# GENERAL ASSEMBLY
## COMMONWEALTH OF KENTUCKY

## 2015 REGULAR SESSION

HOUSE BILL NO. 440

AS ENACTED

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to business entities.

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

3 ➔Section 1. KRS 14.105 is amended to read as follows:

4 (1) The Secretary of State may accept electronic signatures to meet the filing
5 requirements for a:

6 (a) Corporation as required in KRS Chapter 271B;

7 (b) Nonprofit corporation as required in KRS Chapter 273;

8 (c) Professional service corporation as required in KRS Chapter 274;

9 (d) Limited liability company as required in KRS Chapter 275;

10 (e) Partnership as required in KRS Chapter 362;

11 (f) Partnership as required in Subchapter 1 of KRS Chapter 362;

12 (g) Limited partnership as required in Subchapter 2 of KRS Chapter 362;

13 (h) Cooperative corporations and associations as required in KRS
14 ***Chapter***[~~Chapters~~] 272 ***or***[~~and~~] 272A;

15 (i) Business trust as required in KRS Chapter 386 ***or a statutory trust under KRS***
16 ***Chapter 386A***;

17 (j) Rural electric and rural telephone cooperative corporation as required in KRS
18 Chapter 279;

19 ***(k) Unincorporated nonprofit association as required in Sections 12 to 44 of***
20 ***this Act;***

21 ***(l)***[~~(k)~~] Assumed name filing under KRS Chapter 365; and

22 ***(m)***[~~(l)~~] ***Filings***[~~Filing~~] under KRS Chapter 14A.

23 (2) The electronic signature shall satisfy the requirements set forth in KRS 369.101 to
24 369.120.

25 ➔Section 2. KRS 14A.2-010 is amended to read as follows:

26 (1) A document shall satisfy the requirements of this section, and of any other section
27 that adds to or varies these requirements, to be entitled to filing by the Secretary of

1 State.
2 (2) This chapter shall require or permit filing a document in the office of the Secretary
3 of State.
4 (3) A document shall contain the information required by the organic law or by this
5 chapter, and may contain other information if permitted by the organic law.
6 (4) A document shall be typewritten, printed, or electronically transmitted. If a
7 document is electronically transmitted, the document shall be in a format that can be
8 retrieved or reproduced in typewritten or printed form.
9 (5) A document shall be in the English language. A name may be in a language other
10 than English if written in English letters or Arabic or Roman numerals. A document
11 not in English shall be accompanied by an English translation reasonably
12 authenticated to the satisfaction of the Secretary of State.
13 (6) A document shall be executed in the manner set forth in KRS 14A.2-020.
14 (7) The person executing the document shall sign it and state beneath or opposite the
15 signature the person's name and the capacity in which the document is signed. The
16 document may but need not contain:
17 (a) A seal of the entity or foreign entity;
18 (b) An attestation, acknowledgment, or verification; or
19 (c) A statement regarding the preparer of the document which complies with KRS
20 382.335(1).
21 (8) If the Secretary of State has prescribed a mandatory form for a document, it shall be
22 in or on the prescribed form.
23 (9) A document shall be delivered to the office of the Secretary of State for filing.
24 Delivery may be made by electronic transmission, if and to the extent permitted by
25 the Secretary of State. If the document is filed in typewritten or printed form and not
26 transmitted electronically, the Secretary of State may require that up to two (2)
27 exact or conformed copies be delivered with the document.

1 (10) When the document is delivered to the office of the Secretary of State for filing, the
2 correct filing fee, the organization tax, and any penalty required by this chapter or
3 other law to be collected by the office of the Secretary of State with the document
4 shall be paid or provision for payment shall be made in a manner permitted by the
5 Secretary of State. The Secretary of State may accept payment of the correct amount
6 due by check, credit card, charge card, or similar method. However, if the amount
7 due is tendered by any method other than cash, the liability shall not be finally
8 discharged until the Secretary of State receives final payment or credit of collectible
9 funds. If, after five (5) days' prior written notice to the entity, foreign entity, or
10 person who delivered a document for filing for which the filing fee was not
11 collectible, payment of the filing fee in full is not made in immediately available
12 funds, the Secretary of State may declare the document filed to be null and void and
13 of no legal effect and may remove the document from the records of the Secretary
14 of State. Written notice given pursuant to this subsection may be given by electronic
15 communication.
16 (11) A document is delivered to the office of the Secretary of State for filing upon actual
17 receipt. A document delivered electronically that is self-operative will be treated as
18 received on the date of receipt. A document that is not self-operative delivered
19 electronically or otherwise will be treated as received on the date of delivery if
20 delivery is accomplished not later than 4:30 p.m. prevailing time in Frankfort,
21 Kentucky or otherwise on the next business day.
22 (12) Any communication from the Secretary of State to an entity or foreign entity may be
23 accomplished electronically. Communications to an entity may be mailed to the
24 entity by first-class mail at its principal office address.
25 ***(13) If any law prohibits the disclosure by the Secretary of State of information***
26 ***contained in a record delivered for filing, the Secretary of State shall file the***
27 ***record if it otherwise complies with the applicable law, but the Secretary of State***

1 ***may redact such information so that it is not available to the public.***

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

3 (1) Except as authorized by subsection ***(24)***[~~(23)~~] of this section, the real name of an
4 entity or foreign entity shall be distinguishable from any name of record with the
5 Secretary of State.

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

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

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

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

18 (3) The real name of a limited liability company shall end with the phrase "limited
19 liability company" or "limited company" or the abbreviation "LLC" or "LC,"
20 provided, however, if the company is a professional limited liability company the
21 name shall end with the phrase "professional limited liability company" or
22 "professional limited company" or the abbreviation "PLLC" or "PLC." In the name
23 of either a limited liability company or a professional limited liability company, the
24 word "limited" may be abbreviated as "Ltd." and the word "Company" may be
25 abbreviated as "Co."

26 (4) The real name of a limited liability partnership registered pursuant to KRS 362.555
27 shall contain the phrase "Registered Limited Liability Partnership" or the

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

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

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

1 any person interested or affected, enjoin such corporation from doing business
2 under a name assumed in violation of this section, although a certificate of
3 incorporation may have been issued.
4 *(21)*[~~(20)~~] This section shall not apply to any domestic or foreign telephone cooperative
5 which became subject to KRS 279.310 to 279.600 by complying with the provisions
6 of KRS 279.470 or which does business in this Commonwealth pursuant to KRS
7 279.570 and which elects to retain a name which does not comply with this section.
8 *(22)*[~~(21)~~] Nothing in this section shall limit the ability of a professional regulatory board
9 to promulgate rules governing entities and foreign entities under its jurisdiction.
10 *(23)*[~~(22)~~] The real name of a foreign entity will be determined according to KRS
11 365.015. For entities not covered by that statute, the real name of the foreign entity
12 will be the real name of the entity as so recognized in the jurisdiction of its
13 origination.
14 *(24)*[~~(23)~~] The real name of a partnership, other than that of a limited liability partnership
15 as set forth on a statement of qualification or a registration as a limited liability
16 partnership filed pursuant to KRS 362.555 or that of a foreign limited liability
17 partnership as set forth on a statement of foreign qualification, need not be
18 distinguishable from any name of record with the Secretary of State.
19 ➔Section 4. KRS 14A.6-010 is amended to read as follows:
20 (1) Each entity and each foreign entity authorized to transact business in this
21 Commonwealth shall deliver to the Secretary of State for filing an annual report that
22 sets forth:
23 (a) The name of the entity or foreign entity and the state or country under whose
24 law it is organized;
25 (b) The address of its registered office and the name of its registered agent at that
26 office in this Commonwealth;
27 (c) The address of its principal office; and

1 (d) With respect to each:
2 1. Corporation, not-for-profit corporation, cooperative, association, or
3 limited cooperative association, whether domestic or foreign:
4 a. The name and business address of the secretary or other officer
5 with responsibility for authenticating the records of the entity;
6 b. The name and business address of each other principal officer; and
7 c. The name and business address of each director;
8 2. Manager-managed limited liability company, whether domestic or
9 foreign, the name and business address of each manager;
10 3. Limited partnership, whether domestic or foreign, the name and business
11 address of each general partner;
12 4. Business trust, whether domestic or foreign, the name and business
13 address of each trustee; and
14 5. Professional service corporation, domestic or foreign, a statement that
15 each of the shareholders, not less than one-half (1/2) of the directors, and
16 each of the officers other than secretary and treasurer is a qualified
17 person.
18 ~~[(2) A professional service corporation formed under the provisions of this chapter,~~
19 ~~except as this chapter may otherwise provide, shall have the same powers, authority,~~
20 ~~duties, and liabilities as a corporation formed under KRS Chapter 271B.]~~
21 *(2)*~~[(3)]~~ Information in the annual report shall be current as of the date the annual
22 report is executed on behalf of the entity or foreign entity.
23 *(3)*~~[(4)]~~ The first annual report shall be delivered to the Secretary of State between
24 January 1 and June 30 of the year following the calendar year in which an entity was
25 organized or a foreign entity was authorized to transact business in this state.
26 Subsequent annual reports shall be delivered to the Secretary of State between
27 January 1 and June 30 of each following calendar year.

1 ***(4)***[~~(5)~~] If an annual report does not contain the information required by this section,
2 the Secretary of State shall promptly notify the entity or foreign entity in writing and
3 return the report to it for correction, which notification may be accomplished
4 electronically. For purposes of KRS 14A.2-130 or 14A.2-140, an annual report
5 returned for correction shall not be deemed to have been delivered until it is
6 returned and accepted by the Secretary of State.
7 ***(5)***[~~(6)~~] An entity or foreign entity may amend the information in its last filed annual
8 report by delivery of an amendment to the annual report to the Secretary of State for
9 filing on such form as is provided by the Secretary of State.
10 ***(6) An unincorporated nonprofit association that has filed a certificate of association***
11 ***is subject to this section.***
12 (7) The requirement to file an annual report shall not apply to:
13 (a) A limited partnership governed as to its internal affairs by the Kentucky
14 Uniform Limited Partnership Act as it existed prior to its repeal by 1988 Ky.
15 Acts ch. 284, sec. 65;
16 (b) A partnership other than a limited liability partnership that has filed a
17 statement of qualification pursuant to KRS 362.1-951 or a foreign limited
18 liability partnership;[~~ or~~]
19 (c) A foreign rural electric cooperative or foreign rural telephone cooperative not
20 required to qualify to transact business by a filing with the Secretary of State***;***
21 ***or***
22 ***(d) An unincorporated nonprofit association that has not filed a certificate of***
23 ***association***.
24 ➔Section 5. KRS 14A.9-010 is amended to read as follows:
25 (1) A foreign entity shall not transact business in this Commonwealth until it obtains a
26 certificate of authority from the Secretary of State.
27 (2) The following activities, among others, shall not constitute transacting business

1 within the meaning of subsection (1) of this section:
2 (a) Maintaining, defending, or settling any proceeding;
3 (b) Holding meetings of the board of directors, shareholders, partners, members,
4 managers, beneficial owners, or trustees or carrying on other activities
5 concerning the internal affairs of the foreign entity;
6 (c) Maintaining bank accounts;
7 (d) Maintaining offices or agencies for the transfer, exchange, and registration of
8 the foreign entity's own securities or maintaining trustees or depositaries with
9 respect to those securities;
10 (e) Selling through independent contractors;
11 (f) Soliciting or obtaining orders, whether by mail or through employees, agents,
12 or otherwise, if the orders require acceptance outside this state before they
13 become contracts;
14 (g) Creating or acquiring indebtedness, mortgages, and security interests in real,
15 personal, or intangible property;
16 (h) Securing or collecting debts or enforcing mortgages and security interests in
17 property securing the debts;
18 (i) Owning, without more, real or personal property;
19 (j) Conducting an isolated transaction that is completed within thirty (30) days
20 and that is not one (1) in the course of repeated transactions of a like nature;
21 and
22 (k) Transacting business in interstate commerce.
23 (3) The list of activities in subsection (2) of this section is not exhaustive.
24 (4) Except as provided in subsection (6) of this section, this section shall not apply to
25 foreign general partnerships. Whether a foreign limited liability partnership is
26 transacting business in this Commonwealth shall be determined under subsection
27 (2) of this section. A foreign limited liability partnership that is transacting business

1 in this Commonwealth shall file a statement of foreign qualification pursuant to
2 KRS 362.1-951.
3 (5) This section shall not apply in determining the contacts or activities that may
4 subject a foreign entity to service of process or taxation in this Commonwealth or to
5 regulation under any other law of this Commonwealth.
6 (6) Notwithstanding any other law to the contrary, a foreign entity, in order to be
7 eligible for award of a state contract under KRS Chapter 45A or 176, shall have a
8 certificate of authority or a statement of foreign qualification.
9 ***(7) A foreign insurer with a certificate of authority from the commissioner of the***
10 ***Department of Insurance is not subject to subsection (1) or (6) of this section.***
11 ➔Section 6. KRS 271B.1-400 is amended to read as follows:
12 In this chapter:
13 ***(1) "Appropriate court" means the Circuit Court for the county within the***
14 ***Commonwealth in which the corporation maintains its principal office or, if***
15 ***none, the county in which the registered office is located.***
16 *(2)*[~~(1)~~] "Articles of incorporation" include amended and restated articles of
17 incorporation and articles of merger;
18 *(3)*[~~(2)~~] "Authorized shares" means the shares of all classes a domestic or foreign
19 corporation is authorized to issue;
20 *(4)*[~~(3)~~] "Conspicuous" means so written that a reasonable person against whom the
21 writing is to operate should have noticed it. For example, printing in italics or
22 boldface or contrasting color, or typing in capitals or underlining, shall be
23 considered conspicuous;
24 *(5)*[~~(4)~~] "Corporation" or "domestic corporation" means a corporation for profit, which
25 is not a foreign corporation, incorporated under or subject to the provisions of this
26 chapter***, and includes a professional service corporation***;
27 *(6)*[~~(5)~~] "Deliver" or "delivery" means any method of delivery used in conventional

1 commercial practice, including delivery by hand, mail, commercial delivery, and
2 electronic transmission;
3 *(7)*[~~(6)~~] "Distribution" means a direct or indirect transfer of money or other property
4 (except its own shares) or incurrence of indebtedness by a corporation to or for the
5 benefit of its shareholders in respect of any of its shares. A distribution may be in
6 the form of a declaration or payment of a dividend; a purchase, redemption, or other
7 acquisition of shares; a distribution of indebtedness; or otherwise;
8 *(8)*[~~(7)~~] "Effective date of notice" is defined in KRS 271B.1-410;
9 *(9)*[~~(8)~~] "Electronic transmission" or "electronically transmitted" means any process of
10 communication not directly involving the physical transfer of paper that is suitable
11 for the retention, retrieval, and reproduction of information by the recipient;
12 *(10)*[~~(9)~~] "Employee" includes an officer but not a director. A director may accept
13 duties that make him also an employee;
14 *(11)*[~~(10)~~] "Entity" includes a domestic or foreign corporation; not-for-profit corporation;
15 profit and not-for-profit unincorporated association; business trust, estate,
16 partnership, trust, and two (2) or more persons having a joint or common economic
17 interest; and state, United States, and foreign government;
18 *(12)*[~~(11)~~] "Foreign corporation" means a corporation for profit incorporated under a law
19 other than the law of this state;
20 *(13)*[~~(12)~~] "Governmental subdivision" includes authority, county, district, and
21 municipality;
22 *(14)*[~~(13)~~] "Includes" denotes a partial definition;
23 *(15)*[~~(14)~~] "Individual" means a natural person and includes the estate of an incompetent
24 or deceased individual;
25 *(16)*[~~(15)~~] "Means" denotes an exhaustive definition;
26 *(17)*[~~(16)~~] "Name of record with the Secretary of State" means any real, fictitious,
27 reserved, registered, or assumed name of an entity;

1 *(18)*[~~(17)~~] "Notice" is defined in KRS 271B.1-410;
2 *(19)*[~~(18)~~] "Person" includes individual and entity;
3 *(20)*[~~(19)~~] "Principal office" means the office in or out of this state, so designated in
4 writing to the Secretary of State where the principal executive offices of a domestic
5 or foreign corporation are located;
6 *(21)*[~~(20)~~] "Proceeding" includes civil suit and criminal, administrative, and
7 investigatory action;
8 *(22)*[~~(21)~~] "Real name" shall have the meaning set forth in KRS 365.015.
9 *(23)*[~~(22)~~] "Record date" means the date established under Subtitle 6 or 7 of this chapter
10 on which a corporation determines the identity of its shareholders and their
11 shareholdings for purposes of this chapter. The determinations shall be made as of
12 the close of business on the record date, unless another time for doing so is
13 specified when the record date is fixed;
14 *(24)*[~~(23)~~] "Secretary" means the corporate officer to whom the board of directors has
15 delegated responsibility under KRS 271B.8-400(3) for custody of the minutes of the
16 meetings of the board of directors and of the shareholders and for authenticating
17 records of the corporation;
18 *(25)*[~~(24)~~] "Share" means the unit into which the proprietary interests in a corporation are
19 divided;
20 *(26)*[~~(25)~~] "Shareholder" means the person in whose name shares are registered in the
21 records of a corporation or the beneficial owner of shares to the extent of the rights
22 granted by a nominee certificate on file with a corporation;
23 *(27)*[~~(26)~~] "Sign" or "signature" includes any manual, facsimile, or conformed or
24 electronic signature;
25 *(28)*[~~(27)~~] "State," when referring to a part of the United States, includes a state and
26 Commonwealth and their agencies and governmental subdivisions, and a territory
27 and insular possession and their agencies and governmental subdivisions of the

1 United States.

2 *(29)*[~~(28)~~] "Subscriber" means a person who subscribes for shares in a corporation,
3 whether before or after incorporation.

4 *(30)*[~~(29)~~] "United States" includes district, authority, bureau, commission, department,
5 and any other agency of the United States; and

6 *(31)*[~~(30)~~] "Voting group" means all shares of one (1) or more classes or series that under
7 the articles of incorporation or this chapter are entitled to vote and be counted
8 together collectively on a matter at a meeting of shareholders. All shares entitled by
9 the articles of incorporation or this chapter to vote generally on the matter are for
10 that purpose a single voting group.

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

12 (1) A person shall not commence a proceeding in the right of a domestic or foreign
13 corporation unless he was a shareholder of the corporation when the transaction
14 complained of occurred or unless he became a shareholder through transfer by
15 operation of law from one who was a shareholder at that time. The derivative
16 proceeding shall not be maintained if it appears that the person commencing the
17 proceeding does not fairly and adequately represent the interests of the shareholders
18 in enforcing the right of the corporation.

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

25 (3) A proceeding commenced under this section may not be discontinued or settled
26 without the court's approval. If the court determines that a proposed discontinuance
27 or settlement will substantially affect the interest of the corporation's shareholders

1 or a class of shareholders, the court shall direct that notice be given the shareholders
2 affected.
3 (4) On termination of the proceeding the court may require the plaintiff to pay any
4 defendant's reasonable expenses, including counsel fees, incurred in defending the
5 proceeding if it finds that the proceeding was commenced without reasonable cause.
6 (5) For purposes of this section, "shareholder" includes a beneficial owner whose shares
7 are held in a voting trust or held by a nominee on his behalf.
8 (6) In any derivative proceedings in the right of a foreign corporation, the matters
9 covered by this section shall be governed by the laws of the jurisdiction of
10 incorporation.
11 ***(7) The articles of incorporation of the corporation may provide that proper venue***
12 ***for a derivative action or an action to compel the production of books and records***
13 ***is in or only is in the appropriate court.***
14 ➔Section 8. KRS 271B.8-510 is amended to read as follows:
15 (1) Except as provided in subsection (4) of this section, a corporation may indemnify an
16 individual made a party to a proceeding because he is or was a director against
17 liability incurred in the proceeding if:
18 (a) He conducted himself in good faith; and
19 (b) He ***honestly***~~[reasonably]~~ believed:
20 1. In the case of conduct in his official capacity with the corporation, that
21 his conduct was in its best interests; and
22 2. In all other cases, that his conduct was at least not opposed to its best
23 interests; and
24 (c) In the case of any criminal proceeding, he had no reasonable cause to believe
25 his conduct was unlawful.
26 (2) A director's conduct with respect to an employee benefit plan for a purpose he
27 reasonably believed to be in the interests of the participants in and beneficiaries of

1 the plan shall be conduct that satisfies the requirement of subsection (1)(b)2. of this
2 section.
3 (3) The termination of a proceeding by judgment, order, settlement, conviction, or upon
4 a plea of nolo contendere or its equivalent shall not be, of itself, determinative that
5 the director did not meet the standard of conduct described in this section.
6 (4) A corporation may not indemnify a director under this section:
7 (a) In connection with a proceeding by or in the right of the corporation in which
8 the director was adjudged liable to the corporation; or
9 (b) In connection with any other proceeding charging improper personal benefit to
10 him, whether or not involving action in his official capacity, in which he was
11 adjudged liable on the basis that personal benefit was improperly received by
12 him.
13 (5) Indemnification permitted under this section in connection with a proceeding by or
14 in the right of the corporation shall be limited to reasonable expenses incurred in
15 connection with the proceeding.
16 ➔Section 9. KRS 271B.11-050 is amended to read as follows:
17 (1) After a plan of merger or share exchange is approved by the shareholders, or
18 adopted by the board of directors if shareholder approval is not required, the
19 surviving or acquiring corporation shall deliver to the Secretary of State for filing
20 articles of merger or share exchange setting forth:
21 (a) ***The names of the parties to the merger or share exchange***[~~The plan of~~
22 ~~merger or share exchange~~];
23 ***(b) The name of the surviving corporation, if a merger, or the name of the***
24 ***acquiring corporation, if a share exchange;***
25 ***(c) If a merger, the information required by KRS 271B.11-010(2)(c);***
26 ***(d) If a merger, any amendment to the articles of incorporation of the surviving***
27 ***corporation;***

1 ***(e) If a share exchange, the information required by KRS 271B.11-020(c);***
2 ***(f)***[~~(b)~~] If shareholder approval was not required, a statement to that effect; and
3 ***(g)***[~~(c)~~] If approval of the shareholders of one (1) or more corporations party to
4 the merger or share exchange was required:
5 1. The designation, number of outstanding shares, and number of votes
6 entitled to be cast by each voting group entitled to vote separately on the
7 plan as to each corporation; and
8 2. Either the total number of votes cast for and against the plan by each
9 voting group entitled to vote separately on the plan or the total number
10 of undisputed votes cast for the plan separately by each voting group
11 and a statement that the number cast for the plan by each voting group
12 was sufficient for approval by that voting group.
13 (2) A merger or share exchange shall take effect upon the effective date of the articles
14 of merger or share exchange.
15 ➔Section 10. KRS 271B.11-060 is amended to read as follows:
16 (1) When a merger takes effect:
17 (a) Every other corporation party to the merger shall merge into the surviving
18 corporation and the separate existence of every corporation, except the
19 surviving corporation, shall cease;
20 (b) The title to all property, whether real, personal, or intangible, owned by each
21 corporation party to the merger shall be vested in the surviving corporation
22 without reversion or impairment;
23 (c) The surviving corporation shall have all liabilities of each corporation party to
24 the merger;
25 (d) A proceeding pending against any corporation party to the merger may be
26 continued as if the merger did not occur or the surviving corporation may be
27 substituted in the proceeding for the corporation whose existence ceased;

1 (e) The articles of incorporation of the surviving corporation shall be amended to
2 the extent provided in the ***articles***[~~plan~~] of merger; and
3 (f) The shares of each corporation party to the merger that are to be converted
4 into shares, obligations, or other securities of the surviving or any other
5 corporation or into cash or other property shall be converted, and the former
6 holders of the shares shall be entitled only to the rights provided in the articles
7 of merger or to their rights under Subtitle 13.
8 (2) When a share exchange takes effect, the shares of each acquired corporation shall be
9 exchanged as provided in the ***articles of share exchange***[~~plan~~], and the former
10 holders of the shares shall be entitled only to the exchange rights provided in the
11 articles of share exchange or to their rights under Subtitle 13.
12 ➔Section 11. KRS 271B.13-020 is amended to read as follows:
13 (1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value
14 of his shares in the event of, any of the following corporate actions:
15 (a) Consummation of a plan of merger to which the corporation is a party:
16 1. If shareholder approval is required for the merger by KRS 271B.11-030
17 or the articles of incorporation and the shareholder is entitled to vote on
18 the merger; or
19 2. If the corporation is a subsidiary that is merged with its parent under
20 KRS 271B.11-040;
21 (b) Consummation of a plan of share exchange to which the corporation is a party
22 as the corporation whose shares will be acquired, if the shareholder is entitled
23 to vote on the plan;
24 (c) Consummation of a sale or exchange of all, or substantially all, of the property
25 of the corporation other than in the usual and regular course of business, if the
26 shareholder is entitled to vote on the sale or exchange, including a sale in
27 dissolution but not including a sale pursuant to court order or a sale for cash

1 pursuant to a plan by which all or substantially all of the net proceeds of the
2 sale will be distributed to the shareholders within one (1) year after the date of
3 sale;
4 (d) Consummation of a plan of conversion of the corporation into a limited
5 liability company or statutory trust;
6 (e) An amendment of the articles of incorporation that materially and adversely
7 affects rights in respect of a dissenter's shares because it:
8 1. Alters or abolishes a preferential right of the shares to a distribution or in
9 dissolution;
10 2. Creates, alters, or abolishes a right in respect of redemption, including a
11 provision respecting a sinking fund for the redemption or repurchase of
12 the shares;
13 3. Excludes or limits the right of the shares to vote on any matter other than
14 a limitation by dilution through issuance of shares or other securities
15 with similar voting rights; or
16 4. Reduces the number of shares owned by the shareholder to a fraction of
17 a share, if the fractional share so created is to be acquired for cash under
18 KRS 271B.6-040;
19 (f) Any transaction subject to the requirements of KRS 271B.12-210 or exempted
20 by KRS 271B.12-220(2); or
21 (g) Any corporate action taken pursuant to a shareholder vote to the extent the
22 articles of incorporation, bylaws, or a resolution of the board of directors
23 provides that voting or nonvoting shareholders are entitled to dissent and
24 obtain payment for their shares.
25 (2) A shareholder entitled to dissent and obtain payment for his shares under this
26 chapter shall not challenge the corporate action creating his entitlement ***except by***
27 ***an application for injunctive relief prior to the consummation of the corporate***

1 *action*[~~unless the action is unlawful or fraudulent with respect to the shareholder or~~
2 ~~the corporation~~].
3 ➔SECTION 12. KRS CHAPTER 273A IS ESTABLISHED AND A NEW
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:
5 *As used in this chapter:*
6 *(1) "Appropriate court" means the Circuit Court of the county of the*
7 *Commonwealth in which the unincorporated nonprofit association's principal*
8 *office is located or, if none, the county in which the registered office is or was last*
9 *maintained;*
10 *(2) "Established practices" means the practices used by an unincorporated nonprofit*
11 *association without material change during the most recent five (5) years of its*
12 *existence or, if it has existed for less than five (5) years, during its entire*
13 *existence;*
14 *(3) "Governing principles" means the agreements, whether oral, in a record, or*
15 *implied from its established practices, that govern the purpose or operation of an*
16 *unincorporated nonprofit association and the rights and obligations of its*
17 *members and manager. The term includes any amendment or restatement of the*
18 *agreements constituting the governing principles;*
19 *(4) "Manager" means a person that is responsible, whether alone or in concert with*
20 *others, for the management of an unincorporated nonprofit association;*
21 *(5) "Member" means a person that, under the governing principles, may participate*
22 *in the selection of persons authorized to manage the affairs of the unincorporated*
23 *nonprofit association or in the development of the policies and activities of the*
24 *association;*
25 *(6) "Nonprofit purpose" means any one (1) or more of the following purposes:*
26 *charitable, benevolent, eleemosynary, educational, civic, patriotic, political,*
27 *governmental, religious, social, recreational, fraternal, literary, cultural, athletic,*

1 *scientific, agricultural, horticultural, animal husbandry, and professional,*
2 *commercial, industrial, or trade association, but shall not include labor unions,*
3 *cooperative organizations, and organizations subject to any of the provisions of*
4 *the insurance laws or banking laws of this state which may not be organized*
5 *under this chapter;*
6 *(7) "Person" means an individual, corporation, business or statutory trust, estate,*
7 *donative trust, partnership, limited partnership, limited liability company,*
8 *cooperative, association, limited cooperative association, joint venture, public*
9 *corporation, government or governmental subdivision, agency, instrumentality,*
10 *or any other legal or commercial entity;*
11 *(8) "Record" means information that is inscribed on a tangible medium or that is*
12 *stored in an electronic or other medium and is retrievable in perceivable form;*
13 *(9) "State" means a state of the United States, the District of Columbia, Puerto Rico,*
14 *the United States Virgin Islands, or any territory or insular possession subject to*
15 *the jurisdiction of the United States;*
16 *(10) "Statement of authority" means a statement authorizing a person to transfer an*
17 *interest in real property held in the name of an unincorporated nonprofit*
18 *association; and*
19 *(11) "Unincorporated nonprofit association" means an unincorporated organization*
20 *consisting of two (2) or more members joined under an agreement that is oral, in*
21 *a record, or implied from conduct, for one (1) or more common, nonprofit*
22 *purposes. The term does not include:*
23 *(a) A trust;*
24 *(b) A marriage, domestic partnership, common law domestic relationship, civil*
25 *union, or other domestic living arrangement;*
26 *(c) An organization formed under any other statute that governs the*
27 *organization and operation of any person;*

1 *(d) A joint tenancy, tenancy in common, or tenancy by the entireties even if the*
2 *co-owners share use of the property for a nonprofit purpose; or*
3 *(e) A relationship under an agreement in a record that expressly provides that*
4 *the relationship between the parties does not create an unincorporated*
5 *nonprofit association.*
6 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
7 TO READ AS FOLLOWS:
8 *(1) An unincorporated nonprofit association is a legal entity distinct from its*
9 *members and managers.*
10 *(2) An unincorporated nonprofit association shall have perpetual duration unless the*
11 *governing principles specify otherwise.*
12 *(3) An unincorporated nonprofit association shall have the same powers as an*
13 *individual to do all things necessary or convenient to carry on its purposes.*
14 *(4) An unincorporated nonprofit association may engage in profit-making activities,*
15 *but profits from any activities shall be used or set aside for the association's*
16 *nonprofit purposes.*
17 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
18 TO READ AS FOLLOWS:
19 *(1) An unincorporated nonprofit association may acquire, hold, encumber, or*
20 *transfer in its name an interest in real, personal, or intangible property.*
21 *(2) An unincorporated nonprofit association may be a beneficiary of a trust or*
22 *contract, a legatee, or a devisee.*
23 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
24 TO READ AS FOLLOWS:
25 *(1) An interest in real property held in the name of an unincorporated nonprofit*
26 *association may be transferred by a person authorized to do so in a statement of*
27 *authority recorded by the association in the office in the county in which a*

1 *transfer of the property would be recorded.*
2 *(2) A statement of authority shall set forth:*
3 *(a) The name of the unincorporated nonprofit association;*
4 *(b) The address in this Commonwealth, including the street address, if any, of*
5 *the association or, if the association does not have an address in this*
6 *Commonwealth, its out-of-state address;*
7 *(c) That the association is an unincorporated nonprofit association;*
8 *(d) The name and title or position of a person authorized to transfer an interest*
9 *in real property held in the name of the association; and*
10 *(e) An affirmation by the person executing the statement that they are duly*
11 *authorized to do so.*
12 *(3) A statement of authority shall be executed by a person other than the person*
13 *authorized in the statement to transfer the interest.*
14 *(4) A filing officer may collect a fee for recording a statement of authority in the*
15 *amount of ten dollars ($10).*
16 *(5) A document amending, revoking, or canceling a statement of authority or stating*
17 *that the statement is unauthorized or erroneous shall meet the requirements for*
18 *executing and recording an original statement.*
19 *(6) Unless canceled earlier, a recorded statement of authority and its most recent*
20 *amendment expire five (5) years after the date of the most recent recording.*
21 *(7) If the record title to real property is in the name of an unincorporated nonprofit*
22 *association and the statement of authority is recorded in the office of the county*
23 *in which a transfer of the property would be recorded, the authority of the person*
24 *named in the statement to transfer is conclusive in favor of a person that gives*
25 *value without notice that the person lacks authority.*
26 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
27 TO READ AS FOLLOWS:

1 *(1) An unincorporated nonprofit association may file a certificate of association with*
2 *the Secretary of State containing:*
3 *(a) The name of the association meeting the requirements of Section 4 of this*
4 *Act;*
5 *(b) The mailing address of the association's initial principal office;*
6 *(c) The name and address of the association's registered agent and registered*
7 *office, both meeting the requirements of KRS 14A.4-010; and*
8 *(d) A statement of the association's purpose.*
9 *(2) An unincorporated nonprofit association that has filed a certificate of association*
10 *is thereby subject to Section 4 of this Act.*
11 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
12 TO READ AS FOLLOWS:
13 *(1) If the association has filed a certificate of association with the Secretary of State,*
14 *a debt, obligation, or other liability of an unincorporated nonprofit association,*
15 *whether arising in contract, tort, or otherwise accruing or arising after the filing*
16 *of the certificate is:*
17 *(a) Solely the debt, obligation, or other liability of the association; and*
18 *(b) Not a debt, obligation, or other liability of a member or manager solely*
19 *because the member acts as a member or the manager acts as a manager.*
20 *(2) Subsection (1) of this section shall not affect the liability of a member or manager*
21 *of an association for his or her own negligence, wrongful acts, or misconduct.*
22 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
23 TO READ AS FOLLOWS:
24 *(1) An unincorporated nonprofit association may sue or be sued in its own name.*
25 *(2) A member or manager may assert a claim the member or manager has against*
26 *the unincorporated nonprofit association. An association may assert a claim it*
27 *has against a member or manager.*

1 *(3) If the unincorporated nonprofit association has filed a statement of association*
2 *and the claim accrued on or after the effective date thereof, a member or*
3 *manager in an association is not a proper party to a proceeding to enforce that*
4 *claim solely by reason of being a member or manager.*
5 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
6 TO READ AS FOLLOWS:
7 *(1) A judgment or order against an unincorporated nonprofit association is not by*
8 *itself a judgment or order against a member or manager.*
9 *(2) Pursuant to this chapter, a judgment creditor of an unincorporated nonprofit*
10 *association shall not levy execution against the assets of a member to satisfy a*
11 *judgment based on a claim against the association unless:*
12 *(a) A judgment based on the same claim has been obtained against the*
13 *association and a writ of execution on the judgment has been returned*
14 *unsatisfied in whole or in part;*
15 *(b) The association is a debtor in bankruptcy;*
16 *(c) The member has agreed that the creditor need not exhaust association*
17 *assets; or*
18 *(d) Liability is imposed on the member by law or contract independent of the*
19 *existence of the association.*
20 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
21 TO READ AS FOLLOWS:
22 *In an action or proceeding against an unincorporated nonprofit association, process*
23 *may be served on the registered agent or in any other manner authorized by the law of*
24 *this Commonwealth.*
25 ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
26 TO READ AS FOLLOWS:
27 *An action or proceeding against an unincorporated nonprofit association shall not*

1 ***abate merely because of a change in its members or managers.***

2 ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 273A IS CREATED

3 TO READ AS FOLLOWS:

4 ***(1) Venue of an action against an unincorporated nonprofit association that has***

5 ***filed a certificate of association shall be in the appropriate court.***

6 ***(2) Venue of an action brought in this Commonwealth against an unincorporated***

7 ***nonprofit association that has not filed a certificate of association shall be***

8 ***brought in accordance with the law applicable to an action brought in this***

9 ***Commonwealth against a general partnership.***

10 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 273A IS CREATED

11 TO READ AS FOLLOWS:

12 ***A member is not an agent of the association solely by reason of being a member.***

13 ➔SECTION 24. A NEW SECTION OF KRS CHAPTER 273A IS CREATED

14 TO READ AS FOLLOWS:

15 ***(1) Except as otherwise provided in the governing principles, an unincorporated***

16 ***nonprofit association shall have the approval of its members to:***

17 ***(a) Admit, suspend, dismiss, or expel a member;***

18 ***(b) Select or dismiss a manager;***

19 ***(c) Adopt, amend, or repeal the governing principles;***

20 ***(d) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the***

21 ***association's property, with or without the association's goodwill, outside***

22 ***the ordinary course of its activities;***

23 ***(e) Dissolve under subsection (1)(b) of Section 36 of this Act;***

24 ***(f) Undertake any other act outside the ordinary course of the association's***

25 ***activities; or***

26 ***(g) Determine the policy and purposes of the association.***

27 ***(2) An unincorporated nonprofit association shall have the approval of the members***

1 *to do any other act or exercise a right that the governing principles require to be*
2 *approved by members.*
3 ➔SECTION 25. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
4 TO READ AS FOLLOWS:
5 *(1) Unless the governing principles of a corporation provide otherwise:*
6 *(a) Approval of a matter by members requires an affirmative majority of the*
7 *votes cast at a meeting of members; and*
8 *(b) Each member is entitled to one (1) vote on each matter that is submitted for*
9 *approval by members.*
10 *(2) Notice and quorum requirements for member meetings and the conduct of*
11 *meetings of members shall be determined by the governing principles.*
12 ➔SECTION 26. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
13 TO READ AS FOLLOWS:
14 *(1) A member shall not have a fiduciary duty to an unincorporated nonprofit*
15 *association or to another member solely by being a member.*
16 *(2) A member shall discharge any duties to the unincorporated nonprofit association*
17 *and the other members and exercise any rights under this chapter consistent with*
18 *the governing principles and the obligation of good faith and fair dealing.*
19 ➔SECTION 27. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
20 TO READ AS FOLLOWS:
21 *(1) A person becomes a member and may be suspended, dismissed, or expelled in*
22 *accordance with the association's governing principles. If there are no applicable*
23 *governing principles, a person may become a member or be suspended,*
24 *dismissed, or expelled from an association only by a vote of its members. A*
25 *person shall not be admitted as a member without the person's consent.*
26 *(2) Unless the governing principles provide otherwise, the suspension, dismissal, or*
27 *expulsion of a member shall not relieve the member from any unpaid capital*

1 ***contribution, dues, assessments, fees, or other obligation incurred or commitment***
2 ***made by the member before the suspension, dismissal, or expulsion.***
3 ➔SECTION 28. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
4 TO READ AS FOLLOWS:
5 ***(1) A member may resign as a member in accordance with the governing principles.***
6 ***In the absence of applicable governing principles, a member may resign at any***
7 ***time.***
8 ***(2) Unless the governing principles provide otherwise, resignation of a member shall***
9 ***not relieve the member from any unpaid capital contribution, dues, assessments,***
10 ***fees, or other obligation incurred or commitment made by the member before***
11 ***resignation.***
12 ***(3) The governing principles may impose reasonable limitations upon the access to***
13 ***or use of any record of or information with respect to the unincorporated***
14 ***nonprofit association. Except as to limitations set forth in governing principles to***
15 ***which the member or manager requesting information has assented, the***
16 ***association bears the burden of proof in demonstrating the reasonableness of any***
17 ***restrictions imposed.***
18 ➔SECTION 29. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
19 TO READ AS FOLLOWS:
20 ***Except as otherwise provided in the governing principles of the corporation, a***
21 ***member's interest or any right under the governing principles is not transferable.***
22 ➔SECTION 30. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
23 TO READ AS FOLLOWS:
24 ***Except as otherwise provided in this chapter or the governing principles:***
25 ***(1) Only the members may select a manager or managers;***
26 ***(2) A manager may be a member or a nonmember;***
27 ***(3) If a manager is not selected, all members are managers;***

1 *(4) Each manager has equal rights in the management and conduct of the*
2 *association's activities;*
3 *(5) All matters relating to the association's activities shall be decided by its managers*
4 *except for matters reserved for approval by members in Section 24 of this Act;*
5 *and*
6 *(6) A difference among managers shall be decided by a majority of the managers.*
7 ➔SECTION 31. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
8 TO READ AS FOLLOWS:
9 *(1) A manager owes to the unincorporated nonprofit association the fiduciary duties*
10 *of loyalty and care.*
11 *(2) A manager shall manage the unincorporated nonprofit association in good faith,*
12 *in a manner the manager honestly believes to be in the best interests of the*
13 *association, and with such care, including reasonable inquiry, as a prudent*
14 *person would reasonably exercise in a similar position and under similar*
15 *circumstances. A manager may rely in good faith upon any opinion, report,*
16 *statement, or other information provided by another person that the manager*
17 *reasonably believes is a competent and reliable source for the information.*
18 *(3) After full disclosure of all material facts, a specific act or transaction that would*
19 *otherwise violate the duty of loyalty by a manager may be authorized or ratified*
20 *by a majority of the members that are not interested directly or indirectly in the*
21 *act or transaction.*
22 *(4) A manager that makes a business judgment in good faith satisfies the duties*
23 *specified in subsection (1) of this section if the manager:*
24 *(a) Is not interested, directly or indirectly, in the subject of the business*
25 *judgment and is otherwise able to exercise independent judgment;*
26 *(b) Is informed with respect to the subject of the business judgment to the*
27 *extent the manager reasonably believes to be appropriate under the*

1 *circumstances; and*
2 *(c) Believes that the business judgment is in the best interests of the*
3 *unincorporated nonprofit association and in accordance with its purposes.*
4 *(5) The governing principles in a record may limit or eliminate the liability of a*
5 *manager to the unincorporated nonprofit association or its members for damages*
6 *for any action taken, or for failure to take any action, as a manager, except*
7 *liability for:*
8 *(a) The amount of financial benefit improperly received by a manager;*
9 *(b) An intentional infliction of harm on the association or one (1) or more of its*
10 *members;*
11 *(c) An intentional violation of criminal law;*
12 *(d) Breach of the duty of loyalty; or*
13 *(e) Improper distributions.*
14 ➔SECTION 32. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
15 TO READ AS FOLLOWS:
16 *Notice and quorum requirements for meetings of managers and the conduct of*
17 *meetings of managers shall be determined by the governing principles.*
18 ➔SECTION 33. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
19 TO READ AS FOLLOWS:
20 *(1) On reasonable notice and for a proper purpose, a member or manager of an*
21 *unincorporated nonprofit association may inspect and copy during the*
22 *unincorporated nonprofit association's regular operating hours, at a reasonable*
23 *location specified by the association, any record maintained by the association*
24 *regarding its activities, financial condition, and other circumstances, to the extent*
25 *the information is material to the member's or manager's rights and duties under*
26 *the governing principles.*
27 *(2) An unincorporated nonprofit association may charge a person that makes a*

1 *demand under this section reasonable copying costs, limited to the costs of labor*
2 *and materials.*
3 *(3) The governing principles may impose reasonable limitations upon the inspection*
4 *and use of any record of or information with respect to an unincorporated*
5 *nonprofit association. Except as to limitations set forth in written governing*
6 *principles to which a member or manager requesting information has assented,*
7 *the association bears the burden of proof in demonstrating the reasonableness of*
8 *any restrictions imposed.*
9 *(4) A former member or manager shall be entitled to information to which the*
10 *member or manager was entitled while a member or manager if the information*
11 *pertains to the period during which the person was a member or manager, the*
12 *former member or manager seeks the information in good faith, and the former*
13 *member or manager satisfies subsections (1) to (3) of this section.*
14 ➔SECTION 34. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
15 TO READ AS FOLLOWS:
16 *(1) Except as otherwise provided in subsection (2) of this section, an unincorporated*
17 *nonprofit association shall not pay dividends or make distributions to a member*
18 *or manager.*
19 *(2) An unincorporated nonprofit association may:*
20 *(a) Pay reasonable compensation or reimburse reasonable expenses to a*
21 *member or manager for services rendered;*
22 *(b) Confer benefits on a member or manager in conformity with its nonprofit*
23 *purposes;*
24 *(c) Repurchase a membership and repay a capital contribution made by a*
25 *member to the extent authorized by its governing principles; or*
26 *(d) Make distributions of property to members upon winding up and*
27 *termination to the extent permitted by Section 37 of this Act.*

1 ➔SECTION 35. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
2 TO READ AS FOLLOWS:
3 *(1) Except as otherwise provided in the governing principles, an unincorporated*
4 *nonprofit association shall reimburse a member or manager for authorized*
5 *expenses reasonably incurred in the course of the member's or manager's*
6 *activities on behalf of the association.*
7 *(2) An unincorporated nonprofit association may indemnify a member or manager*
8 *for any debt, obligation, or other liability incurred in the course of the member's*
9 *or manager's activities on behalf of the association if the person seeking*
10 *indemnification has complied with Sections 26 and 31 of this Act, as applicable.*
11 *Governing principles in a record may broaden or limit indemnification.*
12 *(3) If a person is made or threatened to be made a party in an action based on that*
13 *person's activities on behalf of an unincorporated nonprofit association and the*
14 *person makes a request in a record to the association, a majority of the*
15 *disinterested managers may approve in a record advance payment, or*
16 *reimbursement, by the association, of all or a part of the reasonable expenses,*
17 *including attorney's fees and costs, incurred by the person before the final*
18 *disposition of the proceeding. To be entitled to an advance payment or*
19 *reimbursement, the person shall state in a record that the person has a good faith*
20 *belief that the criteria for indemnification in subsection (2) of this section have*
21 *been satisfied and that the person will repay the amounts advanced or reimbursed*
22 *if the criteria for payment have not been satisfied. The governing principles in a*
23 *record may broaden or limit the advance payments or reimbursements.*
24 *(4) An unincorporated nonprofit association may purchase insurance on behalf of a*
25 *member or manager for liability asserted against or incurred by the member or*
26 *manager in the capacity of a member or manager, whether or not the association*
27 *has authority under this chapter to reimburse, indemnify, or advance expenses to*

1 *the member or manager against the liability.*
2 *(5) The rights of reimbursement, indemnification, and advancement of expenses*
3 *under this section apply to a former member or manager for an activity*
4 *undertaken on behalf of the unincorporated nonprofit association while a*
5 *member or manager.*
6 ➔SECTION 36. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
7 TO READ AS FOLLOWS:
8 *(1) An unincorporated nonprofit association may be dissolved as follows:*
9 *(a) If the governing principles provide a time or method for dissolution, at that*
10 *time or by that method;*
11 *(b) If the governing principles do not provide a time or method for dissolution,*
12 *upon approval by the members;*
13 *(c) If no member can be located and the association's operations have been*
14 *discontinued for at least three (3) years, by the managers or, if the*
15 *association has no current manager, by its last manager;*
16 *(d) By court order; or*
17 *(e) Under law other than this chapter.*
18 *(2) After dissolution, an unincorporated nonprofit association continues in existence*
19 *until its activities have been wound up and it is terminated pursuant to Section 37*
20 *of this Act.*
21 ➔SECTION 37. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
22 TO READ AS FOLLOWS:
23 *Winding up and termination of an unincorporated nonprofit association shall proceed*
24 *in accordance with the following rules:*
25 *(1) All known debts and liabilities shall be paid or adequately provided for;*
26 *(2) Any property subject to a condition requiring return to the person designated by*
27 *the donor shall be transferred to that person;*

1 *(3) Any property subject to a trust shall be distributed in accordance with the trust*
2 *agreement; and*
3 *(4) Any remaining property shall be distributed as follows:*
4 *(a) As required by law other than this chapter that requires assets of an*
5 *association to be distributed to another person with similar nonprofit*
6 *purposes;*
7 *(b) In accordance with the association's governing principles or, in the absence*
8 *of applicable governing principles, to the members of the association per*
9 *capita or as the members direct; or*
10 *(c) If neither paragraph (a) nor (b) of this subsection applies, as directed by the*
11 *appropriate court.*
12 ➔SECTION 38. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
13 TO READ AS FOLLOWS:
14 *(1) If, before the effective date of this Act, an interest in property was by terms of a*
15 *transfer purportedly transferred to an unincorporated nonprofit association but*
16 *under the law of this Commonwealth the interest did not vest in the association,*
17 *or in one (1) or more persons on behalf of the association under subsection (2) of*
18 *this section, on the effective date of this Act the interest vests in the association,*
19 *unless the parties to the transfer have treated the transfer as ineffective.*
20 *(2) If, before the effective date of this Act, an interest in property was by terms of a*
21 *transfer purportedly transferred to an unincorporated nonprofit association but*
22 *the interest was vested in one (1) or more persons to hold the interest for or on*
23 *behalf of the association or the members of the association, on or after the*
24 *effective date of this Act the persons, or their successors in interest, may transfer*
25 *the interest to the association in its name, or the association may require that the*
26 *interest be transferred to it in its name.*
27 ➔SECTION 39. A NEW SECTION OF KRS CHAPTER 273A IS CREATED

1 TO READ AS FOLLOWS:

2 ***In applying and construing this chapter, consideration shall be given to the need to***
3 ***promote uniformity of the law with respect to its subject matter among states that enact***
4 ***it.***

5 ➔SECTION 40. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
6 TO READ AS FOLLOWS:

7 ***The provisions of this chapter governing the legal effect, validity, or enforceability of***
8 ***electronic records or electronic signatures, and of contracts formed or performed with***
9 ***the use of such records or signatures, modify, limit, and supersede the Electronic***
10 ***Signatures in Global and National Commerce Act, 15 U.S.C. secs. 7001 et. seq., but***
11 ***this chapter does not modify, limit, or supersede Section 101(c) of the Electronic***
12 ***Signatures in Global and National Commerce Act or authorize electronic delivery of***
13 ***any of the notices described in Section 103(b) of that Act.***

14 ➔SECTION 41. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
15 TO READ AS FOLLOWS:

16 ***(1) Principles of law and equity supplement this chapter unless displaced by a***
17 ***particular provision of it.***
18 ***(2) A statute governing a specific type of unincorporated nonprofit association***
19 ***prevails over an inconsistent provision in this chapter, to the extent of the***
20 ***inconsistency.***

21 ➔SECTION 42. A NEW SECTION OF KRS CHAPTER 273A IS CREATED
22 TO READ AS FOLLOWS:

23 ***(1) Except as otherwise provided in subsection (2) of this section, the laws of this***
24 ***Commonwealth govern the operation in this state of all unincorporated nonprofit***
25 ***associations formed or operating in this Commonwealth.***
26 ***(2) Unless the governing principles specify a different jurisdiction, the law of the***
27 ***jurisdiction in which a foreign unincorporated nonprofit association has its***

1 ***principal place of activities governs the internal affairs of the association.***

2 ➔SECTION 43. A NEW SECTION OF KRS CHAPTER 273A IS CREATED

3 TO READ AS FOLLOWS:

4 ***The provisions of this chapter do not affect an action or proceeding commenced or***

5 ***right accrued before it takes effect.***

6 ➔SECTION 44. A NEW SECTION OF KRS CHAPTER 273A IS CREATED

7 TO READ AS FOLLOWS:

8 ***Sections 12 to 44 of this Act shall be known and may be cited as the Kentucky Uniform***

9 ***Unincorporated Nonprofit Association Act.***

10 ➔Section 45. KRS 275.015 is amended to read as follows:

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

12 (1) "Articles of organization" means the articles filed in conformity with the provisions

13 of KRS 275.020 and 275.025, and those articles as amended or restated;

14 (2) "Business entity" means a domestic or foreign limited liability company,

15 corporation, partnership, limited partnership, business or statutory trust, and not-for-

16 profit unincorporated association;

17 (3) "Corporation" means a profit or nonprofit corporation formed under the laws of any

18 state or a foreign country;

19 (4) "Court" means every court having jurisdiction in the case;

20 (5) "Deliver" or "delivery" means any method of delivery used in conventional

21 commercial practice, including delivery by hand, mail, commercial delivery, and

22 electronic transmission;

23 (6) "Dissent" means a right to object to a proposed action or transaction and, in

24 connection therewith, to demand a redemption of a limited liability company

25 interest;

26 (7) "Electronic transmission" or "electronically transmitted" means any process of

27 communication not directly involving the physical transfer of paper that is suitable

1 for the retention, retrieval, and reproduction of information by the recipient;
2 (8) "Event of disassociation" means an event that causes a person to cease to be a
3 member as provided in KRS 275.280;
4 (9) "Foreign limited liability company" means an organization that is:
5 (a) An unincorporated association;
6 (b) Organized under laws of a state other than the laws of this Commonwealth, or
7 under the laws of any foreign country; and
8 (c) Organized under a statute pursuant to which an association may be formed
9 that affords to each of its members limited liability with respect to the
10 liabilities of the entity;
11 ***(10) "Foreign nonprofit corporation" means a corporation incorporated for a***
12 ***nonprofit purpose under the laws of a state other than the Commonwealth or***
13 ***under the laws of a foreign country;***
14 ***(11)***[~~(10)~~] "Knowledge" means actual knowledge of a fact;
15 ***(12)***[~~(11)~~] "Limited liability company" or "domestic limited liability company" means a
16 limited liability company formed under this chapter ***and, except with respect to a***
17 ***nonprofit limited liability company,*** having one (1) or more members;
18 ***(13)***[~~(12)~~] "Limited liability company interest" or "interest in the limited liability
19 company" means the interest that may be issued in accordance with KRS 275.195;
20 ***(14)***[~~(13)~~] "Limited partnership" means a limited partnership formed under the laws of
21 the Commonwealth or any other state or a foreign country;
22 ***(15)***[~~(14)~~] "Majority-in-interest of the members" means those members entitled to cast a
23 majority of the votes to be cast by the members on any matter under the terms of the
24 operating agreement described in KRS 275.175(3);
25 ***(16)***[~~(15)~~] "Manager" or "managers" means, with respect to a limited liability company
26 that has set forth in its articles of organization that it is to be managed by managers,
27 the person or persons designated in accordance with KRS 275.165;

1 ***(17)***[~~(16)~~] "Member" or "members" means a person or persons who have been admitted
2 to membership in a limited liability company as provided in KRS 275.275 and who
3 have not ceased to be members as provided in KRS 275.280;
4 ***(18)***[~~(17)~~] "Name of record with the Secretary of State" means any real, fictitious,
5 reserved, registered, or assumed name of a business entity;
6 ***(19)***[~~(18)~~] "Nonprofit limited liability company" [~~-~~]means a limited liability company
7 formed for a nonprofit purpose ***having one (1) or more or no members***;
8 ***(20)***[~~(19)~~] "Nonprofit purpose" includes any purpose authorized under KRS 273.167;
9 ***(21)***[~~(20)~~] "Operating agreement" means any agreement, written or oral, among all of the
10 members, as to the conduct of the business and affairs of a limited liability
11 company. If a limited liability company has only one (1) member, an operating
12 agreement shall be deemed to include:
13 (a) A writing executed by the member that relates to the affairs of the limited
14 liability company and the conduct of its business regardless of whether the
15 writing constitutes an agreement; or
16 (b) If the limited liability company is managed by a manager, any other agreement
17 between the member and the limited liability company as it relates to the
18 limited liability company and the conduct of its business, regardless of
19 whether the agreement is in writing;
20 ***(22)***[~~(21)~~] "Person" means an individual, a partnership, a domestic or foreign limited
21 liability company, a trust, an estate, an association, a corporation, or any other legal
22 entity;
23 ***(23)***[~~(22)~~] "Principal office" means the office, in or out of the Commonwealth, so
24 designated in writing with the Secretary of State where the principal executive
25 offices of a domestic or foreign limited liability company are located;
26 ***(24)***[~~(23)~~] "Proceeding" means civil suit and criminal, administrative, and investigative
27 action;

1 *(25)*[~~(24)~~] "Professional limited liability company" means a limited liability company
2 organized under this chapter or the laws of another state or foreign country for
3 purposes that include, but are not limited to, the providing of one (1) or more
4 professional services. Except as otherwise expressly provided in this chapter, all
5 provisions of this chapter governing limited liability companies shall be applicable
6 to professional limited liability companies;
7 *(26)*[~~(25)~~] "Professional services" mean the personal services rendered by physicians,
8 osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists,
9 psychologists, occupational therapists, veterinarians, engineers, architects,
10 landscape architects, certified public accountants, public accountants, physical
11 therapists, and attorneys;
12 *(27)*[~~(26)~~] "Real name" shall have the meaning set forth in KRS 365.015;
13 *(28)*[~~(27)~~] "Regulating board" means the governmental agency which is charged by law
14 with the licensing and regulation of the practice of the profession which the
15 professional limited liability company is organized to provide; and
16 *(29)*[~~(28)~~] "State" means a state, territory, or possession of the United States, the District
17 of Columbia, or the Commonwealth of Puerto Rico.
18 ➔Section 46. KRS 275.285 is amended to read as follows:
19 A limited liability company shall be dissolved, and it shall commence to wind up its
20 affairs upon the happening of the first to occur of the following:
21 (1) The expiration of the term of the limited liability company set forth in the articles of
22 organization, if any;
23 (2) Upon the occurrence of events specified in the articles of organization or a written
24 operating agreement;
25 (3) Unless otherwise set forth in the operating agreement, the written consent of all of
26 the members of a limited liability company;
27 (4) There are no remaining members, except that the limited liability company shall not

1 be dissolved and its affairs shall not be wound up when:
2 (a) A member is admitted to the limited liability company in the manner provided
3 for in a written operating agreement, effective as of the occurrence of the
4 event that terminated the continued membership of the last remaining
5 member; or
6 (b) Unless otherwise provided in a written operating agreement, within ninety
7 (90) days after the occurrence of the event that terminated the continued
8 membership of the last remaining member, the successor-in-interest of the last
9 remaining member agrees in writing to continue the limited liability company
10 and to the admission of the successor-in-interest of that member or its
11 designee to the limited liability company as a member, effective as of the
12 occurrence of the event that terminated the continued membership of the last
13 remaining member;
14 (5) Entry of a decree of judicial dissolution under KRS 275.290; or
15 (6) Filing of a certificate of dissolution by the Secretary of State under KRS 14A.7-020***;***
16 ***but***
17 ***(7) If a nonprofit limited liability company does not have members, subsection (4) of***
18 ***this section shall not apply***.
19 ➔Section 47. KRS 275.376 is amended to read as follows:
20 (1) A corporation may be converted to a limited liability company pursuant to this
21 section.
22 (2) The terms and conditions of the conversion of a corporation to a limited liability
23 company shall be set forth in a written plan of conversion and approved by the
24 board of directors and by the shareholders of the corporation.
25 (3) The plan of conversion shall set forth:
26 (a) The name of the corporation planning to convert;
27 (b) The terms and conditions of the conversion, including the articles of

1 organization and the written operating agreement, if any, of the limited
2 liability company into which the corporation will convert; and
3 (c) The manner and basis of converting the shares of the corporation into
4 membership interests, obligations, or other securities of the limited liability
5 company or into cash or other property in whole or part.
6 (4) The plan of conversion may set forth any other provision relating to the conversion.
7 (5) For a plan of conversion to be approved:
8 (a) The board of directors shall recommend the plan of conversion to the
9 shareholders, unless the board of directors determines that, because of conflict
10 of interest or other special circumstances, it should make no recommendation
11 and communicates the basis for its determination to the shareholders with a
12 plan; and
13 (b) The shareholders entitled to vote shall approve the plan.
14 (6) The board of directors may condition its submission of the proposed conversion on
15 any basis.
16 (7) The corporation shall notify each shareholder, whether or not entitled to vote, of the
17 proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice
18 shall also state that the purpose, or one (1) of the purposes, of the meeting is to
19 consider the plan of conversion and contain or be accompanied by a copy or
20 summary of the plan.
21 (8) Unless KRS Chapter 271B, the articles of incorporation, or the board of directors
22 acting pursuant to subsection (6) of this section, require a greater vote or vote by
23 voting groups, the plan of conversion to be authorized shall be approved by each
24 voting group entitled to vote separately on the plan by a majority of all the votes
25 entitled to be cast on the plan by that voting group.
26 (9) Separate voting by voting groups shall be required on a plan of conversion if the
27 plan contains a provision that, if contained in a proposed amendment to the articles

1 of incorporation, would require action by one (1) or more separate voting groups on
2 the proposed amendment under KRS 271B.10-040.
3 (10) After a conversion is authorized, and at any time before articles of organization are
4 filed, the planned conversion may be abandoned subject to any contractual rights,
5 without further shareholder action, in accordance with the procedure set forth in the
6 plan of conversion or, if none is set forth, in the manner determined by the board of
7 directors.
8 (11) After the conversion is approved, the corporation shall file articles of organization
9 with the office of the Secretary of State that satisfy the requirements of KRS
10 275.025 and also include:
11 (a) A statement that the corporation was converted to a limited liability company;
12 (b) Its former name; and
13 (c) The designation, number of outstanding shares, and number of votes to be cast
14 by each voting group entitled to vote separately on the plan of conversion and
15 either the total number of undisputed votes cast for the plan separately by each
16 voting group or a statement that the number cast for the plan by each voting
17 group was sufficient for approval by that voting group.
18 (12) The conversion shall take effect when the articles of organization are filed with the
19 office of the Secretary of State or, subject to KRS 14A.2-070, at a later date
20 specified in the articles of organization.
21 ***(13) Both a nonprofit corporation organized under the laws of the Commonwealth***
22 ***and a foreign nonprofit corporation, if not forbidden by the laws of its***
23 ***jurisdiction of organization, may convert into a nonprofit limited liability***
24 ***company, except that the only member or members of the converted nonprofit***
25 ***limited liability company shall be organizations qualified under Section 501(c)(3)***
26 ***or 501(c)(4) of the Internal Revenue Code. The articles of organization filed to***
27 ***effect this conversion, in addition to the otherwise applicable requirements, shall***

1 ***contain an affirmative statement that the only member or members of the***
2 ***converted nonprofit limited liability company are qualified under Section***
3 ***501(c)(3) or 501(c)(4) of the Internal Revenue Code.***
4 ➔Section 48. KRS 275.520 is amended to read as follows:
5 (1) ***Unless a nonprofit limited liability company has only business entities formed for***
6 ***a nonprofit purpose as its members,*** a nonprofit limited liability company shall not
7 have or issue membership interests in the limited liability company, and no
8 distribution shall be paid, and no part of the income or profit of the limited liability
9 company shall be distributed to its members or managers.
10 ***(2) No part of the income or profit of a nonprofit limited liability company shall be***
11 ***distributed to its manager or managers.***
12 ***(3)***[~~(2)~~] A nonprofit limited liability company may pay compensation in a reasonable
13 amount to its members or managers for services rendered and may confer benefits
14 upon its members in conformity with its purposes, and these payments or benefits
15 shall not be deemed to be a distribution of income or profit.
16 ➔Section 49. KRS 275.525 is amended to read as follows:
17 ***(1) Unless a nonprofit limited liability company has only business entities formed for***
18 ***a nonprofit purpose as its members,*** no loan shall be made by ***the***[~~a nonprofit~~
19 ~~limited liability~~] company to its members or managers, and any member or manager
20 who assents to or participates in the making of a loan violating this prohibition shall
21 be liable to the [~~limited liability~~ ]company for the amount of the loan until its
22 repayment.
23 ***(2) No loan shall be made by a nonprofit limited liability company to its managers,***
24 ***and any member or manager who assents to or participates in the making of a***
25 ***loan violating this prohibition shall be liable to the company for the amount of***
26 ***the loan until its repayment.***
27 ➔SECTION 50. A NEW SECTION OF KRS CHAPTER 275 IS CREATED TO

1 READ AS FOLLOWS:

2 *(1) A member may maintain a direct action against a limited liability company,*
3 *another member, or a manager to redress an injury sustained by, or to enforce a*
4 *duty owed to, the member if the member can prevail without showing an injury or*
5 *breach of duty to the company.*

6 *(2) A member may maintain a derivative action to redress an injury sustained by or*
7 *enforce a duty owed to a limited liability company if:*

8 *(a) The member shall first make a demand on the other members and, if the*
9 *company is manager-managed, the managers, requesting that they cause*
10 *the company to bring an action to redress the injury or enforce the right,*
11 *and they do not bring the action within a reasonable time; or*

12 *(b) A demand would be futile.*

13 *(3) A derivative action on behalf of a limited liability company shall be maintained*
14 *only by a person that is a member at the time the action is commenced and who:*

15 *(a) Was a member when the conduct giving rise to the action occurred; or*

16 *(b) Acquired the status as a member by operation of law or pursuant to the*
17 *terms of the operating agreement from a person that was a member at the*
18 *time of the conduct giving rise to the action occurred.*

19 *(4) In a derivative action on behalf of the limited liability company, the complaint*
20 *shall state with particularity:*

21 *(a) The date and content of the member's demand and the response to the*
22 *demand; or*

23 *(b) The reason the demand should be excused as futile.*

24 *(5) Except as otherwise provided in subsection (8) of this section:*

25 *(a) Any proceeds or other benefits of a derivative action on behalf of a limited*
26 *liability company, whether by judgment, compromise, or settlement, are the*
27 *property of the company and not of the plaintiff; and*

1 *(b) If the plaintiff receives any proceeds or other benefits, the plaintiff shall*
2 *immediately remit them to the company.*
3 *(6) A derivative action on behalf of a limited liability company may not be voluntarily*
4 *dismissed or settled without the court's approval.*
5 *(7) The proper venue for a direct action under subsection (1) of this section or a*
6 *derivative action shall be the Circuit Court for the county in which the company*
7 *maintains its registered office and agent.*
8 *(8) On termination of the proceeding brought pursuant to this section, the court*
9 *may:*
10 *(a) Require the plaintiff member to pay any defendant's reasonable expenses,*
11 *including counsel fees, incurred in defending the proceeding to the extent it*
12 *finds that the proceeding or any portion thereof was commenced without*
13 *reasonable cause or for an improper purpose; and*
14 *(b) Require the limited liability company to pay the plaintiff member's*
15 *reasonable expenses, including counsel fees, incurred in the proceeding to*
16 *the extent it finds that the proceeding has resulted in a substantial benefit to*
17 *the company.*
18 ➔Section 51. KRS 273.227 is amended to read as follows:
19 (1) A corporation shall have the officers described in its bylaws or appointed by the
20 board of directors in accordance with the bylaws.
21 (2) A duly appointed officer may appoint one (1) or more officers or assistant officers if
22 authorized by the bylaws or the board of directors.
23 (3) The bylaws or the board of directors shall delegate to one (1) of the officers
24 responsibility for preparing minutes of the directors' and members' meetings and for
25 authenticating records of the corporation.
26 (4) The same individual may simultaneously hold more than one (1) office in a
27 corporation.

1 (5) Each officer shall be elected or appointed at such time and in such manner and for
2 such terms not exceeding three (3) years as may be prescribed in the articles of
3 incorporation or the bylaws. In the absence of any such provision, all officers shall
4 be elected or appointed annually by the board of directors.
5 (6) The articles of incorporation or the bylaws may provide that any one (1) or more
6 officers of the corporation shall be ex officio members of the board of directors.
7 (7) Every officer of a corporation, by acceptance of election or appointment as ***an***
8 ***officer***[~~a director~~], including by service, shall be deemed to have consented to the
9 jurisdiction of the courts of the Commonwealth of Kentucky for any action by, in
10 the name of, or on behalf of the corporation.
11 ➔Section 52. KRS 275.165 is amended to read as follows:
12 (1) Unless the articles of organization vest management of the limited liability company
13 in a manager or managers, management of the business and affairs of the limited
14 liability company shall vest in the members. Subject to any provisions in the articles
15 of organization, the operating agreement or this chapter restricting or enlarging the
16 management rights and duties of any person or group or class of persons, the
17 members shall have the right and authority to manage the affairs of the limited
18 liability company and to make all decisions with respect thereto.
19 (2) If the articles of organization vest management of the limited liability company in
20 one (1) or more managers, except to the extent otherwise provided in the articles of
21 organization, the operating agreement, or this chapter, the manager or managers
22 shall have exclusive power to manage the business and affairs of the limited
23 liability company. Unless otherwise provided in the articles of organization or the
24 operating agreement, managers:
25 (a) Shall be designated, appointed, elected, removed, or replaced by a vote,
26 approval, or consent of the majority-in-interest of the members;
27 (b) Shall not be required to be members of the limited liability company or natural

1 persons; and
2 (c) Unless they are sooner removed or sooner resign, shall hold office until their
3 successors shall have been elected and qualified.
4 (3) Unless otherwise set forth in a written operating agreement, a member or manager
5 of a limited liability company has the power and authority to delegate to one (1) or
6 more other persons the member's or manager's powers to manage or control the
7 business and affairs of the limited liability company, including without limitation
8 the power to delegate to agents and employees of a member, manager, or limited
9 liability company or to delegate by an agreement to other persons. This delegation
10 by a member or manager of a limited liability company shall not cause the member
11 or manager to cease to be a member or manager of the limited liability company.
12 ***(4) A member or manager shall not be entitled to remuneration for services***
13 ***performed for the limited liability company except as may be set forth in a written***
14 ***operating agreement.***
15 ➔Section 53. KRS 275.175 is amended to read as follows:
16 (1) Unless otherwise provided in the articles of organization, a written operating
17 agreement, or this chapter, the affirmative vote, approval, or consent of a majority-
18 in-interest of the members~~[, if management of the limited liability company is~~
19 ~~vested in the members,]~~ or a simple majority of the managers, each having a single
20 vote,~~[ if the management of the limited liability company is vested in managers,]~~
21 shall be required to decide any matter connected with the business affairs of the
22 limited liability company.
23 (2) Unless otherwise provided in a written operating agreement, ***irrespective of***
24 ***whether management of the limited liability company is vested in a manager or***
25 ***managers,*** the affirmative vote, approval, or consent of the ~~[majority-in-interest of~~
26 ~~the ]~~members shall be required to:
27 (a) Amend a written operating agreement;

1 (b) Authorize a manager or member to do any act on behalf of the limited liability
2 company that contravenes a[~~ written~~] operating agreement, including any
3 written provision thereof which expressly limits the purpose, business, or
4 affairs of the limited liability company or the conduct thereof;[~~ or~~]
5 (c) Amend the articles of organization***;***
6 ***(d) Merge or convert the limited liability company or approve a sale of all or***
7 ***substantially all of its assets;***
8 ***(e) Admit a new member, including the assignee of a member, as a member;***
9 ***(f) Remove a member after the assignment of all assignable interest in the***
10 ***limited liability company;***
11 ***(g) Waive an agreement to contribute to the limited liability company;***
12 ***(h) Approve the voluntary dissolution of the limited liability company;***
13 ***(i) Approve any acting contravention of a written operating agreement; or***
14 ***(j) Allow the voluntary resignation of a member from a manager-managed***
15 ***limited liability company***.
16 (3) Unless otherwise provided in the articles of organization, a written operating
17 agreement, or this chapter, for all purposes of this chapter, the members of a limited
18 liability company shall vote, approve, or consent in proportion to their
19 contributions, based upon the agreed value as stated in the records of the limited
20 liability company as required by KRS 275.185, made by each member to the extent
21 they have been received by the limited liability company and have not been
22 returned.
23 ***(4) In a nonprofit limited liability company that does not have members, the capacity***
24 ***and authority to manage the business and affairs of the company shall be set***
25 ***forth in a written operating agreement.***
26 ***(5)***[~~(4)~~] Unless otherwise provided in the articles of organization or the written
27 operating agreement, no member of a limited liability company shall have the right

1 to dissent from an amendment to the operating agreement or the articles of
2 organization.
3 ➔Section 54. KRS 275.335 is amended to read as follows:
4 (1) Unless otherwise provided in a written operating agreement, a suit on behalf of the
5 limited liability company may be brought in the name of the[~~ limited liability~~]
6 company only by:
7 (a) One (1) or more members of ***the***[~~a limited liability~~] company,[~~ whether or not~~
8 ~~the operating agreement vests management of the limited liability company in~~
9 ~~one (1) or more managers,~~] who are authorized to sue by the vote of more than
10 one half (1/2) of the number of members eligible to vote thereon[~~, unless the~~
11 ~~vote of all members shall be required pursuant to KRS 275.175(1). In~~
12 ~~determining the vote required under KRS 275.175, the vote of any member~~
13 ~~who has an interest in the outcome of the suit that is adverse to the interest of~~
14 ~~the limited liability company shall be excluded~~]; or
15 (b) One (1) or more managers of the limited liability company, if ***the articles of***
16 ***organization vest***[~~an operating agreement vests~~] management of the [~~limited~~
17 ~~liability~~ ]company in one (1) or more managers, who are authorized to do so
18 by the vote ***of more than one-half (1/2) of the number of managers eligible***
19 ***to vote***[~~required pursuant to KRS 275.175 of the managers eligible to vote~~
20 ~~thereon. In determining the required vote, the vote of any manager who has an~~
21 ~~interest in the outcome of the suit that is adverse to the interest of the limited~~
22 ~~liability company shall be excluded~~].
23 ***(2) Subsection (1)(a) of this section shall be applicable irrespective of whether the***
24 ***articles of organization vest management of the limited liability company in one***
25 ***(1) or more managers.***
26 ***(3) Unless otherwise provided in a written operating agreement, in any vote of the***
27 ***members or managers pursuant to subsection (1) of this section, the vote of any***

1 ***member or manager who has an interest in the outcome of the suit that is adverse***
2 ***to the interest of the limited liability company shall be excluded.***
3 ***(4) Unless otherwise provided in a written operating agreement, any vote pursuant to***
4 ***subsection (1) of this section shall be set forth in a record signed or otherwise***
5 ***approved by each member or manager voting in favor of bringing suit on behalf***
6 ***of the limited liability company.***
7 ***(5) Except as otherwise provided in a writing approved in accordance with subsection***
8 ***(1) of this section that would also be sufficient to amend the operating agreement***
9 ***pursuant to the terms of the written operating agreement or, in the absence of a***
10 ***provision governing amendment of the operating agreement, the prosecution and***
11 ***settlement of any suit brought pursuant to subsection (1) of this section shall be***
12 ***pursuant to Section 53 of this Act.***
13 ***(6)***[~~(2)~~] Every member and manager of a limited liability company shall be deemed to
14 have consented to the jurisdiction of the courts of the Commonwealth of Kentucky
15 for any action by, in the name of, or on behalf of the limited liability company or for
16 any violation of a duty owed the limited liability company or a member thereof.
17 ➔Section 55. KRS 362.605 is amended to read as follows:
18 ***(1)*** A ***general*** partnership may sue or be sued in its ***real***[~~common~~] name. A judgment
19 by or against a partnership shall bind the partnership as if it were a legal entity. A
20 judgment against a partnership shall not bind a partner in his individual capacity
21 except to the extent permitted by KRS 362.220.
22 ***(2) A limited partnership may sue or be sued in its real name. A judgment by or***
23 ***against a limited partnership shall bind the limited partnership as a legal entity.***
24 ***Judgment against a limited partnership shall not bind a general partner in his,***
25 ***her or its individual capacity except to the extent permitted by KRS 362.447 and***
26 ***362.220, and only if the general partner is named as a party in the action.***
27 ***(3) The real name of a partnership or limited partnership shall be determined in***

1 ***accordance with Section 59 of this Act.***

2 ➔Section 56. KRS 275.360 is amended to read as follows:

3 (1) The business entity surviving from the merger shall deliver to the Secretary of State
4 for filing articles of merger duly executed by each constituent business entity setting
5 forth:

6 (a) The name and jurisdiction of formation or organization of each constituent
7 business entity which is to merge;

8 ~~[(b) The plan of merger;]~~

9 ***(b)***~~[(c)]~~ The name of the surviving business entity;

10 ***(c) The information required by KRS 275.355(2)(d);***

11 ***(d) Any amendment to the articles of organization of the surviving limited***
12 ***liability company;***

13 ***(e)***~~[(d)]~~ A statement that the plan of merger was duly authorized and approved
14 by each constituent business entity in accordance with KRS 275.350; and

15 ***(f)***~~[(e)]~~ If the surviving entity is not a business entity organized under the laws
16 of this Commonwealth, a statement that the surviving business entity:

17 1. Agrees that it may be served with process in this Commonwealth in any
18 proceeding for enforcement of any obligation of any constituent business
19 entity party to the merger that was organized under the laws of this
20 Commonwealth, as well as for enforcement of any obligation of the
21 surviving business entity arising from the merger; and

22 2. Appoints the Secretary of State as its agent for service of process in any
23 such proceeding. The surviving entity shall specify the address to which
24 a copy of the process shall be mailed to it by the Secretary of State.

25 (2) A merger shall take effect upon the later of the effective date of the filing of the
26 articles of merger or the date set forth in the articles of merger.

27 (3) The articles of merger shall be executed by a limited liability company that is a

1 party to the merger in the manner provided for in KRS 14A.2-020 and shall be filed
2 with the Secretary of State in the manner provided for in KRS 14A.2-010.
3 (4) A plan of merger approved in accordance with KRS 275.350 may effect any
4 amendment to an operating agreement for a limited liability company if it is the
5 surviving company in the merger. An approved plan of merger may also provide
6 that the operating agreement of any constituent limited liability company to the
7 merger, including a limited liability company formed for the purpose of
8 consummating a merger, shall be the operating agreement of the limited liability
9 company that is the surviving business entity. Any amendment to an operating
10 agreement or adoption of a new operating agreement made pursuant to this
11 subsection shall be effective at the effective time and date of the merger. The
12 provisions of this subsection shall not be construed to limit the accomplishment of a
13 merger or of any of the matters referred to in this section by any other means
14 provided for in an operating agreement or other agreement or as otherwise permitted
15 by law.
16 ➔Section 57. KRS 275.365 is amended to read as follows:
17 A merger shall have the following effects:
18 (1) The constituent business entities that are parties to the merger shall be a single
19 entity, which shall be the entity designated in the plan of merger as the surviving
20 business entity.
21 (2) Each party to the merger, except the surviving business entity, shall cease to exist.
22 (3) The surviving business entity shall possess all the rights, privileges, immunities, and
23 powers of each constituent business entity and shall be subject to all the restrictions,
24 disabilities, and duties of each of the constituent entities to the extent the rights,
25 privileges, immunities, powers, restrictions, disabilities, and duties are applicable to
26 the type of business entity that is the surviving business entity.
27 (4) All property, whether real, personal, or intangible, and all debts due on whatever

1 account, including promises to make capital contributions and subscriptions for
2 shares, and all other choses in action, and all and every other interest of, belonging
3 to, or due to each of the constituent business entities shall be vested in the surviving
4 business entity without further act or deed.
5 (5) The title to all real estate and any interest therein, vested in any constituent business
6 entity shall not revert or be in any way impaired by reason of the merger.
7 (6) The surviving entity shall thenceforth be liable for all liabilities and obligations of
8 each of the constituent business entities merged, and any claim existing or action or
9 proceeding pending by or against any constituent business entity may be prosecuted
10 as if the merger had not taken place, or the surviving business entity may be
11 substituted in the action.
12 (7) Neither the rights of creditors nor any liens on the property of any constituent
13 business entity shall be impaired by the merger.
14 (8) The interests in a limited liability company or other business entities that are to be
15 converted or exchanged into interests, other securities, cash, obligations, or other
16 property under the terms of the plan of merger are so converted and the former
17 holders thereof are entitled only to the rights provided in the plan of merger or the
18 rights otherwise provided by law.
19 (9) A partner or, in the case of a limited partnership, a general partner who becomes a
20 member of a limited liability company as a result of a merger, as the case may be,
21 shall remain liable as a partner or general partner for an obligation incurred by the
22 partnership or limited partnership before the merger takes effect. The partner's or
23 general partner's liability for all other obligations of the limited liability company
24 incurred after the merger takes effect shall be that of a member as provided in this
25 chapter. A limited partner who becomes a member as a result of a merger shall
26 remain liable only as a limited partner for an obligation incurred by the limited
27 partnership before the merger takes effect.

1 (10) If the surviving business entity is a limited liability company, such amendments to
2 the articles of organization ***set forth in the articles of merger,*** and ***such***
3 ***amendments to*** the operating agreement thereof set forth in the plan of merger or
4 the articles of merger, subject to KRS 275.200, shall be effective.
5 (11) If the surviving business entity is a limited liability company, the written operating
6 agreement provided for in the plan of merger, if any, shall be binding upon each
7 member in that limited liability company, but any provision thereof obligating a
8 member to make a contribution to the limited liability company is subject to KRS
9 275.200.
10 ➔Section 58. KRS 362.2-801 is amended to read as follows:
11 Except as otherwise provided in KRS 362.2-802, a limited partnership is dissolved, and
12 its activities shall be wound up, only upon the occurrence of any of the following:
13 (1) The happening of an event specified in the partnership agreement;
14 (2) The consent of all general partners and of all limited partners;
15 (3) After the dissociation of a person as a general partner:
16 (a) If the limited partnership has at least one (1) remaining general partner, the
17 consent to dissolve the limited partnership given within ninety (90) days after
18 the dissociation by partners owning a majority of the rights to receive
19 distributions as partners at the time the consent is to be effective; or
20 (b) If the limited partnership does not have a remaining general partner, the
21 passage of ninety (90) days after the dissociation, unless before the end of that
22 period:
23 1. Consent to continue the activities of the limited partnership and admit at
24 least one (1) general partner is given by limited partners owning a
25 majority of the rights to receive distributions as limited partners at the
26 time the consent is to be effective; and
27 2. At least one (1) person is admitted as a general partner in accordance

1 with that consent;
2 (4) The passage of ninety (90) days after the dissociation of the limited partnership's
3 last limited partner, unless before the end of that period the limited partnership
4 admits at least one (1) limited partner;~~[or]~~
5 (5) The administrative dissolution of the limited partnership by the Secretary of State
6 under KRS 14A.7-010 or predecessor law***; or***
7 ***(6) Except as provided in subsection (3) or (4) of this section, the same person shall***
8 ***not be both the only general partner and the only limited partner***.
9 ➔Section 59. KRS 365.015 is amended to read as follows:
10 (1) (a) The real name of an individual shall include his or her surname at birth, or his
11 or her name as changed by a court of competent jurisdiction, or the surname of
12 a married woman.
13 (b) The real name of a domestic:
14 1. General partnership that is not a limited liability partnership and that has
15 not filed a statement of partnership authority is that name which includes
16 the real name of each of the partners;
17 2. General partnership that is not a limited liability partnership and that has
18 filed a statement of partnership authority is the name set forth on the
19 statement of partnership authority;
20 3. General partnership that is a limited liability partnership is the name
21 stated on the statement of qualification filed pursuant to KRS 362.1-931
22 or predecessor law;
23 4. Limited partnership is that name stated in its certificate of limited
24 partnership filed pursuant to KRS 362.2-201 or predecessor law;
25 5. Business trust or statutory trust is the name set forth in the declaration of
26 trust;
27 6. Corporation is the name set forth in its articles of incorporation;

1 7. Limited liability company is the name set forth in its articles of
2 organization;~~[ and]~~
3 8. Limited cooperative association is the name set forth in its articles of
4 association***; and***
5 ***9. Unincorporated nonprofit association that has filed a certificate of***
6 ***association is the name set forth in the certificate of association and, if***
7 ***no certificate of association has been filed, the name under which the***
8 ***unincorporated nonprofit association generally acts***.
9 (c) The real name of a foreign:
10 1. General partnership is the name recognized by the laws of the
11 jurisdiction under which it is formed as being the real name;
12 2. Limited liability partnership is the name stated in its statement of foreign
13 qualification filed pursuant to KRS 362.1-952 or predecessor law;
14 3. Limited partnership is the name set forth in its certificate of limited
15 partnership or the fictitious name adopted for use in this Commonwealth
16 under KRS 14A.3-010 to 14A.3-050 or predecessor law;
17 4. Business trust or statutory trust is the name recognized by the laws of the
18 jurisdiction under which it is formed as being the real name of the
19 business trust or statutory trust or the fictitious name adopted for use in
20 this Commonwealth under Subchapter 3 of KRS Chapter 14A;
21 5. Corporation, including a cooperative or association that is incorporated,
22 is the name set forth in its articles of incorporation or the fictitious name
23 adopted for use in this Commonwealth under KRS 14A.3-010 to 14A.3-
24 050 or predecessor law;
25 6. Limited liability company is the name set forth in its articles of
26 organization or the fictitious name adopted for use in this
27 Commonwealth under KRS 14A.3-010 to 14A.3-050 or predecessor

1 law;~~[and]~~
2 7. Limited cooperative association is the name set forth in its articles of
3 association or the fictitious name adopted for use in this Commonwealth
4 under KRS 14A.3-010 to 14A.3-050 or predecessor law***; and***
5 ***8. Unincorporated nonprofit association is the name recognized by the***
6 ***laws of the jurisdiction under which it is organized as being the real***
7 ***name***.
8 (2) (a) No individual, general partnership, limited partnership, business or statutory
9 trust, corporation, limited liability company,~~[or]~~ limited cooperative
10 association***, or unincorporated nonprofit association that has filed a***
11 ***certificate of association*** shall conduct or transact business in this
12 Commonwealth under an assumed name or any style other than his, her, or its
13 real name, as defined in subsection (1) of this section, unless such individual,
14 general partnership, limited partnership, business or statutory trust,
15 corporation, limited liability company,~~[or]~~ limited cooperative association***, or***
16 ***unincorporated nonprofit association that has filed a certificate of***
17 ***association*** has filed a certificate of assumed name;
18 (b) The certificate shall state the assumed name under which the business will be
19 conducted or transacted, the real name of the individual, general partnership,
20 limited partnership, business or statutory trust, corporation, limited liability
21 company,~~[or]~~ limited cooperative association***, or unincorporated nonprofit***
22 ***association that has filed a certificate of association*** and his,~~[or]~~ her***,*** or its
23 address, including street and number, if any;
24 (c) A separate certificate shall be filed for each assumed name;
25 (d) No certificate to be filed with the Secretary of State shall set forth an assumed
26 name which is not distinguishable upon the records of the Secretary of State
27 from any other name previously filed and on record with the Secretary of

1 State;
2 (e) The certificate shall be executed for an individual, by the individual, and
3 otherwise as provided by KRS 14A.2-020.
4 (3) Each certificate of assumed name for an individual shall be filed with the county
5 clerk where the person maintains his or her principal place of business. Each
6 certificate of assumed name for a general partnership, limited partnership, business
7 or statutory trust, corporation, limited liability company, or limited cooperative
8 association shall be delivered to the Secretary of State for filing, accompanied by
9 one (1) exact or conformed copy. One (1) of the exact or conformed copies stamped
10 as "filed" by the Secretary of State shall be filed with the county clerk of the county
11 where the entity maintains its registered agent for service of process or, if no
12 registered agent for service of process is required, then with the county clerk of the
13 county where the entity maintains its principal office. If the entity does not maintain
14 a registered agent for service of process and does not maintain a principal office in
15 this Commonwealth, then the certificate of assumed name shall be filed only with
16 the Secretary of State.
17 (4) An assumed name shall be effective for a term of five (5) years from the date of
18 filing and may be renewed for successive terms upon filing a renewal certificate
19 within six (6) months prior to the expiration of the term, in the same manner of
20 filing the original certificate as set out in subsection (3) of this section. Any
21 certificate in effect on July 15, 1998, shall continue in effect for five (5) years and
22 may be renewed by filing a renewal certificate with the Secretary of State.
23 (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn
24 by filing a certificate in the office wherein the original certificate of assumed name
25 was filed. The certificate of withdrawal shall state the assumed name, the real name
26 and address of the party formerly transacting business under the assumed name and
27 the date upon which the original certificate was filed. The certificate of withdrawal

1 shall be signed for an individual by the individual or his or her agent and otherwise
2 as provided in KRS 14A.2-020.
3 (6) A general partnership, except a limited liability partnership, shall amend an
4 assumed name certificate to reflect a change in the identity of partners. The
5 amendment shall set forth:
6 (a) The assumed name and date of original filing;
7 (b) A statement setting out the changes in identity of the partners; and
8 (c) Shall be signed by at least one (1) partner authorized to do so by the partners.
9 (7) The filing of a certificate of assumed name shall not automatically prevent the use
10 of that name or protect that name from use by other persons.
11 (8) In the event of the merger or conversion of a partnership, limited partnership,
12 business or statutory trust, corporation, limited liability company, or limited
13 cooperative association, any certificate of assumed name filed by a party to a merger
14 or conversion shall remain in full force and effect, as provided in subsection (4) of
15 this section, as if originally filed by the business organization which survives the
16 merger or conversion.
17 (9) A certificate of assumed name may be amended to revise the real name or the
18 address of the person or business organization holding the certificate of assumed
19 name.
20 (10) A certificate of assumed name, or its amendment or cancellation, shall be effective
21 on the date it is filed, as evidenced by the Secretary of State's date and time
22 endorsement on the original document, or at a time specified in the document as its
23 effective time on the date it is filed. The document may specify a delayed effective
24 time and date and, if it does so, the document shall become effective at the time and
25 date specified. If a delayed effective date but no time is specified, the document
26 shall be effective at the close of business on that date. A delayed effective date for a
27 document shall not be later than the ninetieth day after the date it is filed.

1 (11) The county clerk shall receive a fee pursuant to KRS 64.012 for filing each
2 certificate, and the Secretary of State shall receive a fee of twenty dollars ($20) for
3 filing each certificate, amendment, and renewal certificate.
4 (12) A series entity, as defined in KRS 14A.1-070, may, on behalf of any series thereof,
5 file a certificate of assumed name. The certificate shall provide that the assumed
6 name is adopted on behalf of a series of the series entity and not on behalf of the
7 series entity itself, but the certificate of assumed name shall be recorded on the
8 records of the Secretary of State as being that of the series entity.
9 ➔Section 60. KRS 386A.1-030 is amended to read as follows:
10 (1) Except as otherwise provided in KRS 386A.1-040(2), the governing instrument
11 governs:
12 (a) The management, affairs, and conduct of the business of a statutory trust; and
13 (b) The rights, interests, duties, obligations, and powers of, and the relations
14 among, the trustees, the beneficial owners, the statutory trust, and other
15 persons.
16 (2) To the extent the governing instrument does not otherwise provide for a matter
17 described in subsection (1) of this section, this chapter governs the matter.
18 (3) The governing instrument may include one (1) or more instruments, agreements,
19 declarations, bylaws, or other records and refer to or incorporate any record.
20 (4) Subject to KRS 386A.1-040(2), without limiting the terms that may be included in a
21 governing instrument, the governing instrument may:
22 (a) Provide the means by which beneficial ownership is determined and
23 evidenced;
24 (b) Limit a beneficial owner's right to transfer a beneficial interest;
25 (c) Provide for one (1) or more series under Subchapter 4 of this chapter;
26 (d) To the extent that voting rights are granted to the beneficial owners or trustees
27 under the governing instrument, include terms relating to:

1. Notice of the date, time, place, or purpose of any meeting at which any matter is to be voted on;
2. Waiver of notice;
3. Action by consent without a meeting;
4. Establishment of record dates;
5. Quorum requirements;
6. Voting:
   a. In person;
   b. By proxy;
   c. By any form of communication that creates a record, telephone, or video conference; or
   d. In any other manner; or
7. Any other matter with respect to the exercise of the right to vote;

(e) Provide for the creation of one (1) or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties;

(f) Provide for any action to be taken without the vote or approval of any particular trustee or beneficial owner, or classes of trustees, beneficial owners, or beneficial interests, including:
1. Amendment of the governing instrument;
2. Merger, conversion, or reorganization;
3. Appointment of trustees;
4. Sale, lease, exchange, transfer, pledge, or other disposition of all or any part of the property of the statutory trust or the property of any series thereof; and
5. Dissolution of the statutory trust;

(g) Provide for the creation of a statutory trust, including the creation of a statutory trust to which all or any part of the property, liabilities, profits, or

1 losses of a statutory trust may be transferred or exchanged, and for the
2 conversion of beneficial interests in a statutory trust, or series thereof, into
3 beneficial interests in the new statutory trust or series thereof;
4 (h) Provide for the appointment, election, or engagement of agents or independent
5 contractors of the statutory trust or delegates of the trustees, or agents,
6 officers, employees, managers, committees, or other persons that may manage
7 the business and affairs of the statutory trust, designate their titles, and specify
8 their rights, powers, and duties;
9 (i) Provide rights to any person, including a person who is not a beneficial owner
10 or not otherwise a party to the governing instrument, to the extent set forth
11 therein;
12 (j) Subject to paragraph (k) of this subsection, specify the manner in which the
13 governing instrument may be amended, including, unless waived by all
14 persons for whose benefit the condition or requirement was intended:
15 1. A condition that a person that is not a party to the instrument must
16 approve the amendment for it to be effective; and
17 2. A requirement that the governing instrument may be amended only as
18 provided in the governing instrument or as otherwise permitted by law;
19 (k) Provide that a person may comply with paragraph (j) of this subsection by a
20 representative authorized by the person orally, in a record, or by conduct;
21 (l) Provide that a person becomes a beneficial owner, acquires a beneficial
22 interest, and is bound by the governing instrument if the person complies with
23 the conditions for becoming a beneficial owner set forth in the governing
24 instrument;
25 (m) Provide that the beneficial interest of any beneficial owner who fails to make
26 any contribution that the beneficial owner is obligated to make or who
27 otherwise violates an obligation undertaken in the governing instrument shall

be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting beneficial owner's proportionate interest in the statutory trust, subordinating the beneficial owner's interest to that of nondefaulting beneficial owners, a forced sale of that beneficial interest, forfeiture of his or her beneficial interest, the lending by other beneficial owners of the amount necessary to meet the defaulting beneficial owner's commitment, a fixing of the value of his or her beneficial interest by appraisal or by formula and redemption or sale of the beneficial interest at such value, or other penalty or consequence;

(n) Provide that the statutory trust or the trustees, acting for the statutory trust, hold beneficial ownership of any income earned on securities held by the statutory trust that are issued by any business entity formed, organized, or existing under the laws of any jurisdiction;

(o) Provide for the establishment of record dates;

(p) Grant to, or withhold from, a trustee or beneficial owner, or class of trustees or beneficial owners, the right to vote, separately or with any or all other trustees or beneficial owners, or class of trustees or beneficial owners, on any matter;~~[ and]~~

(q) Provide that neither the power to direct a trustee or other person nor the exercise of the power by any person, including a beneficial owner, causes the person to be a trustee or imposes on the person duties, including fiduciary duties, or liabilities relating to these duties, to a statutory trust or beneficial owner;

***(r) Provide that the statutory trust is to act as a beneficial owner associated with a series thereof; or***

***(s) Provide that each beneficial owner shall be the owner of an undivided***

1 ***beneficial interest in all property of the statutory trust in addition to or***
2 ***including an undivided beneficial interest in all property of or associated***
3 ***with a series of the statutory trust with which the beneficial owner is***
4 ***associated***.
5 ➔Section 61. KRS 386A.4-010 is amended to read as follows:
6 (1) If a statutory trust complies with KRS 386A.4-020(2), a governing instrument may
7 establish or provide for the establishment of one (1) or more designated series that:
8 (a) Has separate rights, powers, or duties with respect to specified property or
9 obligations or profits and losses associated with specified property or
10 obligations; or
11 (b) Has a separate purpose or investment objective.
12 (2) A series of a statutory trust is to the degree provided in subsection (4) of this section
13 an entity separate from the statutory trust.
14 (3) A series of a statutory trust may have a separate purpose from the trust or any other
15 series thereof if the purpose of the series is:
16 (a) Permitted by KRS 386A.3-030; and
17 (b) Not outside the purpose of the trust.
18 (4) Unless otherwise provided in the governing instrument, a series established in
19 accordance with subsection (1) of this section shall have the power and capacity to,
20 in its own name, contract, hold title to real, personal, and intangible assets, grant
21 liens and security interests, and sue and be sued.
22 (5) The registered agent and registered office of a statutory trust that is a series trust
23 shall be the registered agent and registered office of each series thereof.
24 (6) The governing instrument may provide that one (1) or more trustees shall be
25 associated with a series, in which case they shall be the trustees discharging the
26 obligations of Subchapter 5 of this chapter as to that series. In the absence of such
27 an association, all trustees of the statutory trust shall be trustees associated with a

1 series.

2 ***(7) The governing instrument may provide for the means by which beneficial owners***
3 ***are associated with a series. The statutory trust may be associated with a series***
4 ***thereof. In the absence of association as provided in the governing instrument, all***
5 ***beneficial owners of the statutory trust shall be deemed associated with each***
6 ***series.***

7 ➔Section 62. KRS 369.102 is amended to read as follows:

8 As used in KRS 369.101 to 369.120, unless the context requires otherwise:

9 (1) "Agreement" means the bargain of the parties in fact, as found in their language or
10 inferred from other circumstances and from rules, regulations, and procedures given
11 the effect of agreements under laws otherwise applicable to a particular transaction;

12 (2) "Automated transaction" means a transaction conducted or performed, in whole or
13 in part, by electronic means or electronic records, in which the acts of records of
14 one (1) or both parties are not reviewed by an individual in the ordinary course in
15 forming a contract, performing under an existing contract, or fulfilling an obligation
16 required by the transaction;

17 (3) "Computer program" means a set of statements or instructions to be used directly or
18 indirectly in an information processing system in order to bring about a certain
19 result;

20 (4) "Contract" means the total legal obligation resulting from the parties' agreement as
21 affected by KRS 369.101 to 369.120 and other applicable law;

22 (5) "Electronic" means relating to technology having electrical, digital, magnetic,
23 wireless, optical, electromagnetic, or similar capabilities;

24 (6) "Electronic agent" means a computer program or an electronic or other automated
25 means used independently to initiate an action or respond to electronic records or
26 performances in whole or in part, without review or action by an individual;

27 (7) "Electronic record" means a record created, generated, sent, communicated,

1 received, or stored by electronic means;
2 (8) "Electronic signature" means an electronic sound, symbol, or process attached to or
3 logically associated with a record and executed or adopted by a person with the
4 intent to sign the record;
5 (9) "Governmental agency" means an executive, legislative, or judicial agency,
6 department, board, commission, authority, institution, or instrumentality of the
7 federal government or of a state or of a county, municipality, or other political
8 subdivision of a state;
9 (10) "Information" means data, text, images, sounds, codes, computer programs,
10 software, databases, or the like;
11 (11) "Information processing system" means an electronic system for creating,
12 generating, sending, receiving, storing, displaying, or processing information;
13 (12) "Person" means an individual, corporation, business ***or statutory*** trust, estate, trust,
14 partnership, ***limited partnership,*** limited liability company, association, ***limited***
15 ***cooperative association,*** joint venture, governmental agency, public corporation, or
16 any other legal or commercial entity;
17 (13) "Record" means information that is inscribed on a tangible medium or that is stored
18 in an electronic or other medium and is retrievable in perceivable form;
19 (14) "Security procedure" means a procedure employed for the purpose of verifying that
20 an electronic signature, record, or performance is that of a specific person or for
21 detecting changes or errors in the information in an electronic record. The term
22 includes a procedure that requires the use of algorithms or other codes, identifying
23 words or numbers, encryption, or callback or other acknowledgment procedures;
24 (15) "State" means a state of the United States, the District of Columbia, Puerto Rico,
25 the United States Virgin Islands, or any territory or insular possession subject to the
26 jurisdiction of the United States. The term includes an Indian tribe or band, or
27 Alaskan native village, which is recognized by federal law or formally

1 acknowledged by a state; and
2 (16) "Transaction" means an action or set of actions occurring between two (2) or more
3 persons relating to the conduct of business, commercial, or governmental affairs.
4 ➔Section 63. KRS 386A.4-020 is amended to read as follows:
5 (1) Subject to subsection (2) of this section:
6 (a) A debt, liability, obligation, and expense incurred, contracted for, or otherwise
7 existing with respect to a series, whether in its name or as to the property of or
8 associated therewith, shall be enforceable against the assets of or associated
9 with that series only, and shall not be enforceable against the assets of the
10 statutory trust generally or any assets of or associated with other series
11 thereof; and
12 (b) None of the debts, liabilities, obligations, and expenses incurred, contracted
13 for, or otherwise existing with respect to the statutory trust generally or any
14 other series thereof shall be enforceable against the assets of or associated
15 with a series.
16 (2) Subsection (1) of this section applies only if:
17 (a) The records maintained by the statutory trust account for the assets of or
18 associated with that series separately from the other assets of the statutory
19 trust or of or associated with any other series;
20 (b) The governing instrument contains a statement to the effect of the limitations
21 provided in subsection (1) of this section; and
22 (c) The statutory trust's certificate of trust contains a statement that the statutory
23 trust may have one (1) or more series subject to the limitations provided in
24 subsection (1) of this section.
25 (3) The statement of limitation on liabilities of a series required by subsection (2)(c) of
26 this section is sufficient regardless of whether:
27 (a) The statutory trust has established any series under this subchapter when the

1 statement of limitations is contained in the certificate of formation; and
2 (b) The statement of limitations makes reference to any specific series of the
3 statutory trust.
4 (4) If the records are maintained in a manner such that the assets of or associated with a
5 series can be reasonably identified by specific listing, category, type, quantity, or
6 computational or allocational formula or procedure, including a percentage or share
7 of any assets, or by any other method in which the identity of the assets can be
8 objectively determined, the records are considered to satisfy the requirements of
9 subsection (2)(a) of this section.
10 (5) The association, disassociation, or reassociation of property of a statutory trust or a
11 series thereof to or with the trust or a series thereof is deemed to be a transfer
12 between separate persons under the laws of Kentucky governing fraudulent
13 transfers.
14 (6) A distribution by a series shall be made to the beneficial ***owners***[~~owner~~] associated
15 with the series.
16 ➔Section 64. KRS 362.2-935 is amended to read as follows:
17 (1) Except as otherwise provided in subsection (2) of this section:
18 (a) Any proceeds or other benefits of a derivative action, whether by judgment,
19 compromise, or settlement, belong to the limited partnership and not to the
20 derivative plaintiff;
21 (b) If the derivative plaintiff receives any of those proceeds, then the derivative
22 plaintiff shall immediately remit them to the limited partnership.
23 (2) If a derivative action is successful in whole or in part, then the court may award the
24 plaintiff reasonable expenses, including reasonable attorney's fees, from the
25 recovery of the limited partnership.
26 ***(3) On termination of the proceeding brought pursuant to this section, the court may***
27 ***require the plaintiff to pay any defendant's reasonable expenses, including***

1 ***counsel fees, incurred in defending the proceeding to the extent it finds that the***
2 ***proceeding or any portion thereof was commenced without reasonable cause or***
3 ***for an improper purpose.***
4 ➔Section 65. KRS 360.027 is amended to read as follows:
5 (1) No limited partnership, limited liability company, or business ***or statutory*** trust
6 shall hereafter plead or set up the taking of more than the legal rate of interest, as a
7 defense to any action brought against it to recover damages on, or enforce payment
8 of, or other remedy on, any mortgage, bond, note or other obligation, executed or
9 assumed by such limited partnership, limited liability, or business ***or statutory*** trust;
10 provided, that this section shall not apply to any action instituted subsequent to June
11 16, 1972, upon any mortgage, bond, note or other obligation executed or assumed
12 by such limited partnership or business trust prior to June 16, 1972.
13 (2) The provisions of subsection (1) of this section shall not apply to a limited
14 partnership, limited liability company, or business ***or statutory*** trust, the principal
15 asset of which shall be the ownership of a one (1) or two (2) family dwelling.
16 ➔SECTION 66. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO
17 READ AS FOLLOWS:
18 ***(1) Notice under this chapter shall be in writing unless oral notice is reasonable***
19 ***under the circumstances. Notice by electronic transmission is written notice.***
20 ***(2) Notice may be communicated in person, by mail or other method of delivery, or***
21 ***by telephone, voice mail, or other electronic means. If these forms of personal***
22 ***notice are impracticable, notice may be communicated by a newspaper of general***
23 ***circulation in the area where published, or by radio, television, or other form of***
24 ***public broadcast communication.***
25 ***(3) Written notice by a corporation to a member, if in a comprehensible form, shall***
26 ***be effective:***
27 ***(a) Upon deposit in the United States mail, if mailed postpaid and correctly***

1 *addressed to the member's address shown in the corporation's current*
2 *record of members; or*
3 *(b) When electronically transmitted to the member in a manner authorized and*
4 *in accordance with the member's instructions, if any.*
5 *(4) Written notice to a domestic or foreign corporation authorized to transact*
6 *business in this Commonwealth may be addressed to its registered agent at its*
7 *registered office or to the corporation or its secretary at its principal office*
8 *address of record with the Secretary of State.*
9 *(5) Except as provided in subsections (3) and (4) of this section, written notice, if in a*
10 *comprehensible form, shall be effective at the earliest of the following:*
11 *(a) When received;*
12 *(b) Five (5) days after its deposit in the United States mail, if mailed postpaid*
13 *and correctly addressed; or*
14 *(c) On the date shown on the return receipt, if sent by registered or certified*
15 *mail, return receipt requested, and the receipt is signed by or on behalf of*
16 *the addressee.*
17 *(6) Oral notice shall be effective when communicated, if communicated in a*
18 *comprehensible manner.*
19 *(7) If KRS 273.161 to 273.390 prescribe notice requirements for particular*
20 *circumstances, those requirements shall govern. If articles of incorporation or*
21 *bylaws prescribe notice requirements not inconsistent with this section or other*
22 *provisions of KRS 273.161 to 273.390, those requirements shall govern.*
23 ➔SECTION 67. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO
24 READ AS FOLLOWS:
25 *(1) Unless the articles of incorporation or bylaws provide otherwise, action required*
26 *or permitted by KRS 273.161 to 273.390 as amended by Sections 66 through 85 of*
27 *this Act to be taken at a board of directors meeting may be taken without a*

1 ***meeting if the action is taken by all members of the board. The action shall be***
2 ***evidenced by one (1) or more written consents describing the action taken, signed***
3 ***by each director, and included in the minutes or filed with the corporate records***
4 ***reflecting the action taken.***
5 ***(2) Action taken under this section shall be effective when the last director signs the***
6 ***consent, unless the consent specifies a different effective date.***
7 ***(3) A consent signed under this section shall have the effect of a meeting vote and***
8 ***may be described as such in any document.***
9 ➔Section 68. KRS 273.161 is amended to read as follows:
10 As used in KRS ***273.161***[~~273.163~~] to ***273.390***[~~273.387~~], unless the context otherwise
11 requires[~~, the term~~]:
12 (1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to
13 the provisions of KRS ***273.161***[~~273.163~~] to ***273.390***[~~273.387~~], except a foreign
14 corporation;
15 (2) "Disaster" means any natural, technological, or civil emergency that causes damage
16 of sufficient severity and magnitude to result in a declaration of a state of
17 emergency by a county, the Governor, or the President of the United States;
18 (3) "Foreign corporation" means a nonprofit corporation organized under laws other
19 than the laws of this state;
20 (4) "Nonprofit corporation" means a corporation no part of the income or profit of
21 which is distributable to its members, directors or officers;
22 (5) "Articles of incorporation" means the original or restated articles of incorporation or
23 articles of consolidation and all amendments thereto, including articles of merger;
24 (6) "Bylaws" means the code or codes of rules adopted for the regulation or
25 management of the affairs of the corporation irrespective of the name or names by
26 which such rules are designated;
27 (7) "Member" means one having membership rights in a corporation in accordance with

1 the provisions of its articles of incorporation or bylaws;
2 (8) "Board of directors" means the group of persons vested with the management of the
3 affairs of the corporation irrespective of the name by which group is designated;
4 (9) "Insolvent" means inability of a corporation to pay its debts as they become due in
5 the usual course of its affairs;
6 (10) "Principal office" means the office, in or out of this state, so designated in the
7 annual report where the principal executive offices of a domestic or foreign
8 corporation are located;
9 (11) "Secretary" means the corporate officer to whom the board of directors has
10 delegated responsibility for custody of the minutes of the meetings of the board of
11 directors and the members and for authenticating records of the corporation;
12 (12) "Individual" includes the estate of an incompetent or deceased individual;
13 (13) "Entity" includes a domestic or foreign corporation; not-for-profit corporation;
14 profit and not-for-profit unincorporated association; business or statutory trust,
15 estate, partnership, limited partnership, limited liability company, trust, and two (2)
16 or more persons having a joint or common economic interest; and state, United
17 States, and foreign government;
18 (14) "Person" includes individual and entity.
19 (15) "Name of record with the Secretary of State" means any real, fictitious, reserved,
20 registered, or assumed name of an entity;~~[ and]~~
21 (16) "Real name" shall have the meaning set forth in KRS 365.015;
22 ***(17) "Deliver" or "delivery" means any method of delivery used in conventional***
23 ***commercial practice, including delivery by hand, mail, commercial delivery, and***
24 ***electronic transmission;***
25 ***(18) "Effective date of notice" means notice when effective under subsection (3) of***
26 ***Section 66 of this Act;***
27 ***(19) "Electronic transmission" or "electronically transmitted" means any process of***

1 ***communication not directly involving the physical transfer of paper that is***
2 ***suitable for the retention, retrieval, and reproduction of information by the***
3 ***recipient;***
4 ***(20) "Notice" means notice as described in Section 66 of this Act; and***
5 ***(21) "Sign" or "signature" includes any manual, facsimile, or conformed or***
6 ***electronic signature.***
7 ➔Section 69. KRS 273.197 is amended to read as follows:
8 Unless otherwise provided in the articles of incorporation or the bylaws,~~[ written]~~ notice
9 stating the place, day and hour of meeting and, in case of a special meeting, the purpose
10 or purposes for which the meeting is called, shall be ***given***~~[delivered ]~~not less than ten
11 (10) nor more than thirty-five (35) days before the date of the meeting,~~[ either personally~~
12 ~~or by mail,]~~ by or at the direction of the president, or the secretary, or the officers or
13 persons calling the meeting, to each member entitled to vote at such meeting.~~[ If mailed,~~
14 ~~such notice shall be deemed to be delivered when deposited in the United States mail~~
15 ~~addressed to the member at his address as it appears on the records of the corporation,~~
16 ~~with postage thereon prepaid.]~~
17 ➔Section 70. KRS 273.217 is amended to read as follows:
18 ***(1)*** A majority of the number of directors fixed by the bylaws, or in the absence of a
19 bylaw fixing the number of directors, then of the number stated in the articles of
20 incorporation, shall constitute a quorum for the transaction of business, unless
21 otherwise provided in the articles of incorporation or the bylaws.~~[.]~~
22 ***(2) Unless the articles of incorporation or bylaws provide otherwise, the board of***
23 ***directors may permit any or all directors to participate in a regular or special***
24 ***meeting by, or conduct the meeting through the use of, any means of***
25 ***communication by which all directors participating may simultaneously hear***
26 ***each other during this meeting. A director participating in a meeting by this***
27 ***means shall be deemed to be present in person at the meeting.***

1 *(3)* The act of the majority of the directors present at a meeting at which a quorum is
2 present shall be the act of the board of directors, unless the act of a greater number
3 is required by KRS 273.161 to 273.390, the articles of incorporation or the bylaws.
4 ***(4) Irrespective of whether or not the corporation has members, a director may not***
5 ***vote by proxy.***
6 ➔Section 71. KRS 273.223 is amended to read as follows:
7 (1) Meetings of the board of directors, regular or special, may be held either within or
8 without this state, and upon such notice as the bylaws may prescribe. ***If the bylaws***
9 ***are silent as to the required notice of a meeting of the board of directors,***
10 ***meetings of the board of directors shall be preceded by at least two (2) days notice***
11 ***of the time, date, and place of the meeting.***[~~.~~]
12 ***(2) Neither the business to be transacted at, nor the purpose of, any regular or***
13 ***special meeting of the board of directors needs to be specified in the notice or***
14 ***waiver of notice of such meeting.***
15 *(3)* Attendance of a director at any meeting shall constitute a waiver of notice of such
16 meeting except when a director attends a meeting for the express purpose of
17 objecting to the transaction of any business because the meeting is not lawfully
18 called or convened.[~~ Neither the business to be transacted at, nor the purpose of, any~~
19 ~~regular or special meeting of the board of directors need be specified in the notice or~~
20 ~~waiver of notice of such meeting.~~]
21 *(4)*[~~(2)~~] The Circuit Court for the county where a corporation's principal office or, if
22 there is none in this state, its registered office is located may order a special meeting
23 of the board of directors on the application of one-third (1/3) or more of the
24 incumbent directors. The court may fix the time and place of the meeting, prescribe
25 the form and content of the meeting notice, and enter such other orders as are
26 necessary to accomplish the purpose of the meeting.
27 ➔Section 72. KRS 273.313 is amended to read as follows:

1 ***(1) At any time after dissolution is authorized and***[~~If voluntary dissolution~~]
2 proceedings have not been revoked,[~~ then when all debts, liabilities and obligations~~
3 ~~of the corporation shall have been paid and discharged, or adequate provisions shall~~
4 ~~have been made therefor, and all of the remaining property and assets of the~~
5 ~~corporation shall have been transferred, conveyed, or distributed in accordance with~~
6 ~~the provisions of KRS 273.161 to 273.390,~~] articles of dissolution shall be delivered
7 to the Secretary of State for filing and shall set forth:
8 ***(a)***[~~(1)~~] The name of the corporation;[~~.~~]
9 ***(b) The date dissolution was authorized;***
10 ***(c)***[~~(2)~~] If there are members entitled to vote thereon:
11 ***1. The number of votes entitled to be cast on the proposal to dissolve;***
12 ***2. Either the total number of votes cast for and against dissolution or the***
13 ***total number of undisputed votes cast for dissolution and a statement***
14 ***that the number cast for dissolution was sufficient for approval; and***
15 ***3. If voting by voting groups was required, the information required by***
16 ***this paragraph shall be separately provided for each voting group***
17 ***entitled to vote separately on the plan to dissolve;***
18 [~~(a) A statement setting forth the date of the meeting of members at which the~~
19 ~~resolution to dissolve was adopted, that a quorum was present at such~~
20 ~~meeting, and that such resolution received at least two-thirds (2/3) of the votes~~
21 ~~which members present at such meeting or represented by proxy were entitled~~
22 ~~to cast; or~~
23 ~~(b) A statement that such resolution was adopted by a consent in writing signed~~
24 ~~by all members entitled to vote with respect thereto.~~]
25 ***(d)***[~~(3)~~] If there are no members, or no members entitled to vote thereon, a
26 statement of such fact, the date of the meeting of the board of directors at
27 which the resolution to dissolve was adopted and a statement of the fact that

1 such resolution received the vote of a majority of the directors in office***;***
2 ***and***[~~.~~]
3 [~~(4) That all debts, obligations, and liabilities of the corporation have been paid and~~
4 ~~discharged or that adequate provision has been made therefor.~~]
5 ***(e)***[~~(5)~~] A copy of the plan of distribution[~~, if any,~~] as adopted by the
6 corporation[~~, or a statement that no plan was so adopted~~].
7 [~~(6) That all the remaining property and assets of the corporation have been transferred,~~
8 ~~conveyed or distributed in accordance with the provisions of KRS 273.161 to~~
9 ~~273.390.~~
10 ~~(7) That there are no suits pending against the corporation in any court, or that adequate~~
11 ~~provision has been made for the satisfaction of any judgment, order or decree which~~
12 ~~may be entered against it in any pending suit.~~
13 ~~(8) Upon the filing of articles of dissolution with the Secretary of State, the existence of~~
14 ~~the corporation shall cease, except for the purpose of suits, other proceedings and~~
15 ~~appropriate corporate action by members, directors and officers as provided by law.~~]
16 ***(2) The Secretary of State shall immediately forward one (1) of the exact or***
17 ***conformed copies of the articles of dissolution to the secretary of revenue.***
18 ***(3) A corporation shall be dissolved upon the effective date of its articles of***
19 ***dissolution.***
20 ➔SECTION 73. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO
21 READ AS FOLLOWS:
22 ***(1) A dissolved corporation shall continue its corporate existence but shall not carry***
23 ***on any business except that appropriate to wind up and liquidate its business and***
24 ***affairs, including:***
25 ***(a) Collecting its assets;***
26 ***(b) Disposing of its properties in accordance with KRS 273.303;***
27 ***(c) Discharging or making provision for discharging its liabilities including, as***

1 *appropriate, entering into agreements with creditors for the satisfaction*
2 *thereof; and*
3 *(d) Doing every other act necessary to wind up and liquidate its business and*
4 *affairs.*
5 *(2) Dissolution of a corporation shall not:*
6 *(a) Transfer title to the corporation's property;*
7 *(b) Subject its directors or officers to standards of conduct different from those*
8 *prescribed in KRS 273.161 to 273.390;*
9 *(c) Change quorum or voting requirements for its board of directors or*
10 *members; change provisions for selection, resignation, or removal of its*
11 *directors or officers or both; or change provisions for amending its bylaws;*
12 *(d) Prevent commencement of a proceeding by or against the corporation in its*
13 *corporate name;*
14 *(e) Abate or suspend a proceeding pending by or against the corporation on the*
15 *effective date of dissolution;*
16 *(f) Terminate the authority of the registered agent of the corporation;*
17 *(g) Alter the obligations and responsibilities of the corporation as prescribed by*
18 *applicable federal or state law with regard to the filing or examination of all*
19 *federal and state tax returns or the payment, assessment, or collection of*
20 *any federal or state tax due with respect to those returns; or*
21 *(h) Abate or suspend KRS 273.187(2).*
22 ➔SECTION 74. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO
23 READ AS FOLLOWS:
24 *(1) If the board of directors is authorized to determine the place of an annual or*
25 *special meeting of members, the board of directors, in its sole discretion, may*
26 *determine that the meeting shall not be held at any place but shall instead be held*
27 *solely by means of remote communication under subsection (2) of this section.*

1 *(2) If authorized by the board of directors in its sole discretion, and subject to such*
2 *guidelines and procedures as the board of directors may adopt, members and*
3 *proxy holders not physically present at a meeting of members may by means of*
4 *remote communication:*
5 *(a) Participate in a meeting of members; and*
6 *(b) Be deemed present in person and vote at a meeting of members, whether*
7 *such meeting is to be held at a designated place or solely by means of*
8 *remote communication, if:*
9 *1. The corporation implements reasonable measures to verify that each*
10 *person deemed present and permitted to vote at the meeting by means*
11 *of remote communication is a member or proxy holder;*
12 *2. The corporation implements reasonable measures to provide members*
13 *and proxy holders referred to in subparagraph 1. of this paragraph a*
14 *reasonable opportunity to participate in the meeting and to vote on*
15 *matters submitted to the members, including an opportunity to read or*
16 *hear the proceedings of the meeting substantially concurrently with*
17 *the proceedings; and*
18 *3. The corporation records any vote or other action taken at the meeting*
19 *by a member or proxy holder by means of remote communication. The*
20 *corporation shall maintain as a record the recorded vote or other*
21 *action taken.*
22 ➔Section 75. KRS 273.377 is amended to read as follows:
23 (1) Any action required by KRS 273.161 to 273.390 to be taken at a meeting of the
24 members[~~ or directors~~] of a corporation, or any action which may be taken at a
25 meeting of the members[~~ or directors~~], may be taken without a meeting if a consent
26 in writing, setting forth the action so taken, shall be signed by all of the members
27 entitled to vote with respect to the subject matter thereof[~~, or all of the directors, as~~

1 ~~the case may be~~].

2 ***(2) The action taken under this section shall be evidenced by one (1) or more written***
3 ***consents describing the action taken, signed by the members taking the action,***
4 ***and delivered to the corporation for inclusion in the minutes or filing with the***
5 ***corporate records.***

6 ***(3) Action taken under this section shall be effective when consents representing the***
7 ***votes necessary to take the action under this section are delivered to the***
8 ***corporation, or upon delivery of the consents representing the necessary votes, as***
9 ***of a different date if specified in the consent.***

10 ***(4) Any member giving a consent may revoke the consent by a writing received by the***
11 ***corporation prior to the time that consents representing the votes required to take***
12 ***the action under this section have been delivered to the corporation but may not***
13 ***do so thereafter.***

14 ***(5) A consent signed under this section shall have the effect of a meeting vote and***
15 ***may be described as such in any document.***

16 ~~[(2) Such consent shall have the same force and effect as a unanimous vote, and may be~~
17 ~~stated as such in any articles or document filed with the Secretary of State under~~
18 ~~KRS 273.161 to 273.390.]~~

19 ➔Section 76. KRS 275.290 is amended to read as follows:

20 (1) The Circuit Court for the county in which the principal office of the limited liability
21 company is located, or, if none, in the county of the registered office, may dissolve a
22 limited liability company in a proceeding by a member if it is established that it is
23 not reasonably practicable to carry on the business of the limited liability company
24 in conformity with the operating agreement.

25 (2) If after a hearing the court determines that one (1) or more grounds for judicial
26 dissolution exist, it may enter a decree of dissolution, and the clerk of the court shall
27 deliver a certified copy of the decree to the Secretary of State, who shall file it. The

1 dissolution shall be effective upon the filing of the decree by the Secretary of State
2 or a later date as is specified in the decree.
3 (3) After entering the decree of dissolution, the court shall direct the winding up and
4 liquidation of the limited liability company's business and affairs in accordance with
5 KRS 275.300 and the notification of claimants in accordance with KRS 275.320
6 and 275.325.
7 (4) The effect of dissolution under this section shall be as provided in KRS 275.300(2)
8 and (3).
9 ***(5) After dissolution pursuant to Section 46 of this Act or otherwise, upon***
10 ***application of a limited liability company, a member, or a creditor of the***
11 ***company, the appropriate court may order judicial supervision of the winding up***
12 ***of the company, including the appointment of a person to wind up the company's***
13 ***activities, if:***
14 ***(a) After a reasonable time, the company has not wound up its activities; or***
15 ***(b) The applicant establishes other good cause.***
16 ➔Section 77. KRS 286.3-065 is amended to read as follows:
17 ***(1)*** Each ***officer and*** director shall ***discharge the duties and responsibilities of his or***
18 ***her respective office or position in good faith and with such ordinary care and***
19 ***diligence as necessary and reasonable to administer the affairs of the bank in a***
20 ***safe and sound manner. No officer or director, including a former officer or***
21 ***director, shall be personally liable to the bank or any person for monetary***
22 ***damages for any action taken, or failure to act as such officer or director, in the***
23 ***absence of conduct that constitutes gross negligence; willful or reckless***
24 ***misconduct; a knowing violation of the law; or unless the action or claim arises***
25 ***out of a transaction or matter from which the officer or director receives an***
26 ***improper personal benefit. In discharging his or her duties an officer or director***
27 ***shall be entitled to rely on information, opinions, reports, or statements,***

1 *including financial statements and other financial data, if prepared or presented*
2 *by.*
3 *(a) One (1) or more officers, or directors, or employees of the bank whom the*
4 *officer or director reasonably believes to be reliable and competent in the*
5 *matters presented;*
6 *(b) Legal counsel, public accountants, or other persons as to matters the officer*
7 *or director reasonably believes are within the person's professional or*
8 *expert competence; or*
9 *(c) A committee of the board of directors upon which the officer or director*
10 *does not serve, duly designated in accordance with a provision of the*
11 *articles of incorporation or the bylaws of the bank, or otherwise by*
12 *resolution of the board, as to matters within that committee's designated*
13 *authority, which committee the officer or director reasonably believes to*
14 *merit confidence*[~~exercise such ordinary care and diligence as necessary and~~
15 ~~reasonable to administer the affairs of the bank in a safe and sound manner. In~~
16 ~~this regard, the bank shall furnish each director with a copy of an appropriate~~
17 ~~publication outlining the duties of a bank director and an updated copy of the~~
18 ~~Kentucky banking law, and maintain in the bank updated copies of federal~~
19 ~~banking laws, as determined by administrative regulations~~].
20 *(2) An officer or director shall not be considered to be acting in good faith if he or*
21 *she has knowledge concerning the matter in question that makes reliance*
22 *otherwise permitted by this section unreasonable.*
23 *(3) A person bringing an action for monetary damages under this section shall have*
24 *the burden of proving by clear and convincing evidence that the officer or*
25 *director has breached or failed to perform his or her duties under this section,*
26 *and the burden of proving that the breach or failure to perform was the legal*
27 *cause of damages suffered by the bank.*

1 ***(4) Nothing in this section shall eliminate or limit the liability of any officer or***

2 ***director for any act or omission occurring prior to the effective date of this Act.***

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 3/20/15