbreviation "L.C.A." or
5 "LCA." "Limited" may be abbreviated as "Ltd.," "Cooperative" may be abbreviated
6 as "Co-op" or "Coop," and "Association" may be abbreviated as "Assoc." or "Assn."
- 7 (15) There are no required identifiers for a business trust or a statutory trust, but the
8 name of a business or statutory trust may include "Limited" or "Ltd." and may not
9 include any of "incorporated," "corporation," "Inc.," "Corp.," "partnership," or
10 "cooperative."
- 11 (16) The real name of an unincorporated nonprofit association that has filed a certificate
12 of association with the Secretary of State shall end with "Limited" or "Ltd.," and the
13 real name of an unincorporated nonprofit association that has not filed a certificate
14 of association with the Secretary of State shall not include "Limited" or "Ltd." No
15 unincorporated nonprofit association shall include in its name any of
16 "incorporated," "corporation," "Inc.," "Corp.," "company," "partnership," "benefit,"
17 or "cooperative."
- 18 (17) This chapter does not control the use of assumed names.
- 19 (18) The filing of articles of incorporation, articles of organization, articles of
20 association, a statement of qualification, a certificate of limited partnership, a
21 declaration or certificate of trust, a certificate of association, an application to
22 transact authority in the Commonwealth, a statement of foreign qualification, a
23 name registration, or name reservation under a particular name shall not
24 automatically prevent the use of that name or protect that name from use by other
25 persons.
- 26 (19) The provisions of subsection (2)(a) of this section shall not affect the right of any
27 nonprofit corporation existing on June 13, 1968, to continue the use of its name as

1 then in effect.

2 (20) The assumption of a nonprofit corporate name in violation of this section shall not
3 affect or vitiate the corporate existence, but the courts of this Commonwealth
4 having equity jurisdiction may, upon the application of the Commonwealth or of
5 any person interested or affected, enjoin such corporation from doing business
6 under a name assumed in violation of this section, although a certificate of
7 incorporation may have been issued.

8 (21) This section shall not apply to any domestic or foreign telephone cooperative which
9 became subject to KRS 279.310 to 279.600 by complying with the provisions of
10 KRS 279.470 or which does business in this Commonwealth pursuant to KRS
11 279.570 and which elects to retain a name which does not comply with this section.

12 (22) Nothing in this section shall limit the ability of a professional regulatory board to
13 promulgate rules governing entities and foreign entities under its jurisdiction.

14 (23) The real name of a foreign entity will be determined according to KRS 365.015. For
15 entities not covered by that statute, the real name of the foreign entity will be the
16 real name of the entity as so recognized in the jurisdiction of its origination.

17 (24) The real name of a partnership, other than that of a limited liability partnership as
18 set forth on a statement of qualification or a registration as a limited liability
19 partnership filed pursuant to KRS 362.555 or that of a foreign limited liability
20 partnership as set forth on a statement of foreign qualification, need not be
21 distinguishable from any name of record with the Secretary of State.

22 ➔Section 2. KRS 271B.1-400 is amended to read as follows:

23 *As used* in this chapter:

24 (1) "Appropriate court" means the Circuit Court for the county within the
25 Commonwealth in which the corporation maintains its principal office or, if none,
26 the county in which the registered office is located;

27 (2) "Articles of incorporation" include amended and restated articles of incorporation

- 1 and articles of merger;
- 2 (3) "Authorized shares" means the shares of all classes a domestic or foreign
3 corporation is authorized to issue;
- 4 (4) "Conspicuous" means so written that a reasonable person against whom the writing
5 is to operate should have noticed it. For example, printing in italics or boldface or
6 contrasting color, or typing in capitals or underlining, shall be considered
7 conspicuous;
- 8 (5) "Corporation" or "domestic corporation" means a corporation for profit, which is
9 not a foreign corporation, incorporated under or subject to the provisions of this
10 chapter, and includes a professional service corporation and a public benefit
11 corporation;
- 12 (6) "Deliver" or "delivery" means any method of delivery used in conventional
13 commercial practice, including delivery by hand, mail, commercial delivery, and
14 electronic transmission;
- 15 (7) "Distribution" means a direct or indirect transfer of money or other property (except
16 its own shares) or incurrence of indebtedness by a corporation to or for the benefit
17 of its shareholders in respect of any of its shares. A distribution may be in the form
18 of a declaration or payment of a dividend; a purchase, redemption, or other
19 acquisition of shares; a distribution of indebtedness; or otherwise;
- 20 (8) "Effective date of notice" is defined in KRS 271B.1-410;
- 21 (9) "Electronic transmission" or "electronically transmitted" means any process of
22 communication not directly involving the physical transfer of paper that is suitable
23 for the retention, retrieval, and reproduction of information by the recipient;
- 24 (10) "Employee" includes an officer but not a director. A director may accept duties that
25 make him also an employee;
- 26 (11) "Entity" includes a domestic or foreign corporation; not-for-profit corporation;
27 profit and not-for-profit unincorporated association; business trust, estate,

- 1 partnership, trust, and two (2) or more persons having a joint or common economic
2 interest; and state, United States, and foreign government;
- 3 (12) "Foreign corporation" means a corporation for profit incorporated under a law other
4 than the law of this state;
- 5 (13) "Governmental subdivision" includes authority, county, district, and municipality;
- 6 (14) "Includes" denotes a partial definition;
- 7 (15) "Individual" means a natural person and includes the estate of an incompetent or
8 deceased individual;
- 9 (16) "Means" denotes an exhaustive definition;
- 10 (17) "Name of record with the Secretary of State" means any real, fictitious, reserved,
11 registered, or assumed name of an entity;
- 12 (18) "Notice" is defined in KRS 271B.1-410;
- 13 (19) "Person" includes individual and entity;
- 14 (20) "Principal office" means the office in or out of this state, so designated in writing to
15 the Secretary of State where the principal executive offices of a domestic or foreign
16 corporation are located;
- 17 (21) "Proceeding" includes civil suit and criminal, administrative, and investigatory
18 action;
- 19 **(22) "Public benefit" means a positive effect or reduction of negative effects on one**
20 **(1) or more categories of persons, entities, communities, or interests other than**
21 **stockholders in their capacities as stockholders;**
- 22 **(23) "Public benefit corporation" means a for-profit corporation that is intended to**
23 **produce a public benefit and to operate in a responsible manner, balancing the**
24 **stockholders' pecuniary interests, the best interests of those materially affected by**
25 **the corporation's conduct, and the public benefit identified in its articles of**
26 **incorporation;**
- 27 **(24) "Public benefit provisions" means the provisions of articles of incorporation**

1 **authorized by subsection (4) of Section 4 of this Act;**

2 **(25)**~~[(22)]~~ "Real name" shall have the meaning set forth in KRS 365.015;

3 **(26)**~~[(23)]~~ "Record date" means the date established under Subtitle 6 or 7 of this chapter
4 on which a corporation determines the identity of its shareholders and their
5 shareholdings for purposes of this chapter. The determinations shall be made as of
6 the close of business on the record date, unless another time for doing so is
7 specified when the record date is fixed;

8 **(27)**~~[(24)]~~ "Secretary" means the corporate officer to whom the board of directors has
9 delegated responsibility under KRS 271B.8-400(3) for custody of the minutes of the
10 meetings of the board of directors and of the shareholders and for authenticating
11 records of the corporation;

12 **(28)**~~[(25)]~~ "Share" means the unit into which the proprietary interests in a corporation are
13 divided;

14 **(29)**~~[(26)]~~ "Shareholder" means the person in whose name shares are registered in the
15 records of a corporation or the beneficial owner of shares to the extent of the rights
16 granted by a nominee certificate on file with a corporation;

17 **(30)**~~[(27)]~~ "Sign" or "signature" includes any manual, facsimile, or conformed or
18 electronic signature;

19 **(31)**~~[(28)]~~ "State," when referring to a part of the United States, includes a state and
20 Commonwealth and their agencies and governmental subdivisions, and a territory
21 and insular possession and their agencies and governmental subdivisions of the
22 United States;

23 **(32)**~~[(29)]~~ "Subscriber" means a person who subscribes for shares in a corporation,
24 whether before or after incorporation;

25 **(33)**~~[(30)]~~ "United States" includes district, authority, bureau, commission, department,
26 and any other agency of the United States; and

27 **(34)**~~[(31)]~~ "Voting group" means all shares of one (1) or more classes or series that under

1 the articles of incorporation or this chapter are entitled to vote and be counted
 2 together collectively on a matter at a meeting of shareholders. All shares entitled by
 3 the articles of incorporation or this chapter to vote generally on the matter are for
 4 that purpose a single voting group.

5 ➔SECTION 3. A NEW SECTION OF SUBTITLE 11 OF KRS CHAPTER 271B
 6 IS CREATED TO READ AS FOLLOWS:

7 *(1) Notwithstanding any other provisions of this chapter, a corporation that is not a*
 8 *public benefit corporation shall not, without the approval of ninety percent (90%)*
 9 *of the outstanding shares of each class of the stock of the corporation of which*
 10 *there are outstanding shares, whether voting or nonvoting:*

11 *(a) Amend its articles of incorporation to elect to be a public benefit*
 12 *corporation; or*

13 *(b) Merge with or into another entity if, as a result of the merger, the shares in*
 14 *the corporation would become, or be converted into or exchanged for the*
 15 *right to receive, shares or other equity interests in a domestic or foreign*
 16 *public benefit corporation or similar entity. The restrictions of this section*
 17 *shall not apply prior to the time that the corporation has received payment*
 18 *for any of its capital stock.*

19 *(2) Any stockholder of a corporation that is not a public benefit corporation who:*

20 *(a) Holds shares of stock of the corporation immediately prior to the effective*
 21 *time of:*

22 *1. An amendment to the corporation's articles of incorporation to*
 23 *become a public benefit corporation; or*

24 *2. A merger that would result in the conversion of the corporation's*
 25 *stock into, or exchange of the corporation's stock for the right to*
 26 *receive, shares or other equity interests in a domestic or foreign public*
 27 *benefit corporation or similar entity; and*

1 (b) Has not voted in favor of the amendment, merger, or consolidation or
 2 consented thereto in writing;

3 shall be entitled to exercise dissenters rights under Subtitle 13 of this chapter.

4 (3) Notwithstanding any other provisions of this chapter, a corporation that is a
 5 public benefit corporation shall not, without the approval of two-thirds (2/3) of
 6 the outstanding shares of each class of the stock of the corporation of which
 7 there are outstanding shares, whether voting or nonvoting,

8 (a) Amend its articles of incorporation to delete the election to be a public
 9 benefit corporation; or

10 (b) Merge with or into another entity if, as a result of the merger, the shares in
 11 the corporation would become, or be converted into or exchanged for the
 12 right to receive, shares or other equity interests in a domestic or foreign
 13 corporation that is not a public benefit corporation or similar entity and the
 14 articles of incorporation of which does not contain the identical public
 15 benefit or public benefits as the public benefit corporation identified in its
 16 articles of incorporation.

17 ➔Section 4. KRS 271B.2-020 is amended to read as follows:

18 (1) The articles of incorporation shall set forth:

19 (a) A corporate name for the corporation that satisfies the requirements of KRS
 20 14A.3-010;

21 (b) The number of shares the corporation is authorized to issue;

22 (c) The corporation's initial registered office and initial registered agent that
 23 satisfy the requirements of KRS 14A.4-010;

24 (d) The mailing address of the corporation's principal office; and

25 (e) The name and mailing address of each incorporator.

26 (2) The articles of incorporation may set forth:

27 (a) The names and mailing addresses of the individuals who are to serve as the

1 initial directors;

2 (b) Provisions not inconsistent with law regarding:

- 3 1. The purpose or purposes for which the corporation is organized;
- 4 2. Managing the business and regulating the affairs of the corporation;
- 5 3. Defining, limiting, and regulating the powers of the corporation, its
6 board of directors, and shareholders;
- 7 4. A par value for authorized shares or classes of shares; and
- 8 5. The imposition of personal liability on shareholders for the debts of the
9 corporation to a specified extent and upon specified conditions;

10 (c) Any provision that under this chapter is required or permitted to be set forth in
11 the bylaws; and

12 (d) A provision eliminating or limiting the personal liability of a director to the
13 corporation or its shareholders for monetary damages for breach of his duties
14 as a director, provided that such provision shall not eliminate or limit the
15 liability of a director:

- 16 1. For any transaction in which the director's personal financial interest is
17 in conflict with the financial interests of the corporation or its
18 shareholders;
- 19 2. For acts or omissions not in good faith or which involve intentional
20 misconduct or are known to the director to be a violation of law;
- 21 3. For any vote for or assent to an unlawful distribution to shareholders as
22 prohibited under KRS 271B.8-330; or
- 23 4. For any transaction from which the director derived an improper
24 personal benefit.

25 No such provision shall eliminate or limit the liability of any director for any
26 act or omission occurring prior to the date when such provision becomes
27 effective. In no case shall this subsection or any such provision be construed

1 to expand the liability of any director as determined pursuant to KRS 271B.8-
2 300.

3 (3) The articles of incorporation need not set forth any of the corporate powers
4 enumerated in this chapter.

5 **(4) In addition to the information otherwise required, the articles of incorporation**
6 **for a public benefit corporation shall state:**

7 **(a) That the corporation is a public benefit corporation; and**

8 **(b) The purpose or purposes of the corporation, which shall include one (1) or**
9 **more public benefits.**

10 ➔Section 5. KRS 271B.6-260 is amended to read as follows:

11 (1) Unless the articles of incorporation or bylaws provide otherwise, the board of
12 directors of a corporation may authorize the issue of some or all of the shares of any
13 or all of its classes or series without certificates. The authorization shall not affect
14 shares already represented by certificates until they are surrendered to the
15 corporation.

16 (2) Within a reasonable time after the issue or transfer of shares without certificates, the
17 corporation shall send the shareholder a written statement of the information
18 required on certificates by subsections (2) and (3) of KRS 271B.6-250 and, if
19 applicable, KRS 271B.6-270.

20 **(3) Any stock certificate issued by a public benefit corporation shall note**
21 **conspicuously that the corporation is a public benefit corporation.**

22 ➔Section 6. KRS 271B.7-400 is amended to read as follows:

23 (1) A person shall not commence a proceeding in the right of a domestic or foreign
24 corporation unless he was a shareholder of the corporation when the transaction
25 complained of occurred or unless he became a shareholder through transfer by
26 operation of law from one who was a shareholder at that time. The derivative
27 proceeding shall not be maintained if it appears that the person commencing the

1 proceeding does not fairly and adequately represent the interests of the shareholders
2 in enforcing the right of the corporation.

3 (2) A complaint in a proceeding brought in the right of a corporation shall be verified
4 and allege with particularity the demand made, if any, to obtain action by the board
5 of directors and either that the demand was refused or ignored or why he did not
6 make the demand. Whether or not a demand for action was made, if the corporation
7 commences an investigation of the charges made in the demand or complaint, the
8 court may stay any proceeding until the investigation is completed.

9 (3) A proceeding commenced under this section may not be discontinued or settled
10 without the court's approval. If the court determines that a proposed discontinuance
11 or settlement will substantially affect the interest of the corporation's shareholders
12 or a class of shareholders, the court shall direct that notice be given the shareholders
13 affected.

14 (4) On termination of the proceeding the court may require the plaintiff to pay any
15 defendant's reasonable expenses, including counsel fees, incurred in defending the
16 proceeding if it finds that the proceeding was commenced without reasonable cause.

17 (5) For purposes of this section, "shareholder" includes a beneficial owner whose shares
18 are held in a voting trust or held by a nominee on his behalf.

19 (6) In any derivative proceedings in the right of a foreign corporation, the matters
20 covered by this section shall be governed by the laws of the jurisdiction of
21 incorporation.

22 (7) The articles of incorporation of the corporation may provide that proper venue for a
23 derivative action or an action to compel the production of books and records is in or
24 only is in the appropriate court.

25 **(8) Shareholders of a public benefit corporation owning individually or collectively,**
26 **as of the date of instituting a derivative proceeding, at least two percent (2%) of**
27 **the corporation's outstanding shares or, in the case of a corporation with shares**

1 *listed on a national securities exchange, the lesser of that percentage or shares of*
2 *at least two million dollars (\$2,000,000) in market value, may maintain a*
3 *derivative proceeding to enforce the requirements set forth in subsection (8) of*
4 *Section 7 of this Act.*

5 ➔Section 7. KRS 271B.8-300 is amended to read as follows:

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

1 contained in any provision of the corporation's articles of incorporation adopted in
2 accordance with subsection (2)(d) of KRS 271B.2-020, any action taken as a
3 director, or any failure to take any action as a director, shall not be the basis for
4 monetary damages or injunctive relief unless:

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

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

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

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

16 **(8) In a public benefit corporation:**

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

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

27 **(c) With respect to a decision implicating the balance requirement in**

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

7 ➔Section 8. KRS 271B.13-020 is amended to read as follows:

- 8 (1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value
9 of his shares in the event of, any of the following corporate actions:
- 10 (a) Consummation of a plan of merger to which the corporation is a party:
- 11 1. If shareholder approval is required for the merger by KRS 271B.11-030
12 or the articles of incorporation and the shareholder is entitled to vote on
13 the merger; or
- 14 2. If the corporation is a subsidiary that is merged with its parent under
15 KRS 271B.11-040;
- 16 (b) Consummation of a plan of share exchange to which the corporation is a party
17 as the corporation whose shares will be acquired, if the shareholder is entitled
18 to vote on the plan;
- 19 (c) Consummation of a sale or exchange of all, or substantially all, of the property
20 of the corporation other than in the usual and regular course of business, if the
21 shareholder is entitled to vote on the sale or exchange, including a sale in
22 dissolution but not including a sale pursuant to court order or a sale for cash
23 pursuant to a plan by which all or substantially all of the net proceeds of the
24 sale will be distributed to the shareholders within one (1) year after the date of
25 sale;
- 26 (d) Consummation of a plan of conversion of the corporation into a limited
27 liability company or statutory trust;

- 1 (e) An amendment of the articles of incorporation that materially and adversely
 2 affects rights in respect of a dissenter's shares because it:
- 3 1. Alters or abolishes a preferential right of the shares to a distribution or in
 4 dissolution;
 - 5 2. Creates, alters, or abolishes a right in respect of redemption, including a
 6 provision respecting a sinking fund for the redemption or repurchase of
 7 the shares;
 - 8 3. Excludes or limits the right of the shares to vote on any matter other than
 9 a limitation by dilution through issuance of shares or other securities
 10 with similar voting rights; ~~{or}~~
 - 11 4. Reduces the number of shares owned by the shareholder to a fraction of
 12 a share, if the fractional share so created is to be acquired for cash under
 13 KRS 271B.6-040; or
 - 14 **5. In a public benefit corporation, changes the public benefit provisions;**
- 15 (f) Any transaction subject to the requirements of KRS 271B.12-210 or exempted
 16 by KRS 271B.12-220(2);
- 17 **(g) Any election by a corporation to become a public benefit corporation or**
 18 **pursuant to the merger of a corporation with and into a public benefit**
 19 **corporation; or**
- 20 ~~(h)~~~~(g)~~ Any corporate action taken pursuant to a shareholder vote to the extent
 21 the articles of incorporation, bylaws, or a resolution of the board of directors
 22 provides that voting or nonvoting shareholders are entitled to dissent and
 23 obtain payment for their shares.
- 24 (2) A shareholder entitled to dissent and obtain payment for his shares under this
 25 chapter shall not challenge the corporate action creating his entitlement except by an
 26 application for injunctive relief prior to the consummation of the corporate action.
- 27 ➔Section 9. KRS 271B.16-210 is amended to read as follows:

- 1 **(1)** If a corporation indemnifies or advances expenses to a director under KRS 271B.8-
2 510 to 271B.8-540 in connection with a proceeding by or in the right of the
3 corporation, the corporation shall report the indemnification or advance in writing
4 to the shareholders with or before the notice of the next shareholders' meeting.
- 5 **(2)** **A public benefit corporation shall no less than annually provide its stockholders**
6 **with a statement as to the corporation's promotion of the public benefit or public**
7 **benefits identified in the articles of incorporation and of the best interests of those**
8 **materially affected by the corporation's conduct. The statement shall include:**
- 9 **(a) The objectives that the board of directors has established to promote the**
10 **public benefit or public benefits and interests;**
- 11 **(b) The standards that the board of directors has adopted to measure the**
12 **corporation's progress in promoting the public benefit or public benefits**
13 **and interests;**
- 14 **(c) Objective factual information based on those standards regarding the**
15 **corporation's success in meeting the objectives for promoting the public**
16 **benefit or public benefits and interests; and**
- 17 **(d) An assessment of the corporation's success in meeting the objectives and**
18 **promoting the public benefit or public benefits and interests.**
- 19 **(3) The articles of incorporation or bylaws of a public benefit corporation may**
20 **require that the corporation:**
- 21 **(a) Make the statement described in subsection (2) of this section available to**
22 **the public; or**
- 23 **(b) Use a third-party standard in connection with, or attain a periodic third-**
24 **party certification addressing, the corporation's promotion of the public**
25 **benefit or public benefits identified in the articles of incorporation or the**
26 **best interests of those materially affected by the corporation's conduct.**