271B.1-010 Title.

This chapter shall be known and may be cited as the "Kentucky Business Corporation Act."

History: Created 1972 Ky. Acts ch. 274, sec. 1.

Formerly codified as KRS 271A.005.

271B.1-200 Filing requirements.

(1) Each document delivered by a domestic or foreign corporation to the Secretary of State for filing shall satisfy the requirements of KRS 14A.2-010 to 14A.2-150.

(2) Whenever a provision of KRS Chapter 271B permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;

(b) The facts may include but are not limited to:

1. Any of the following that is available in a nationally recognized news or information medium either in print or electronically:

a. Statistical or market indices;

b. Market prices of any security or group of securities;

c. Interest rates;

d. Currency exchange rates; or

e. Similar economic or financial data;

2. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

3. The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;

(c) As used in this subsection:

1. "Filed document" means a document filed with the Secretary of State under any provision of KRS Chapter 271B except an annual report or a filing pursuant to Subtitle 15 of KRS Chapter 271B; and

2. "Plan" means a plan of nonprofit conversion as provided for in KRS 273.382, conversion into an LLC as provided for in KRS 275.376, merger, or of share exchange;

(d) The following provisions of a plan or filed document shall not be made dependent on facts outside the plan or filed document:

1. The name and address of any person required in a filed document;

2. The registered office of any entity required in a filed document;

3. The registered agent of any entity required in a filed document;

4. The number of authorized shares and designation of each class or series of shares;

5. The effective date of a filed document; or

6. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and

(e) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph (b)1. of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

Effective: January 1, 2011

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 46, effective July 15, 2010; and repealed, reenacted, and amended ch. 151, sec. 50, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 46, effective June 26, 2007. -- Amended 2002 Ky. Acts ch. 102, sec. 1, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 1, effective January 1, 1989.

Legislative Research Commission Note (1/1/2011). This section was repealed, reenacted, and amended by 2010 Ky. Acts ch. 151, and repealed and reenacted by 2010 Ky. Acts ch. 51. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment not serve to void the amendment, and these Acts do not appear to be in conflict, therefore, they have been codified together.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.1-210 Repealed, 2011.

Catchline at repeal: Forms.

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 47, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 47, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 2, effective January 1, 1989.

271B.1-220 Fees for filing documents and issuing certificates -- Miscellaneous charges.

The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

(1) Articles of incorporation .... $ 40

(2) Amendment of articles of incorporation .... $ 40

(3) Restatement of articles of incorporation .... $ 40

(4) Amended and restated articles .... $ 80

(5) Articles of merger or share exchange .... $ 50

(6) Articles of dissolution .... $ 40

(7) Articles of revocation of dissolution ....$ 15

(8) Any other document required or permitted to be filed by this chapter .... $ 15

Effective: January 1, 2011

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 48, effective July 15, 2010; and repealed, reenacted, and amended ch. 151, sec. 51, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 48, effective June 26, 2007. -- Amended 1998 Ky. Acts ch. 341, sec. 3, effective July 15, 1998. -- Created 1988 Ky. Acts ch. 23, sec. 3, effective January 1, 1989; and ch. 85, sec. 3, effective July 15, 1988.

Formerly codified as KRS 271A.631.

Legislative Research Commission Note (1/1/2011). This section was repealed, reenacted, and amended by 2010 Ky. Acts ch. 151, and repealed and reenacted by 2010 Ky. Acts ch. 51. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment not serve to void the amendment, and these Acts do not appear to be in conflict, therefore, they have been codified together.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

Legislative Research Commission Note. Similar versions of this section were created by 1988 Acts Chapter 85, Section 3, and 1988 Acts Chapter 23, Section 3, which conflict in regard to the amount of fees to be charged by Secretary of State. Pursuant to KRS 446.250, the fees set forth in Chapter 85 prevail as the later enactment. The remaining provisions do not appear to be in conflict and have been compiled together.

271B.1-230 Repealed, 2011.

Catchline at repeal: Effective time and date of filing.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Amended 2002 Ky. Acts ch. 102, sec. 2, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 4, effective January 1,1989.

271B.1-240 Repealed, 2011.

Catchline at repeal: Correcting filed documents.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Amended 2002 Ky. Acts ch. 102, sec. 3, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 5, effective January 1, 1989.

271B.1-250 Repealed, 2011.

Catchline at repeal: Filing duty of Secretary of State.

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 49, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 49, effective June 26, 2007. -- Amended 2002 Ky. Acts ch. 102, sec. 4, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 6, effective January 1, 1989.

271B.1-260 Repealed, 2011.

Catchline at repeal: Appeal from Secretary of State's refusal to file document.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 7, effective January 1, 1989.

271B.1-270 Repealed, 2011.

Catchline at repeal: Evidentiary effect of filed document.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Amended 2002 Ky. Acts ch. 102, sec. 5, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 8, effective January 1, 1989.

271B.1-280 Repealed, 2011.

Catchline at repeal: Certificate of existence.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 9, effective January 1, 1989.

271B.1-290 Penalty for signing false document.

(1) A person commits an offense by signing a document knowing it is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(2) An offense under this section shall be a misdemeanor punishable by a fine not to exceed one hundred dollars ($100).

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 50, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 50, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 10, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.1-300 Powers.

The Secretary of State shall have the power reasonably necessary to perform the duties required of him by this chapter.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 11, effective January 1, 1989.

271B.1-400 Definitions for chapter.

As used in this chapter:

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

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

(3) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue;

(4) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlining, shall be considered conspicuous;

(5) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter, and includes a professional service corporation and a public benefit corporation;

(6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;

(7) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise;

(8) "Effective date of notice" is defined in KRS 271B.1-410;

(9) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;

(10) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee;

(11) "Entity" includes a domestic or foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government;

(12) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state;

(13) "Governmental subdivision" includes authority, county, district, and municipality;

(14) "Includes" denotes a partial definition;

(15) "Individual" means a natural person and includes the estate of an incompetent or deceased individual;

(16) "Means" denotes an exhaustive definition;
(17) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity;
(18) "Notice" is defined in KRS 271B.1-410;
(19) "Person" includes individual and entity;
(20) "Principal office" means the office in or out of this state, so designated in writing to the Secretary of State where the principal executive offices of a domestic or foreign corporation are located;
(21) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;
(22) "Public benefit" means a positive effect or reduction of negative effects on one (1) or more categories of persons, entities, communities, or interests other than stockholders in their capacities as stockholders;
(23) "Public benefit corporation" means a for-profit corporation that is intended to produce a public benefit and to operate in a responsible manner, balancing the stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit identified in its articles of incorporation;
(24) "Public benefit provisions" means the provisions of articles of incorporation authorized by KRS 271B.2-020(4);
(25) "Real name" shall have the meaning set forth in KRS 365.015;
(26) "Record date" means the date established under Subtitle 6 or 7 of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date, unless another time for doing so is specified when the record date is fixed;
(27) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under KRS 271B.8-400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;
(28) "Share" means the unit into which the proprietary interests in a corporation are divided;
(29) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;
(30) "Sign" or "signature" includes any manual, facsimile, or conformed or electronic signature;
(31) "State," when referring to a part of the United States, includes a state and Commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions of the United States;
(32) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation;
(33) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States; and

(34) "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 28, sec. 2, effective June 29, 2017. -- Amended 2015 Ky. Acts ch. 34, sec. 6, effective June 24, 2015. -- Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 51, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 51, effective June 26, 2007. -- Amended 2002 Ky. Acts ch. 102, sec. 6, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 341, sec. 4, effective July 15, 1998. -- Created 1988 Ky. Acts ch. 23, sec. 12, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 137, sec. 51, subsection (21) cited "Section 164 of this Act." It is apparent from context that the section referred to should have been Section 163 of the Act, KRS 365.015. The Reviser of Statutes has made this change under the authority of KRS 7.136.

271B.1-410 Written or oral notice -- How given -- When effective.

(1) Notice under this chapter shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail, or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective:

(a) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or

(b) When electronically transmitted to the shareholder in a manner authorized and in accordance with the shareholder's instructions, if any.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office address of record with the Secretary of State.

(5) Except as provided in subsections (3) and (4) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed; or

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice shall be effective when communicated, if communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements, shall govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements shall govern.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts ch. 106, sec. 5, effective June 25, 2013. -- Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 52, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 52, effective June 26, 2007. -- Amended 2002 Ky. Acts ch. 102, sec. 7, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 13, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.1-420 Number of shareholders.

(1) For purposes of this chapter, the following identified as a shareholder in a corporation's current record of shareholders shall constitute one (1) shareholder:

(a) Three (3) or fewer co-owners;

(b) A corporation, partnership, trust, estate, or other entity;

(c) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of this chapter, shareholdings registered in substantially similar names shall constitute one (1) shareholder if it is reasonable to believe that the names represent the same person.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 14, effective January 1, 1989.

271B.1-430 Independent legal significance.

Action validly taken pursuant to one (1) provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.

Effective: July 15, 2010

History: Created 2010 Ky. Acts ch. 133, sec. 1, effective July 15, 2010.

271B.2-010 Incorporators.

One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 15, effective January 1, 1989.

271B.2-020 Articles of incorporation.

(1) The articles of incorporation shall set forth:

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

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

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

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

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

(2) The articles of incorporation may set forth:

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

(b) Provisions not inconsistent with law regarding:

1. The purpose or purposes for which the corporation is organized;

2. Managing the business and regulating the affairs of the corporation;

3. Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

4. A par value for authorized shares or classes of shares; and

5. The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

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

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

1. For any transaction in which the director's personal financial interest is in conflict with the financial interests of the corporation or its shareholders;

2. For acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law;

3. For any vote for or assent to an unlawful distribution to shareholders as prohibited under KRS 271B.8-330; or

4. For any transaction from which the director derived an improper personal benefit.

No such provision shall eliminate or limit the liability of any director for any act or omission occurring prior to the date when such provision becomes effective. In no case shall this subsection or any such provision be construed to expand the liability of any director as determined pursuant to KRS 271B.8-300.

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

(4) In addition to the information otherwise required, the articles of incorporation

for a public benefit corporation shall state:

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

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

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 28, sec. 4, effective June 29, 2017. -- Amended 2010 Ky. Acts ch. 151, sec. 52, effective January 1, 2011. -- Amended 1998 Ky. Acts ch. 341, sec. 5, effective July 15, 1998. -- Created 1988 Ky. Acts ch. 23, sec. 16, effective January 1, 1989; and ch. 224, sec. 7, effective July 15, 1988.

Formerly codified as KRS 271A.271.

271B.2-030 Incorporation.

(1) Unless a delayed effective date is specified, the corporate existence shall begin when the articles of incorporation are filed by the Secretary of State.

(2) The Secretary of State's filing of the articles of incorporation shall be conclusive proof that the incorporators satisfied all conditions precedent to incorporation, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 53, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 53, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 17, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.2-040 Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, shall be jointly and severally liable for all liabilities created while so acting.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 18, effective January 1, 1989.

271B.2-050 Organization of corporation.

(1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

1. To elect directors and complete the organization of the corporation; or

2. To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 54, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 54, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 19, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.2-060 Bylaws.

(1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 20, effective January 1, 1989.

271B.2-070 Emergency bylaws.

(1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Shall bind the corporation; and

(b) Shall not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 55, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 55, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 21, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.3-010 Purposes.

(1) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 56, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 56, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 22, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.3-020 General powers.

(1) Unless its articles of incorporation provide otherwise, every corporation shall have perpetual duration and succession in its corporate name and shall have the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to:

- (a) Sue and be sued, complain and defend in its corporate name;
- (b) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (c) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;
- (d) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (e) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (f) Purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (g) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (h) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (i) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (j) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;
- (k) Elect directors and appoint officers, employees and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
- (l) Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (m) Make donations for the public welfare or for charitable, scientific, or educational purposes;
- (n) Transact any lawful business that will aid governmental policy; and
- (o) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

(2) Notwithstanding the provisions of subsection (1)(b) of this section, the presence or absence of a corporate seal on or from a writing shall neither add to nor detract from the legality thereof nor affect its validity in any manner or respect.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 23, effective January 1, 1989.

271B.3-030 Emergency powers.

(1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(b) One (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) Shall bind the corporation; and

(b) Shall not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency shall exist for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 24, effective January 1, 1989.

271B.3-040 Ultra vires.

(1) Except as provided in subsection (2) of this section, the validity of corporate action shall not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged in a proceeding by:

(a) A shareholder against the corporation to enjoin the act;

(b) The corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) The Attorney General under KRS 271B.14-300.

(d) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 25, effective January 1, 1989.

271B.4-010 Corporate name.

The name of each corporation shall satisfy the requirements of KRS 14A.3-010.

Effective: January 1, 2011

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 57, effective July 15, 2010; and ch. 151, sec. 53, effective January 1, 2011. -- Created 2007 Ky. Acts ch. 137, sec. 1, effective June 26, 2007.

Legislative Research Commission Note (1/1/2011). This section was repealed and reenacted without change to the existing language by 2010 Ky. Acts ch. 51, effective 7/15/10, and repealed and reenacted with the new language by 2010 Ky. Acts ch. 151, effective 1/1/2011. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment by ch. 51 not serve to void amendments made by other bills, and these Acts do not appear to be in conflict, therefore, they have been codified together.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.4-020 Repealed, 2011.

Catchline at repeal: Reserved name.

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 58, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 58, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 27, effective January 1, 1989.

271B.4-030 Repealed, 2011.

Catchline at repeal: Registered name.

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 59, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 59, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 28, effective January 1, 1989.

271B.5-010 Registered office and registered agent -- Requirement for agent's written acceptance of appointment.

Each corporation shall continuously maintain in this Commonwealth a registered office and a registered agent that comply with KRS 14A.4-010.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 29, sec. 8, effective June 8, 2011. -- Amended 1998 Ky. Acts ch. 341, sec. 6, effective July 15, 1998. -- Created 1988 Ky. Acts ch. 23, sec. 29, effective January 1, 1989.

271B.5-020 Repealed, 2011.

Catchline at repeal: Change of registered office or registered agent.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 30, effective January 1, 1989.

271B.5-025 Statement of change of principal office.

A corporation that changes the mailing address of its principal office shall comply with KRS 14A.5-010.

Effective: January 1, 2011

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 1, effective July 15, 2011; and ch. 151, sec. 54, effective January 1, 2011. -- Created 2007 Ky. Acts ch. 137, sec. 1, effective June 26, 2007.

Legislative Research Commission Note (1/1/2011). This section was repealed and reenacted without change to the existing language by 2010 Ky. Acts ch. 51, effective 7/15/10, and repealed and reenacted with the new language by 2010 Ky. Acts ch. 151, effective 1/1/2011. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment by ch. 51 not serve to void amendments made by other bills, and these Acts do not appear to be in conflict, therefore, they have been codified together.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.5-030 Repealed, 2011.

Catchline at repeal: Resignation of registered agent.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 31, effective January 1, 1989.

271B.5-040 Repealed, 2011.

Catchline at repeal: Service on corporation.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 32, effective January 1, 1989.

271B.6-010 Authorized shares.

(1) The articles of incorporation shall prescribe the classes of shares and series of shares within a class and the number of shares of each class and series that the corporation is authorized to issue. If more than one (1) class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series, and, prior to the issuance of shares of a class or series, the preferences, limitations, and relative rights of that class or series must be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by KRS 271B.6-020.

(2) The articles of incorporation shall authorize:

(a) One (1) or more classes or series of shares that together have unlimited voting rights; and

(b) One (1) or more classes or series of shares which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one (1) or more classes or series of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;

(b) Are redeemable or convertible as specified in the articles of incorporation:

1. At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

2. For cash, indebtedness, securities, or other property; or

3. In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with KRS 271B.1-200(2).

(5) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section shall not be considered exhaustive.

Effective: January 1, 2011

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 60, effective July 15, 2010; and amended ch. 151, sec. 121, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 60, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 33, effective January 1, 1989.

Legislative Research Commission Note (1/1/2011). This section was amended by 2010 Ky. Acts ch. 151, and repealed and reenacted by 2010 Ky. Acts ch. 51. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment not serve to void the amendment, and these Acts do not appear in conflict, therefore, they have been codified together.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.6-020 Terms of class or series determined by board of directors -- Articles of amendment.

(1) If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in KRS 271B.6-010, of:

(a) Any class of shares before the issuance of any shares of that class; or

(b) One (1) or more series within a class before the issuance of any shares of that series.

(2) Each series of a class shall be given a distinguishing designation.

(3) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the Secretary of State for filing articles of amendment, which are effective without shareholder action, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date it was adopted; and

(d) A statement that the amendment was duly adopted by the board of directors.

(5) The board of directors may adopt articles of amendment without shareholder action to make any of the following changes to a class or series created under this section:

(a) Increase the number of shares of a series but not above the total number of authorized and unissued shares of the class;

(b) Decrease the number of shares of a series but not below the number of shares of the series then issued and outstanding;

(c) Amend the designation, preferences, limitations, or relative rights of the shares of a class or series if no shares of the class or series are then issued or outstanding; or

(d) Eliminate the designation of, and all references to, a series from the articles of incorporation if no shares of the series are then issued and outstanding.

(6) If an amendment reduces the number of shares of a series, or eliminates a series, the shares previously subject to issuance in the series shall return to the status they had before the creation of the series.

(7) Articles of amendment adopted pursuant to subsection (5) of this section shall be delivered to the Secretary of State for filing and shall state:

(a) The name of the corporation;

(b) The designation of the class or series subject to the amendment;

(c) The text of the amendment changing the class or series;

(d) The date the amendment was adopted; and

(e) A statement that the amendment was duly adopted by the board of directors.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 8, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 34, effective January 1, 1989.

271B.6-030 Issued and outstanding shares.

(1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued shall be outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares shall be subject to the limitations of subsection (3) of this section and to KRS 271B.6-400.

(3) At all times that shares of the corporation are outstanding, one (1) or more shares that together have unlimited voting rights and one (1) or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 35, effective January 1, 1989.

271B.6-040 Fractional shares.

(1) A corporation may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders; and

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the information required by subsection (2) of KRS 271B.6-250.

(3) The holder of a fractional share shall be entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip shall not be entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 36, effective January 1, 1989.

271B.6-200 Subscription of shares before incorporation.

(1) A subscription for shares entered into before incorporation shall be irrevocable for six (6) months, unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation shall be fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation shall be a contract between the subscriber and the corporation subject to KRS 271B.6-210.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 37, effective January 1, 1989.

271B.6-210 Issuance of shares.

(1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares in accordance with this section, the shares issued therefor are fully paid and nonassessable. When, and to the extent, consideration for the issuance of shares consists of a promissory note or contract for services or other benefits, the shares shall be fully paid and nonassessable at the time the note is issued or the contract is entered into.

(5) The board of directors, or a committee of the board of directors, may authorize one (1) or more officers of the corporation to approve the issuance, sale, or contract for sale of shares or to determine the designation and relative rights, preferences, and limitations of a class or series of shares, all within limits specifically prescribed by the board of directors or the committee.

Effective: November 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 10, effective November 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 38, effective January 1, 1989.

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 137, sec. 179, effective June 26, 2007 provided: The General Assembly finds and declares that the amendment of KRS 271B.6-210, 271B.6-230, 271B.7-040, 271B.7-280, and 271B.8-080, as provided for in 2002 Ky. Acts ch. 102, secs. 10, 11, 15, 18, and 19, respectively, are and were effective as of November 15, 2002.

Legislative Research Commission Note (11/15/02). 2002 Ky. Acts ch. 102, sec. 22, provides that this section "shall take effect November 15, 2002, if a constitutional amendment proposing to amend Sections 190, 191, 192, 193, 194, 195, 198, 200, 202, 203, 205, 207, and 208 of the Constitution of Kentucky relating to corporations is enacted by the General Assembly and approved by the voters in the November, 2002 general elections. Otherwise, [this section] shall be void."

A constitutional amendment proposing to amend 11 of those 13 sections of the Constitution was enacted by the General Assembly and approved by the voters. During the 2002 Regular Session, the General Assembly enacted 2002 Ky. Acts ch. 341, which proposed to amend Sections 190, 191, 192, 193, 194, 198, 200, 202, 203, 207, and 208 of the Constitution of Kentucky. The voters approved that amendment in the November, 2002 general elections.

271B.6-220 Liability of shareholders.

(1) A purchaser from a corporation of its own shares shall not be liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation shall not be personally liable for the acts or debts of the corporation except that he or she may become personally liable by reason of his own acts or conduct.

(3) That a corporation has a single shareholder is not a basis for setting aside the rule recited in subsection (2) of this section.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 81, sec. 88, effective July 12, 2012. -- Created 1988 Ky. Acts ch. 23, sec. 39, effective January 1, 1989.

271B.6-230 Share dividends.

(1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one (1) or more classes or series. An issuance of shares under this subsection shall be considered a share dividend.

(2) Shares of one (1) class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) The articles of incorporation so authorize;

(b) A majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) There are no outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it shall be the date the board of directors authorizes the share dividend.

Effective: November 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 11, effective November 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 40, effective January 1, 1989.

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 137, sec. 179, effective June 26, 2007 provided: The General Assembly finds and declares that the amendment of KRS 271B.6-210, 271B.6-230, 271B.7-040, 271B.7-280, and 271B.8-080, as provided for in 2002 Ky. Acts ch. 102, secs. 10, 11, 15, 18, and 19, respectively, are and were effective as of November 15, 2002.

Legislative Research Commission Note (11/15/02). 2002 Ky. Acts ch. 102, sec. 22, provides that this section "shall take effect November 15, 2002, if a constitutional amendment proposing to amend Sections 190, 191, 192, 193, 194, 195, 198, 200, 202, 203, 205, 207, and 208 of the Constitution of Kentucky relating to corporations is enacted by the General Assembly and approved by the voters in the November, 2002 general elections. Otherwise, [this section] shall be void."

A constitutional amendment proposing to amend 11 of those 13 sections of the Constitution was enacted by the General Assembly and approved by the voters. During the 2002 Regular Session, the General Assembly enacted 2002 Ky. Acts ch. 341, which proposed to amend Sections 190, 191, 192, 193, 194, 198, 200, 202, 203, 207, and 208 of the Constitution of Kentucky. The voters approved that amendment in the November, 2002 general elections.

271B.6-240 Share options.

(1) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the terms and conditions upon which and the consideration for which the shares are to be issued.

(2) (a) The board of directors may, by a resolution adopted by the board, authorize one (1) or more officers of the corporation to do one (1) or more of the following:

1. Designate officers and employees of the corporation or of any of its subsidiaries to receive rights, options, or warrants to be issued by the corporation;
2. Determine the number of rights, options, or warrants to be issued to each recipient; and
3. Determine the time or times at or during which rights, options, or warrants may be exercised.

(b) Any resolution adopted pursuant to paragraph (a) of this subsection shall specify the total number of rights, options, or warrants the officer or officers may award.

(c) The board of directors shall not authorize an officer to designate himself or herself as a recipient of any rights, options, or warrants.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 12, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 41, effective January 1, 1989.

271B.6-250 Form and content of certificate.

(1) Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders shall be identical whether or not their shares are represented by certificates.

(2) At a minimum each share certificate shall state on its face:

  (a) The name of the issuing corporation and that it is organized under the law of this state;

  (b) The name of the person to whom issued; and

  (c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) shall be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate:

  (a) Must be signed (either manually or in facsimile) by two (2) officers designated in the bylaws or by the board of directors; and

  (b) May bear the corporate seal or its facsimile.

(5) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate shall nevertheless be valid.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 42, effective January 1, 1989.

271B.6-260 Shares without certificates -- Shares of a public benefit corporation.

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

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

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

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 28, sec. 5, effective June 29, 2017. -- Created 1988 Ky. Acts ch. 23, sec. 43, effective January 1, 1989.

271B.6-270 Restrictions on transfer or registration of shares or other securities.

(1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction shall not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares shall be valid and enforceable against the holder, or a transferee of the holder if the restriction is authorized by this section, and the holder or transferee has actual knowledge of the restriction or its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by KRS 271B.6-260(2). Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares shall be authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve exemptions under federal or state securities law;

(c) In connection with shares issued by the corporation to its officers, directors, employees, or independent contractors, including as equity-based compensation under the Internal Revenue Code; or

(d) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may without limitation:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire or transfer the restricted shares;

(c) Obligate a shareholder to transfer the restricted shares to the corporation or other persons for an agreed price or a price based on a valuation formula, including an obligation to transfer the shares for an amount equal to the original consideration paid for the shares;

(d) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(e) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 61, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 61, effective June 26, 2007. -- Amended

2002 Ky. Acts ch. 102, sec. 13, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 44, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.6-280 Expense of issue.

A corporation may pay or allow the expenses of selling or underwriting its shares or other securities, and of organizing or reorganizing the corporation, from the consideration received for shares without thereby rendering such shares or other securities not fully paid or assessable.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 45, effective January 1, 1989.

271B.6-300 Shareholders' preemptive rights.

(1) The shareholders of a corporation shall not have a preemptive right to acquire the corporation's unissued shares except:

(a) To the extent the articles of incorporation so provide; and

(b) To the extent provided in subsection (4) of this section.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or words of similar import) means that the following principles apply, except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation shall have a preemptive right granted on uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) A shareholder may waive his preemptive right. A waiver evidenced by a writing shall be irrevocable even though it is not supported by consideration.

(c) There shall be no preemptive right with respect to:

1. Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

2. Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

3. Shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation; and

4. Shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets shall have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets shall have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one (1) year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one (1) year shall be subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" include a security convertible into or carrying a right to subscribe for or acquire shares.

(4) Except to the extent limited or denied by this subsection, shareholders of a

corporation that existed on January 1, 1989, whose articles of incorporation did not on January 1, 1989, contain a provision specifically addressing preemptive rights shall have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

(a) No preemptive right shall exist:

1. To acquire any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders; or

2. To acquire any shares sold otherwise than for cash.

(b) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right.

(c) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of any class with general voting rights but without preferential rights to distributions or assets, or carrying a right to subscribe to or acquire shares of any class with general voting rights but without preferential rights to distributions or assets.

(d) Holders of shares of any class without general voting rights shall have no preemptive rights to shares of a class which is identical as to rights except that the class has general voting rights.

(e) The preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity to exercise such right.

(f) This subsection shall not apply to any class of stock of any corporation after the corporation's articles of incorporation are amended to limit or deny the preemptive rights of any class of its stock.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 441, sec. 1, effective July 13, 1990. -- Created 1988 Ky. Acts ch. 23, sec. 46, effective January 1, 1989.

271B.6-310 Corporation's acquisition of its own shares.

(1) A corporation may acquire its own shares and shares so acquired shall constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares shall be reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) Articles of amendment may be adopted by the board of directors without shareholder action, and shall be delivered to the Secretary of State for filing, and shall set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 47, effective January 1, 1989.

271B.6-400 Distributions to shareholders.

(1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3) of this section.

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption or other acquisition of the corporation's shares), it shall be the date the board of directors authorizes the distribution.

(3) No distribution shall be made if, after giving it effect:

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

(b) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7) of this section, the effect of a distribution under subsection (3) of this section shall be measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

1. The date money or other property is transferred or debt incurred by the corporation; or

2. The date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) In all other cases, as of:

1. The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or

2. The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by a reason of a distribution made in accordance with this section shall be at parity with the corporation's indebtedness to its general creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, shall not be considered a liability for purposes of determinations under subsection (3) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be

made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest shall be treated as a distribution, the effect of which is measured on the date the payment is actually made.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 48, effective January 1, 1989.

271B.7-010 Annual meeting.

(1) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws shall not affect the validity of any corporate action.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 49, effective January 1, 1989.

271B.7-020 Special meeting.

(1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) If the holders of at least thirty-three and one-third percent (33 1/3%) (or such higher or lower percentage as is contained in the articles of incorporation) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) If not otherwise fixed under KRS 271B.7-030 or 271B.7-070, the record date for determining shareholders entitled to demand a special meeting shall be the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by subsection (3) of KRS 271B.7-050 may be conducted at a special shareholders' meeting.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 50, effective January 1, 1989.

271B.7-030 Court-ordered meeting.

(1) The Circuit Court for the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(b) On application of a shareholder who signed a demand for a special meeting valid under KRS 271B.7-020, if:

1. Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary; or

2. The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 51, effective January 1, 1989.

271B.7-040 Action without meeting.

(1) Except as provided in the articles of incorporation, action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice, except as provided in subsection (8) of this section, if the action is taken by all the shareholders entitled to vote on the action.

(2) If the articles of incorporation so provide, any action except the election of directors by cumulative voting pursuant to KRS 271B.7-280 required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice, except as provided in subsection (8) of this section, if the action is taken by shareholders entitled to vote on the action representing not less than eighty percent (80%), or such higher percentage required by this chapter or the articles of incorporation, of the votes entitled to be cast.

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

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

(5) Any shareholder giving a consent may revoke the consent by a writing received by the corporation prior to the time that consents representing the votes required to take the action under this section have been delivered to the corporation but may not do so thereafter.

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

(7) Prompt notice of the taking of any action by shareholders without a meeting under this section by less than unanimous written consent shall be given to those shareholders entitled to vote on the action who have not consented in writing.

(8) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by consent of the voting shareholders under this section, the corporation shall give its nonvoting shareholders and voting shareholders whose consent is not solicited, written notice of the proposed action at least ten (10) days before the action is taken. The notice shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

Effective: November 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 15, effective November 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 52, effective January 1, 1989.

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 137, sec. 179, effective June 26, 2007 provided: The General Assembly finds and declares that the amendment of KRS 271B.6-210, 271B.6-230, 271B.7-040, 271B.7-280, and 271B.8-080, as provided for in 2002 Ky. Acts ch. 102, secs. 10, 11, 15, 18, and 19, respectively, are and were effective as of November 15, 2002.

Legislative Research Commission Note (11/15/02). 2002 Ky. Acts ch. 102, sec. 22, provides that this section "shall take effect November 15, 2002, if a constitutional amendment proposing to amend Sections 190, 191, 192, 193, 194, 195, 198, 200, 202, 203, 205, 207, and 208 of the Constitution of Kentucky relating to corporations is enacted by the General Assembly and approved by the voters in the November, 2002 general elections. Otherwise, [this section] shall be void."

A constitutional amendment proposing to amend 11 of those 13 sections of the Constitution was enacted by the General Assembly and approved by the voters. During the 2002 Regular Session, the General Assembly enacted 2002 Ky. Acts ch. 341, which proposed to amend Sections 190, 191, 192, 193, 194, 198, 200, 202, 203, 207, and 208 of the Constitution of Kentucky. The voters approved that amendment in the November, 2002 general elections.

271B.7-050 Notice of meeting.

(1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation shall be required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting shall not be required to include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under KRS 271B.7-030 or 271B.7-070, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting shall be the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice shall not be required to be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under KRS 271B.7-070, however, notice of the adjourned meeting shall be given under this section to persons who are shareholders as of the new record date.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 53, effective January 1, 1989.

271B.7-060 Waiver of notice.

(1) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting shall:

(a) Waive objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(b) Waive objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 54, effective January 1, 1989.

271B.7-070 Record date.

(1) The bylaws may fix or provide the manner of fixing the record date for one (1) or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) A record date fixed under this section shall not be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting shall be effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 55, effective January 1, 1989.

271B.7-080 Remote communication.

(1) If the board of directors is authorized to determine the place of an annual or special meeting of shareholders, the board of directors, in its sole discretion, may determine that the meeting shall not be held at any place but shall instead be held solely by means of remote communication under subsection (2) of this section.

(2) If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at a meeting of shareholders may by means of remote communication:

(a) Participate in a meeting of shareholders; and

(b) Be deemed present in person and vote at a meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, if:

1. The corporation implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxyholder;

2. The corporation implements reasonable measures to provide shareholders and proxyholders referred to in subparagraph 1. of this paragraph a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings; and

3. The corporation records any vote or other action taken at the meeting by a shareholder or proxyholder by means of remote communication. The corporation shall maintain as a record the recorded vote or other action taken.

Effective: July 15, 2002

History: Created 2002 Ky. Acts ch. 102, sec. 21, effective July 15, 2002.

271B.7-200 Shareholders' list for meeting.

(1) After fixing a record date for a meeting, a corporation shall prepare a list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(2) The shareholders' list shall be available for inspection by any shareholder, beginning five (5) business days before the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney shall be entitled on written demand to inspect and, subject to the requirements of subsection (3) of KRS 271B.16-020, to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney shall be entitled to inspect the list at any time during the meeting or any adjournment.

(4) Refusal or failure to prepare or make available the shareholders' list shall not affect the validity of action taken at the meeting.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 56, effective January 1, 1989.

271B.7-210 Voting entitlement of shares.

(1) Except as provided in subsections (2) and (4) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, shall be entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares shall be entitled to vote.

(2) Absent special circumstances, the shares of a corporation shall not be entitled to vote if they are owned, directly or indirectly, by an entity, domestic or foreign, and the corporation controls, directly or indirectly, the entity's determination to vote, and how to vote, the shares.

(3) Subsection (2) of this section shall not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares shall not be entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 62, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 62, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 57, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.7-220 Proxies.

(1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder, or his or her agent or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain, or be accompanied by, information from which one can determine that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the electronic transmission.

(3) An appointment of a proxy shall be effective when a signed appointment form or an electronic transmission of the appointment is received by the secretary or other officer or agent authorized to tabulate votes. An appointment shall be valid for eleven (11) months unless a longer period is expressly provided in the appointment form.

(4) An appointment of a proxy shall be revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under KRS 271B.7-310.

(5) The death or incapacity of the shareholder appointing a proxy shall not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section shall be revocable when the interest with which it is coupled is extinguished. The revocation of an appointment under this subsection shall not be effective until the secretary of the corporation has received written notice of the revocation.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to KRS 271B.7-240 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 16, effective July 15, 2002. -- Created

1988 Ky. Acts ch. 23, sec. 58, effective January 1, 1989.

271B.7-230 Shares held by nominees.

(1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) The types of nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner;

(c) The manner in which the procedure is selected by the nominee;

(d) The information that must be provided when the procedure is selected;

(e) The period for which selection of the procedure is effective; and

(f) Other aspects of the rights and duties created.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 59, effective January 1, 1989.

271B.7-240 Corporation's acceptance of votes and persons authorized to vote shares.

(1) If the name signed on or submitted with a vote, consent, waiver, or proxy appointment corresponds to the name or electronic signature of a shareholder, the corporation if acting in good faith shall be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder. For purposes of this section, a telegram or cablegram appearing to have been transmitted by the proper person, or a photographic, photostatic, or equivalent reproduction of a writing appointing a proxy may be accepted by the corporation, if acting in good faith, as a sufficient, signed appointment form.

(2) If the name signed on or submitted with a vote, consent, waiver, or proxy appointment does not correspond to the name or electronic signature of its shareholder, the corporation if, acting in good faith, shall nevertheless be entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) Two (2) or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation shall be entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder or, in the case of an electronic record, to affix the shareholder's electronic signature to the electronic record.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or KRS 271B.7-220(2) shall not be liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section or KRS 271B.7-220(2) shall be valid, unless a court of competent jurisdiction determines otherwise.

(6) Shares standing in the name of another corporation, domestic or foreign, may be voted by either the president of such corporation or by proxy appointed by him, unless the board of directors of such other corporation authorizes another person to vote such shares.

(7) Shares held by an administrator, executor, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(8) Where shares are held jointly by three (3) or more fiduciaries acting under an instrument becoming effective after June 30, 1946, the will of the majority of such fiduciaries shall control the manner of voting or the giving of a proxy, unless the instrument or order appointing the fiduciaries otherwise directs. Where, in any case, fiduciaries are equally divided upon the manner of voting shares jointly held by them, any court of competent jurisdiction may, upon petition filed by any of the fiduciaries, or by any beneficiary, appoint an additional person to act with the fiduciaries in determining the manner in which the shares shall be voted upon the particular questions as to which the fiduciaries are divided.

(9) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(10) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the share so transferred.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 17, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 60, effective January 1, 1989.

271B.7-250 Quorum and voting requirements for voting groups.

(1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group shall constitute a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it shall be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter (other than the election of directors) by a voting group shall be approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (1) or (3) of this section shall be governed by KRS 271B.7-270.

(5) The election of directors shall be governed by KRS 271B.7-280.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 61, effective January 1, 1989.

271B.7-260 Action by single and multiple voting groups.

(1) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter shall be taken when voted upon by that voting group as provided in KRS 271B.7-250.

(2) If the articles of incorporation or this chapter provide for voting by two (2) or more voting groups on a matter, action on that matter shall be taken only when voted upon by each of those voting groups counted separately as provided in KRS 271B.7-250. Action may be taken by one (1) voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 62, effective January 1, 1989.

271B.7-270 Greater quorum or voting requirements.

(1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this chapter.

(2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 63, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 63, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 63, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.7-280 Voting for directors -- Cumulative voting.

(1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. A "plurality" means that the individuals with the largest number of votes are elected as directors up to the maximum number of directors to be chosen at the election.

(2) Shareholders do not have the right to cumulate their votes for directors unless the articles of incorporation so provide.

(3) A statement included in the articles of incorporation that "all, or a designated group of, shareholders are entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

Effective: November 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 18, effective November 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 64, effective January 1, 1989.

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 137, sec. 179, effective June 26, 2007 provided: The General Assembly finds and declares that the amendment of KRS 271B.6-210, 271B.6-230, 271B.7-040, 271B.7-280, and 271B.8-080, as provided for in 2002 Ky. Acts ch. 102, secs. 10, 11, 15, 18, and 19, respectively, are and were effective as of November 15, 2002.

Legislative Research Commission Note (11/15/02). 2002 Ky. Acts ch. 102, sec. 22, provides that this section "shall take effect November 15, 2002, if a constitutional amendment proposing to amend Sections 190, 191, 192, 193, 194, 195, 198, 200, 202, 203, 205, 207, and 208 of the Constitution of Kentucky relating to corporations is enacted by the General Assembly and approved by the voters in the November, 2002 general elections. Otherwise, [this section] shall be void."

A constitutional amendment proposing to amend 11 of those 13 sections of the Constitution was enacted by the General Assembly and approved by the voters. During the 2002 Regular Session, the General Assembly enacted 2002 Ky. Acts ch. 341, which proposed to amend Sections 190, 191, 192, 193, 194, 198, 200, 202, 203, 207, and 208 of the Constitution of Kentucky. The voters approved that amendment in the November, 2002 general elections.

271B.7-300 Voting trusts.

(1) One (1) or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust shall become effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust shall be valid for not more than ten (10) years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten (10) years each by signing an extension. An extension shall be valid for ten (10) years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement shall bind only those parties signing it.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 65, effective January 1, 1989.

271B.7-310 Voting agreements.

(1) Two (2) or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section shall not be subject to the provisions of KRS 271B.7-300.

(2) A voting agreement created under this section shall be specifically enforceable.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 66, effective January 1, 1989.

271B.7-400 Procedure in derivative proceedings -- Shareholders of a public benefit corporation.

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

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

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

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

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

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

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

(8) Shareholders of a public benefit corporation owning individually or collectively, as of the date of instituting a derivative proceeding, at least two percent (2%) of the corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of that percentage or shares of at least two million dollars ($2,000,000) in market value, may maintain a derivative proceeding to enforce the requirements set forth in KRS 271B.8-300(8).

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 28, sec. 6, effective June 29, 2017. -- Amended 2015 Ky. Acts ch. 34, sec. 7, effective June 24, 2015. -- Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 64, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 64, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 67, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec.

183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.8-010 Requirement for and duties of board of directors.

(1) Except as provided in subsection (3) of this section, each corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

(3) A corporation having fifty (50) or fewer shareholders may dispense with or limit the authority of a board of directors by describing in its articles of incorporation who will perform some or all of the duties of a board of directors.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 68, effective January 1, 1989.

271B.8-020 Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director shall not be required to be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 69, effective January 1, 1989.

271B.8-030 Number and election of directors.

(1) A board of directors shall consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent (30%) or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent (30%) the number of directors last approved by the shareholders.

(3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(4) Directors shall be elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under KRS 271B.8-060.

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

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 81, sec. 89, effective July 12, 2012. -- Created 1988 Ky. Acts ch. 23, sec. 70, effective January 1, 1989.

271B.8-040 Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one (1) or more authorized classes of shares. A class (or classes) of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 71, effective January 1, 1989.

271B.8-050 Terms of directors generally.

(1) The terms of the initial directors of a corporation shall expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors shall expire at the next annual shareholders' meeting following their election unless their terms are staggered under KRS 271B.8-060.

(3) A decrease in the number of directors shall not shorten an incumbent director's term.

(4) For a corporation the directors of which are divided into groups under KRS 271B.8-060, any director filling a vacancy under KRS 271B.8-100 shall hold office until the next election of the group in which the director is filling the vacancy, and until his or her successor shall be elected and qualified.

(5) Despite the expiration of a director's term, he shall continue to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

Effective: June 21, 2001

History: Amended 2001 Ky. Acts ch. 130, sec. 1, effective June 21, 2001. -- Created 1988 Ky. Acts ch. 23, sec. 72, effective January 1, 1989.

271B.8-060 Staggered terms for directors.

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors in two (2) or three (3) groups, with each group containing one-half (1/2) or one-third (1/3) of the total, as near as may be. In that event, the terms of directors in the first group shall expire at the first annual shareholders' meeting after their election, the terms of the second group shall expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, shall expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 21, sec. 1, effective July 15, 1996. -- Created 1988 Ky. Acts ch. 23, sec. 73, effective January 1, 1989.

271B.8-070 Resignation of directors.

(1) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.

(2) A resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 74, effective January 1, 1989.

271B.8-080 Removal of directors by shareholders.

(1) The shareholders may remove one (1) or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.

(3) If cumulative voting is authorized, a director shall not be removed if the number of votes sufficient to elect him or her under cumulative voting is voted against his or her removal. If cumulative voting is not authorized, a director shall be removed only if the number of votes cast to remove him or her exceeds the number of votes cast not to remove him or her.

(4) A director shall be removed by the shareholders only at a meeting called for the purpose of removing him or her, and the meeting notice shall state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

Effective: November 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 19, effective November 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 75, effective January 1, 1989.

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 137, sec. 179, effective June 26, 2007 provided: The General Assembly finds and declares that the amendment of KRS 271B.6-210, 271B.6-230, 271B.7-040, 271B.7-280, and 271B.8-080, as provided for in 2002 Ky. Acts ch. 102, secs. 10, 11, 15, 18, and 19, respectively, are and were effective as of November 15, 2002.

Legislative Research Commission Note (11/15/02). 2002 Ky. Acts ch. 102, sec. 22, provides that this section "shall take effect November 15, 2002, if a constitutional amendment proposing to amend Sections 190, 191, 192, 193, 194, 195, 198, 200, 202, 203, 205, 207, and 208 of the Constitution of Kentucky relating to corporations is enacted by the General Assembly and approved by the voters in the November, 2002 general elections. Otherwise, [this section] shall be void."

A constitutional amendment proposing to amend 11 of those 13 sections of the Constitution was enacted by the General Assembly and approved by the voters. During the 2002 Regular Session, the General Assembly enacted 2002 Ky. Acts ch. 341, which proposed to amend Sections 190, 191, 192, 193, 194, 198, 200, 202, 203, 207, and 208 of the Constitution of Kentucky. The voters approved that amendment in the November, 2002 general elections.

271B.8-100 Vacancy on board.

(1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group shall be entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under subsection (2) of KRS 271B.8-070 or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 76, effective January 1, 1989.

271B.8-110 Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 77, effective January 1, 1989.

271B.8-200 Meetings.

(1) The board of directors may hold regular or special meetings in or out of this state.

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

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 78, effective January 1, 1989.

271B.8-205 Court-ordered meeting.

The Circuit Court for the county where a corporation's principal office or, if there is none in this state, its registered office is located may order a special meeting of the board of directors on the application of one-third (1/3) or more of the incumbent number of directors. The court may fix the time and place of the meeting, prescribe the form and content of the meeting notice, and enter such other orders as are necessary to accomplish the purpose of the meeting.

Effective: July 15, 2010

History: Created 2010 Ky. Acts ch. 133, sec. 2, effective July 15, 2010.

271B.8-210 Action without meeting.

(1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of director's meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section shall be effective when the last director signs the consent, unless the consent specifies a different effective date.

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

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 79, effective January 1, 1989.

271B.8-220 Notice of meeting.

(1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two (2) days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 65, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 65, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 80, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.8-230 Waiver of notice.

(1) A director may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (2) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting shall waive any required notice to him of the meeting, unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 81, effective January 1, 1989.

271B.8-240 Quorum and voting.

(1) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors shall consist of:

(a) A majority of the fixed number of directors if the corporation has a fixed board size; or

(b) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors determined under subsection (1) of this section.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present shall be the act of the board of directors, unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken shall be deemed to have assented to the action taken unless:

(a) He objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting;

(b) His dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) He delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention shall not be available to a director who votes in favor of the action taken.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 82, effective January 1, 1989.

271B.8-250 Committees -- Powers -- Limitations -- Alternate members.

(1) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one (1) or more committees and appoint one (1) or more members of the board of directors to serve on any such committee.

(2) Unless this chapter provides otherwise, the creation of a committee and appointment of members to it shall be approved by the greater of:

(a) A majority of all the directors in office when the action is taken; or

(b) The number of directors required by the articles of incorporation or bylaws to take action under KRS 271B.8-240.

(3) KRS 271B.8-200 to 271B.8-240 shall apply both to committees of the board and to their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under KRS 271B.8-010.

(5) A committee shall not, however:

(a) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors;

(b) Approve or propose to shareholders action that this chapter requires be approved by shareholders;

(c) Fill vacancies on the board of directors or, subject to the provisions of subsection (7) of this section, on any of its committees; or

(d) Adopt, amend, or repeal bylaws.

(6) The creation of, delegation of authority to, or action by a committee shall not alone constitute compliance by a director with the standards of conduct described in KRS 271B.8-300.

(7) The board of directors may appoint one (1) or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation, the bylaws, or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting may unanimously appoint another director to act in place of the absent or disqualified member.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 102, sec. 20, effective July 15, 2002. -- Created 1988 Ky. Acts ch. 23, sec. 83, effective January 1, 1989.

271B.8-300 General standards for directors -- Directors of a public benefit corporation.

(1) A director shall discharge his duties as a director, including his duties as a member of a committee:

(a) In good faith;

(b) On an informed basis; and

(c) In a manner he honestly believes to be in the best interests of the corporation.

(2) A director shall be considered to discharge his duties on an informed basis if he makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the corporation, or into a particular action to be taken or decision to be made.

(3) In discharging his duties a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One (1) or more officers or employees of the corporation whom the director honestly believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director honestly believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he is not a member, if the director honestly believes the committee merits confidence.

(4) A director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (3) of this section unwarranted.

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

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

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

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

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

(8) In a public benefit corporation:

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

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

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

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

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 28, sec. 7, effective June 29, 2017. -- Created 1988 Ky. Acts ch. 23, sec. 85, effective January 1, 1989; and ch. 224, sec. 8, effective July 15, 1988.

Formerly codified as KRS 271A.202.

271B.8-310 Director conflict of interest.

(1) A conflict of interest transaction shall be a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction shall not be voidable by the corporation solely because of the director's interest in the transaction if any one (1) of the following is true:

(a) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

(b) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

(c) The transaction was fair to the corporation.

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

(a) Another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or

(b) Another entity of which he is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(3) For purposes of subsection (1)(a) of this section, a conflict of interest transaction shall be considered authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum shall be present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction shall not affect the validity of any action taken under subsection (1)(a) of this section if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(4) For purposes of subsection (1)(b) of this section, a conflict of interest transaction shall be considered authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (2)(a) of this section, may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (1)(b) of this section. The vote of those shares, however, shall be counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares that are entitled to be counted in a vote on the transaction under this subsection shall constitute a quorum for the purpose of taking action under this section.

Effective: July 15, 1988

History: Created 1988 Ky. Acts ch. 23, sec. 86, effective January 1, 1989; and ch. 224, sec. 9, effective July 15, 1988.

Formerly codified as KRS 271A.206.

271B.8-320 Loans to directors.

(1) Except as provided by subsection (3) of this section, a corporation may not lend money to or guarantee the obligation of a director of the corporation unless:

(a) The particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director; or

(b) The corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

(2) The fact that a loan or guarantee is made in violation of this section shall not affect the borrower's liability on the loan or the corporation's liability on the guarantee.

(3) This section shall not apply to loans and guarantees authorized by statute regulating any special class of corporations.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 87, effective January 1, 1989.

271B.8-330 Liability for unlawful distributions.

(1) A director who votes for or who assents to a distribution made in violation of KRS 271B.6-400 or the articles of incorporation shall be personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating KRS 271B.6-400 or the articles of incorporation if it is established that he did not perform his duties in compliance with KRS 271B.8-300. In any proceeding commenced under this section, a director shall have all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution shall be entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of KRS 271B.6-400 or the articles of incorporation.

(3) A proceeding under this section shall be barred unless it is commenced within two (2) years after the date on which the effect of the distribution was measured under subsection (5) or (7) of KRS 271B.6-400.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 88, effective January 1, 1989.

271B.8-400 Required officers.

(1) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one (1) or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one (1) office in a corporation.

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

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 81, sec. 90, effective July 12, 2012. -- Created 1988 Ky. Acts ch. 23, sec. 89, effective January 1, 1989.

271B.8-410 Duties of officers.

Each officer shall have the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 90, effective January 1, 1989.

271B.8-420 Standards of conduct for officers.

(1) An officer with discretionary authority shall discharge his duties under that authority:

(a) In good faith;

(b) On an informed basis; and

(c) In a manner he honestly believes to be in the best interests of the corporation.

(2) An officer shall be considered to discharge his duties on an informed basis if he makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the corporation, or into a particular action to be taken or decision to be made.

(3) In discharging his duties an officer shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One (1) or more officers or employees of the corporation whom the officer honestly believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants, or other persons as to matters the officer honestly believes are within the person's professional or expert competence.

(4) An officer shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (3) of this section unwarranted.

(5) Any action taken as an officer, or any failure to take any action as an officer, shall not be the basis for monetary damages or injunctive relief unless:

(a) The officer has breached or failed to perform his duties in compliance with this section; and

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

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

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

Effective: July 15, 1988

History: Created 1988 Ky. Acts ch. 23, sec. 91, effective January 1, 1989 and ch. 224, sec. 10, effective July 15, 1988.

Formerly codified as KRS 271A.257.

271B.8-430 Resignation and removal of officers.

(1) An officer may resign at any time by delivering notice to the corporation. A resignation shall be effective when the notice is delivered, unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor shall not take office until the effective date.

(2) A board of directors may remove any officer at any time with or without cause.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 92, effective January 1, 1989.

271B.8-440 Contract rights of officers.

(1) The appointment of an officer shall not itself create contract rights.

(2) An officer's removal shall not affect the officer's contract rights, if any, with the corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 93, effective January 1, 1989.

271B.8-500 Definitions for KRS 271B.8-510 to 271B.8-580.

As used in KRS 271B.8-510 to 271B.8-580:

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

(2) "Director" means an individual who is or was a director of a corporation or an individual, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director shall be considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

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

(5) "Official capacity" means:

(a) When used with respect to a director, the office of director in a corporation; and

(b) When used with respect to an individual other than a director, as contemplated in KRS 271B.8-560, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" shall not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

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

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 94, effective January 1, 1989.

271B.8-510 Authority to indemnify.

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

(a) He conducted himself in good faith; and

(b) He honestly believed:

1. In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

2. In all other cases, that his conduct was at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan shall be conduct that satisfies the requirement of subsection (1)(b)2. of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not be, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

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

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 34, sec. 8, effective June 24, 2015. -- Created 1988 Ky. Acts ch. 23, sec. 95, effective January 1, 1989.

271B.8-520 Mandatory indemnification.

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

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 96, effective January 1, 1989.

271B.8-530 Advance for expenses.

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

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

(b) A determination is made that the facts then known to those making the determination would not preclude indemnification under KRS 271B.8-500 to 271B.8-580.

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

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in KRS 271B.8-550.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 193, sec. 6, effective June 29, 2017. -- Created 1988 Ky. Acts ch. 23, sec. 97, effective January 1, 1989.

271B.8-540 Court-ordered indemnification.

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

(1) The director is entitled to mandatory indemnification under KRS 271B.8-520, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in KRS 271B.8-510 or was adjudged liable as described in subsection (4) of KRS 271B.8-510, but if he was adjudged so liable his indemnification shall be limited to reasonable expenses incurred.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 98, effective January 1, 1989.

271B.8-550 Determination and authorization of indemnification.

(1) A corporation shall not indemnify a director under KRS 271B.8-510 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in KRS 271B.8-510.

(2) The determination shall be made:

(a) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under subsection (2)(a) of this section, by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceeding;

(c) By special legal counsel:

1. Selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) and (b) of this section; or

2. If a quorum of the board of directors cannot be obtained under subsection (2)(a) of this section and a committee cannot be designated under subsection (2)(b) of this section, selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or

(d) By the shareholders, but shares owned by or voted under the control of directors or shareholders who are at the time parties to the proceeding shall not be voted on the determination.

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

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 193, sec. 7, effective June 29, 2017. -- Created 1988 Ky. Acts ch. 23, sec. 99, effective January 1, 1989.

271B.8-560 Indemnification of officers, employees, and agents.

Unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation who is not a director shall be entitled to mandatory indemnification under KRS 271B.8-520, and is entitled to apply for court-ordered indemnification under KRS 271B.8-540, in each case to the same extent as a director;

(2) The corporation may indemnify and advance expenses under KRS 271B.8-500 to 271B.8-580 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

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

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 100, effective January 1, 1989.

271B.8-570 Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, manager, partner, trustee, employee, or agent of another entity, or of an employee benefit plan or other enterprise, against liability asserted against or incurred in that capacity or arising from the status as a director, officer, manager, employee, or agent, whether or not the corporation would have power to indemnify against the same liability under KRS 271B.8-510 or 271B.8-520.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 66, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 66, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 101, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.8-580 Application of KRS 271B.8-500 to 271B.8-580.

(1) The indemnification and advancement of expenses provided by, or granted pursuant to, KRS 271B.8-500 to 271B.8-580 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(2) KRS 271B.8-500 to 271B.8-580 shall not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness at a proceeding at a time when he has not been made a named defendant or responded to the proceeding.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 102, effective January 1, 1989.

271B.10-010 Authority to amend -- Conversion to nonstock, nonprofit corporation.

(1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation shall be determined as of the effective date of the amendment.

(2) A shareholder of the corporation shall not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

(3) A corporation existing under this chapter or its predecessors may amend its articles of incorporation to convert into a nonstock, nonprofit corporation under KRS 273.161 to 273.387, but a corporation existing under KRS 273.161 to 273.387 may not convert to a corporation existing under this chapter.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 182, sec. 8, effective June 20, 2005. -- Created 1988 Ky. Acts ch. 23, sec. 103, effective January 1, 1989.

271B.10-020 Amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation without shareholder action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) To delete the mailing address of the corporation's initial principal office if the statement containing the mailing address of new principal office is on file with the Secretary of State;

(5) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(6) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

(7) To make any other change expressly permitted by this chapter to be made without shareholder action.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 341, sec. 7, effective July 15, 1998. -- Created 1988 Ky. Acts ch. 23, sec. 104, effective January 1, 1989.

271B.10-030 Amendment by board of directors and shareholders.

(1) A corporation's board of directors may propose one (1) or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholder's meeting in accordance with KRS 271B.7-050. The notice of meeting shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) Unless this chapter, the articles of incorporation, or the board of directors (acting pursuant to subsection (3) of this section) requires a greater vote or a vote by voting groups, the amendment to be adopted shall be approved by:

(a) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) The votes required by KRS 271B.7-250 and 271B.7-260 by every other voting group entitled to vote on the amendment.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 105, effective January 1, 1989.

271B.10-040 Voting on amendments by voting groups.

(1) The holders of the outstanding shares of a class shall be entitled to vote as a separate voting group (if shareholder voting is otherwise required by this chapter) on a proposed amendment if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class;

(b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(d) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(e) Change the shares of all or part of the class into a different number of shares of the same class;

(f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(h) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one (1) or more of the ways described in subsection (1) of this section, the shares of that series shall be entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two (2) or more series of shares to vote as separate voting groups under this section would affect those two (2) or more series in the same or a substantially similar way, the shares of all the series so affected shall vote together as a single voting group on the proposed amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 106, effective January 1, 1989.

271B.10-050 Amendment before issuance of shares.

If a corporation has not yet issued shares, its incorporators or board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 107, effective January 1, 1989.

271B.10-060 Articles of amendment.

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and

(6) If an amendment was approved by the shareholders:

  (a) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

  (b) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

(7) If the amendment includes language converting the corporation into a nonprofit, nonstock corporation under KRS 273.161 to 273.387, the conversion shall be effective upon the filing of the amendment with the Secretary of State, and, upon filing, the Secretary of State shall immediately forward a copy of the amendment to the commissioner of revenue.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 182, sec. 9, effective June 20, 2005. -- Created 1988 Ky. Acts ch. 23, sec. 108, effective January 1, 1989.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

271B.10-070 Restated articles of incorporation.

(1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

(2) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in KRS 271B.10-030.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

   (a) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

   (b) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by KRS 271B.10-060.

(5) Restated articles of incorporation supersede the original articles of incorporation and all amendments to them when the restated articles of incorporation become effective pursuant to KRS 14A.2-070.

(6) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section.

Effective: January 1, 2011

History: Amended 2010 Ky. Acts ch. 151, sec. 132, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 109, effective January 1, 1989.

271B.10-080 Amendment pursuant to reorganization.

(1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by KRS 271B.2-020.

(2) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization shall not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section shall not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 110, effective January 1, 1989.

271B.10-090 Effect of amendment.

An amendment to articles of incorporation shall not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name shall not abate a proceeding brought by or against the corporation in its former name.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 111, effective January 1, 1989.

271B.10-200 Amendment by board of directors or shareholders.

(1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part; or

(b) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

(3) A shareholder of the corporation shall not have a vested property right resulting from any provision in the bylaws.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 193, sec. 8, effective June 29, 2017. -- Created 1988 Ky. Acts ch. 23, sec. 112, effective January 1, 1989.

271B.10-220 Bylaw increasing quorum or voting requirements for directors.

(1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 113, effective January 1, 1989.

271B.11-010 Merger.

(1) One (1) or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by KRS 271B.11-030) approve a plan of merger.

(2) The plan of merger shall set forth:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation; and

(b) Other provisions relating to the merger.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 114, effective January 1, 1989.

271B.11-020 Share exchange.

(1) A corporation may acquire all of the outstanding shares of one (1) or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by KRS 271B.11-030) approve the exchange.

(2) The plan of exchange shall set forth:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange; and

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may set forth other provisions relating to the exchange.

(4) This section shall not limit the power of a corporation to acquire all or part of the shares of one (1) or more classes or series of another corporation through a voluntary exchange or otherwise.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 115, effective January 1, 1989.

271B.11-025 Change of status from or to a public benefit corporation -- Conditions for.

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

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

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

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

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

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

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

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

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

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

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

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

Effective: June 29, 2017

History: Created 2017 Ky. Acts ch. 28, sec. 3, effective June 29, 2017.

271B.11-030 Action on plan.

(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (7) of this section) or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote shall approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless this chapter, the articles of incorporation, or the board of directors (acting pursuant to subsection (3) of this section) require a greater vote or vote by voting groups, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups shall be required:

(a) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under KRS 271B.10-040; and

(b) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger shall not be required if:

(a) The articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in KRS 271B.10-020) from its articles before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger) will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 116, effective January 1, 1989.

271B.11-040 Merger of subsidiary.

(1) A parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(2) The board of directors of the parent shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(3) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(4) The parent shall not deliver articles of merger to the Secretary of State for filing until at least thirty (30) days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(5) Articles of merger under this section shall not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in KRS 271B.10-020).

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 117, effective January 1, 1989.

271B.11-050 Articles of merger or share exchange.

(1) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the Secretary of State for filing articles of merger or share exchange setting forth:

(a) The names of the parties to the merger or share exchange;

(b) The name of the surviving corporation, if a merger, or the name of the acquiring corporation, if a share exchange;

(c) If a merger, the information required by KRS 271B.11-010(2)(c);

(d) If a merger, any amendment to the articles of incorporation of the surviving corporation;

(e) If a share exchange, the information required by KRS 271B.11-020(2)(c);

(f) If shareholder approval was not required, a statement to that effect; and

(g) If approval of the shareholders of one (1) or more corporations party to the merger or share exchange was required:

1. The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

2. Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(2) A merger or share exchange shall take effect upon the effective date of the articles of merger or share exchange.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 34, sec. 9, effective June 24, 2015. -- Created 1988 Ky. Acts ch. 23, sec. 118, effective January 1, 1989.

Legislative Research Commission Note (6/24/2015). During codification, the Reviser of Statutes has corrected a manifest clerical or typographical error in subsection (1)(e) of this statute from the way it appeared in 2015 Ky. Acts ch. 34, sec. 9 by changing a citation to "KRS 271B.11-020(c)" to read "KRS 271B.11-020(2)(c)." None of the text of the subsection was changed.

271B.11-060 Effect of merger or share exchange.

(1) When a merger takes effect:

(a) Every other corporation party to the merger shall merge into the surviving corporation and the separate existence of every corporation, except the surviving corporation, shall cease;

(b) The title to all property, whether real, personal, or intangible, owned by each corporation party to the merger shall be vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation shall have all liabilities of each corporation party to the merger;

(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) The articles of incorporation of the surviving corporation shall be amended to the extent provided in the articles of merger; and

(f) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property shall be converted, and the former holders of the shares shall be entitled only to the rights provided in the articles of merger or to their rights under Subtitle 13.

(2) When a share exchange takes effect, the shares of each acquired corporation shall be exchanged as provided in the articles of share exchange, and the former holders of the shares shall be entitled only to the exchange rights provided in the articles of share exchange or to their rights under Subtitle 13.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 34, sec. 10, effective June 24, 2015. -- Amended 2012 Ky. Acts ch. 81, sec. 91, effective July 12, 2012. -- Created 1988 Ky. Acts ch. 23, sec. 119, effective January 1, 1989.

271B.11-070 Merger or share exchange with foreign corporation.

(1) One (1) or more foreign corporations may merge or enter into a share exchange with one (1) or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with KRS 271B.11-050 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of KRS 271B.11-010 to 271B.11-040 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with KRS 271B.11-050.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange shall be deemed:

(a) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange;

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Subtitle 13; and

(c) To have agreed, to the extent required by Section 200 of the Kentucky Constitution, that the courts of this Commonwealth shall retain jurisdiction over that part of the corporate property within the limits of this Commonwealth in all matters which may arise, as if the transaction had not taken place.

(3) This section shall not limit the power of a foreign corporation to acquire all or part of the shares of one (1) or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 120, effective January 1, 1989.

271B.11-080 Merger of domestic or foreign limited liability companies or limited partnerships with domestic corporations -- Shareholder's liability following merger.

(1) One (1) or more domestic or foreign limited liability companies or limited partnerships may merge with one (1) or more domestic corporations if:

(a) The merger is permitted by the laws of the state or country under whose law each foreign limited liability company or limited partnership is incorporated, organized, or formed, and each foreign limited liability company or limited partnership complies with those laws in effecting the merger;

(b) Each domestic limited liability company party to the merger complies with the applicable provisions of the Kentucky Revised Statutes;

(c) Each domestic limited partnership party to the merger complies with the applicable provisions of KRS Chapter 362;

(d) Each domestic corporation complies with the applicable provisions of KRS 271B.11-010 to 271B.11-040.

(2) The plan of merger shall set forth:

(a) The name of each constituent business entity that is a party to the merger and the name of the surviving business entity into which each constituent business entity proposes to merge;

(b) The terms and conditions of the proposed merger, including but not limited to, a statement which sets forth whether limited liability is retained by the surviving business entity;

(c) The manner and basis of converting the shares in each corporation and the interests in each business entity that is a party to the merger into interests, shares, or other securities or obligations, as the case may be, of the surviving entity, or of any other business entity, or, in whole or in part, into cash or other property;

(d) The amendments to the articles of organization of a limited liability company, or articles of incorporation of a corporation or certificate of limited partnership, as the case may be, of the surviving business entity as are desired to be effected by the merger, or that no changes are desired;

(e) Other provisions relating to the proposed merger that are deemed necessary or desirable.

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

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

(b) The plan of merger;

(c) The name of the surviving business entity;

(d) A statement that the plan of merger was duly authorized and approved by each constituent business entity in accordance with the laws applicable to such business entity; and

(e) If the surviving entity is not a business entity organized under the laws of this Commonwealth, a statement that the surviving business entity:

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

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

(4) The articles of merger filed by the surviving entity in accordance with this section shall also be deemed to have been filed for any domestic limited liability company party to the merger in accordance with the applicable sections of the Kentucky Revised Statutes and for any domestic limited partnership party to the merger in accordance with KRS Chapter 362.

(5) Upon merger taking effect, if the surviving entity in the merger is a foreign limited partnership, limited liability company, or corporation, the surviving entity shall be deemed:

(a) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger;

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger the amount, if any, to which they are entitled under Subtitle 13 of KRS Chapter 271B; and

(c) To agree, to the extent required by Section 200 of the Constitution, that the courts of this Commonwealth shall retain jurisdiction over that part of the corporate property within the limits of this Commonwealth in all matters which may arise, as if the transaction has not taken place.

(6) If a domestic or foreign limited liability company or limited partnership is the surviving entity of a merger, the surviving domestic or foreign limited liability company or limited partnership shall be considered a surviving corporation for purposes of KRS 271B.11-060(1).

(7) A partner or, in the case of a limited partnership, a general partner who becomes a shareholder of a corporation as a result of a merger shall remain liable as a partner or general partner, as the case may be, for an obligation incurred by the partnership or limited partnership before the merger takes effect. The partner's or general partner's liability for all obligations of the corporation incurred before the merger takes effect shall be that of a shareholder as provided in this chapter. A limited partner who becomes a shareholder as a result of a merger shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the merger takes effect.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 341, sec. 8, effective July 15, 1998. -- Created 1994 Ky. Acts ch. 389, sec. 111, effective July 15, 1994.

Legislative Research Commission Note (3/24/95). Under KRS 7.136(1)(h), the word "or" has been added to subsection (1) of this statute before the phrase "more domestic corporations." The use of the plural in this phrase and the use of the adjective "each" in paragraph (d) of subsection (1) make it clear from context that the omission of the word "or" constitutes a manifest clerical or typographical error.

271B.12-010 Sale of assets in regular course of business and mortgage of assets.

(1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) Transfer any or all of its property to an entity of which all the shares or all of the limited liability company interests or other equity interests are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section shall not be required.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 29, sec. 9, effective June 8, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 121, effective January 1, 1989.

271B.12-020 Sale of assets other than in regular course of business.

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will), otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote shall approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (3) of this section) require a greater vote or a vote by voting groups, the transaction to be authorized shall be approved by a majority of all the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(7) A transaction that constitutes a distribution is governed by KRS 271B.6-400 and not by this section.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 122, effective January 1, 1989.

271B.12-030 Conversion of corporation to limited liability company.

(1) A corporation may be converted to a limited liability company as provided in KRS 275.376.

(2) A corporation may be converted to a statutory trust as provided in KRS 386A.7-060.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 81, sec. 92, effective July 12, 2012. -- Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 2, effective July 15, 2010. -- Created 2007 Ky. Acts ch. 137, sec. 2, effective June 26, 2007.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.12-200 Definitions for KRS 271B.12-210 to 271B.12-230.

As used in KRS 271B.12-210 to 271B.12-230:

(1) "Affiliate," including the term "affiliated person," means a person who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.

(2) "Associate," when used to indicate a relationship with any person, means:

(a) Any corporation or organization (other than the corporation or a subsidiary of the corporation) of which such person is an officer, director or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities;

(b) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and

(c) Any relative or spouse of such person, or any relative of such spouse, any one (1) of whom has the same home as such person or is a director or officer of the corporation or any of its affiliates.

(3) "Beneficial owner," when used with respect to any voting stock, means a person:

(a) Who, individually or with any of its affiliates or associates, beneficially owns voting stock, directly or indirectly; or

(b) Who, individually or with any of its affiliates or associates, has:

1. The right to acquire voting stock, whether such right is exercisable immediately or only after the passage of time and whether or not such right is exercisable only after specified conditions are met, pursuant to any agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise;

2. The right to vote voting stock pursuant to any agreement, arrangement, or understanding; or

3. Any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting or disposing of voting stock with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such shares of voting stock; however, for the purposes of this section and KRS 271B.12-230 the beneficial owner of any voting stock held by, or owned through participation in, any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension, stock ownership or similar plan for employees or officers of the corporation or any of its subsidiaries shall be deemed to be the shareholder of record of such voting stock as shown on the stock transfer books of the corporation.

(4) "Business combination" means:

(a) Unless the merger or consolidation does not alter the contract rights of the stock as expressly set forth in the articles of incorporation or change or convert in whole or in part the outstanding shares of stock of the corporation, any merger or consolidation of the corporation or any subsidiary with any interested shareholder or any other corporation, whether or not itself an interested shareholder, which is, or after the merger or consolidation would be, an affiliate or associate of an interested shareholder who was an interested shareholder prior to the transaction;

(b) Any sale, lease, transfer, or other disposition, other than in the ordinary course of business, in one (1) transaction or a series of transactions in any twelve-month period, to any interested shareholder or any affiliate or associate of any interested shareholder, other than the corporation or any subsidiaries, of any assets of the corporation or any subsidiary having, measured at the time the transaction or transactions are approved by the board of directors of the corporation, an aggregate book value as of the end of the corporation's most recently ended fiscal quarter of five percent (5%) or more of the total market value of the outstanding stock of the corporation or of its net worth as of the end of its most recently ended fiscal quarter;

(c) The issuance or transfer by the corporation, or any subsidiary, in one transaction or a series of transactions in any twelve-month period, of any equity securities of the corporation or any subsidiary which have an aggregate market value of five percent (5%) or more of the total market value of the outstanding stock of the corporation, determined as of the end of the corporation's most recently ended fiscal quarter prior to the first such issuance or transfer, to any interested shareholder or any affiliate or associate of any interested shareholder, other than the corporation or any of its subsidiaries, except pursuant to the exercise of warrants or rights to purchase securities offered pro rata to all holders of the corporation's voting stock or any other method affording substantially proportionate treatment to the holders of voting stock;

(d) The adoption of any plan or proposal for the liquidation or dissolution of the corporation in which anything other than cash will be received by an interested shareholder or any affiliate or associate of any interested shareholder; or

(e) Any reclassification of securities, including any reverse stock split; or recapitalization of the corporation; or any merger or consolidation of the corporation with any of its subsidiaries; or any other transaction which has the effect, directly or indirectly, in one transaction or a series of transactions, of increasing by five percent (5%) or more the proportionate amount of the outstanding shares of any class of equity securities of the corporation or any subsidiary which is directly or indirectly beneficially owned by any interested shareholder or any affiliate or associate of any interested shareholder; or

(f) Any receipt by an interested shareholder or any affiliate or associate of such interested shareholder of the benefit directly or indirectly, except proportionately as a shareholder of such corporation, of any loans, advances, guaranties, pledges or other financial assistance, or any tax credits or other tax advantages provided by or through such corporation.

(5) "Common stock" means any stock other than preferred or preference stock.

(6) "Continuing director" means any member of the board of directors who is not an affiliate or associate of an interested shareholder or any of its affiliates, other than the corporation or any of its subsidiaries, and who was a director of the corporation prior to the time the interested shareholder became an interested shareholder, and any successor to such continuing director who is not an affiliate or associate of an interested shareholder or any of its affiliates, other than the corporation or any of its subsidiaries, and was recommended or elected by a majority of the continuing directors at a meeting at which a quorum consisting of a majority of the continuing directors is present.

(7) "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, and the beneficial ownership of ten percent (10%) or more of the votes entitled to be cast by a corporation's voting stock creates a presumption of control.

(8) "Equity security" means:

(a) Any stock or similar security, certificate of interest, or participation in any profit-sharing agreement, voting trust certificate, or certificate of deposit for the foregoing;

(b) Any security convertible, with or without consideration, into an equity security, or any warrant or other security carrying any right to subscribe to or purchase an equity security; or

(c) Any put, call, straddle, or other option, right or privilege of acquiring an equity security from or selling an equity security to another without being bound to do so.

(9) "Independent member" of the board of directors means any director who is not an officer or full-time employee of the corporation or an affiliate or associate of an interested shareholder or any of its affiliates.

(10) "Interested shareholder" means any person, other than the corporation or any of its subsidiaries, who:

(a) Is the beneficial owner, directly or indirectly, of ten percent (10%) or more of the voting power of the outstanding voting stock of the corporation; or is an affiliate of the corporation and at any time within the five (5) year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of ten percent (10%) or more of the voting power of the then outstanding voting stock of the corporation. The term interested shareholder shall not mean any entity or person holding or owning voting stock for, or through participation in, any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension, stock ownership or similar plan for employees or officers of the corporation or any of its subsidiaries.

(b) For the purpose of determining whether a person is an interested shareholder, the number of shares of voting stock deemed to be outstanding shall include shares deemed owned by the person through application of subsection (3) of this section, but shall not include any other shares of voting stock which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(11) "Market value" means:

(a) In the case of stock, the highest closing sale price during the thirty-day period immediately preceding the date in question of a share of such stock on the composite tape for New York stock exchange listed stocks, or, if such stock is not quoted on the composite tape on the New York stock exchange, or if such stock is not listed on such exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the thirty-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the continuing directors at a meeting of the board of directors at which a quorum consisting of at least a majority of the continuing directors is present; and

(b) In the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the continuing directors at a meeting of the board of directors at which a quorum consisting of at least a majority of the continuing directors is present.

(12) "Subsidiary" means any corporation of which voting stock having a majority of the votes entitled to be cast is owned, directly or indirectly, by the corporation.

(13) "Voting stock" means shares of capital stock of a corporation entitled to vote generally in the election of directors.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 22, sec. 1, effective July 15, 1988. -- Created 1984 Ky. Acts ch. 355, sec. 1, effective July 13, 1984.

Formerly codified as KRS 271A.396.

271B.12-210 Minimum share vote requirements for approval of business combinations -- Limitations on business corporation.

(1) In addition to any vote otherwise required by law or the articles of incorporation of the corporation, a business combination shall either be approved by a majority of the independent members of the board of directors who are also continuing directors, provided that the independent members of the board of directors shall not, for the purposes of this subsection, be required to either approve or disapprove of any proposed business combination, or approved by the affirmative vote of at least:

(a) Eighty percent (80%) of the votes entitled to be cast by outstanding shares of voting stock of the corporation, voting together as a single voting group; and

(b) Two-thirds of the votes entitled to be cast by holders of voting stock other than voting stock beneficially owned by the interested shareholder who is, or whose affiliate is, a party to the business combination or by an affiliate or associate of such interested shareholder, voting together as a single voting group.

(2) Unless a business combination is exempted from the operation of KRS 271B.12-200 to 271B.12-230 in accordance with the terms hereof, the failure to comply with the voting requirements of subsection (1) of this section shall render such business combination void.

(3) Notwithstanding anything to the contrary contained in this chapter (except the provisions of KRS 271B.12-220(5)(a)), no corporation shall engage in any business combination with any entity or person who is at the time of such business combination an interested shareholder of such corporation, unless such person became an interested shareholder before March 28, 1986, for a period of five (5) years following the date on which such interested shareholder became an interested shareholder unless such business combination is approved by a majority of the independent members of the board of directors of such corporation prior to such date on which the interested shareholder became an interested shareholder. If a good faith proposal is made in writing to the board of directors of such corporation regarding a business combination, the board of directors shall respond, in writing, within thirty (30) days or such shorter period, if any, as may be required by the Securities Exchange Act of 1934, setting forth its reasons for its decision regarding such proposal. If the board of directors does not respond affirmatively in writing within thirty (30) days or such shorter period, if any, as may be required by the Securities Exchange Act of 1934, the independent members of the board of directors shall be deemed to have disapproved the business combination.

(4) In discharging its duties under this section, or otherwise, the board of directors, in considering the best interests of the corporation, may consider in addition to the interests of the corporation's shareholders, any of the following:

(a) The interests of the corporation's employees, suppliers, creditors and customers;

(b) The economy of the state and nation;

(c) Community and societal considerations; and

(d) The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

(5) Notwithstanding KRS 271B.6-020 and any other provision of this chapter, and unless otherwise provided in the articles of incorporation before the creation or issuance of any rights or options as set forth herein, in considering the interests of the corporation's shareholders, the board of directors of a corporation may, before, on or after July 15, 1988, create and issue rights or options pursuant to KRS 271B.6-240 which may contain provisions which adjust the option price or number of shares issuable under such rights or options in the event of an acquisition of shares or a reorganization, merger, consolidation, sale of assets or other occurrence involving such corporation. Such rights or options may also include conditions that prevent the holder or holders of at least a specified number or percentage of the outstanding shares of the corporation, including subsequent transferees of the holder, from exercising those rights or options.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 22, sec. 2, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 202, sec. 10, effective March 28, 1986. -- Created 1984 Ky. Acts ch. 355, sec. 2, effective July 13, 1984.

Formerly codified as KRS 271A.397.

271B.12-220 Exemptions from minimum share vote requirements.

(1) For purposes of subsection (2) of this section:

(a) "Announcement date" means the first general public announcement of the proposal or intention to make a proposal of the business combination or its first communication generally to shareholders of the corporation, whichever is earlier;

(b) "Determination date" means the date on which an interested shareholder first became an interested shareholder; and

(c) "Valuation date" means:

1. For a business combination voted upon by shareholders, the latter of the day prior to the date of the shareholders vote or the date twenty (20) days prior to the consummation of the business combination; and

2. For a business combination not voted upon by shareholders, the date of the consummation of the business combination.

(2) The vote required by KRS 271B.12-210 does not apply to a business combination if each of the following conditions is met:

(a) The aggregate amount of the cash and the market value as of the valuation date of consideration, other than cash to be received per share by holders of common stock in such business combination, is at least equal to the highest of the following:

1. The highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the interested shareholder for any shares of common stock of the same class or series acquired by it:

a. Within the five (5) year period immediately prior to the announcement date of the proposal of the business combination;

b. In the transaction in which it became an interested shareholder, whichever is higher; or

2. The market value per share of common stock of the same class or series on the announcement date or on the determination date, whichever is higher; or

3. The price per share equal to the market value per share of common stock of the same class or series determined pursuant to subparagraph 2. of this paragraph, multiplied by the fraction of:

a. The highest per share price, including any brokerage commissions, transfer taxes and soliciting dealers' fees, paid by the interested shareholder for any shares of common stock of the same class or series acquired by it within the five (5) year period immediately prior to the announcement date, over

b. The market value per share of common stock of the same class or series on the first day in such five (5) year period on which the interested shareholder acquired any shares of common stock;

(b) The aggregate amount of the cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of shares of any class or series of outstanding stock other than common stock is at least equal to the highest of the following, whether or not the interested shareholder has previously acquired any shares of a particular class or series of stock:

1. The highest per share price, including any brokerage commissions, transfer taxes and soliciting dealers' fees, paid by the interested shareholder for any shares of such class of stock acquired by it:

    a. Within the five (5) year period immediately prior to the announcement date of the proposal of the business combination;

    b. In the transaction in which it became an interested shareholder, whichever is higher; or

2. The highest preferential amount per share to which the holders of shares of such class of stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation;

3. The market value per share of such class of stock on the announcement date or on the determination date, whichever is higher; or

4. The price per share equal to the market value per share of such class of stock determined pursuant to subparagraph 3. of this paragraph, multiplied by the fraction of:

    a. The highest per share price, including any brokerage commissions, transfer taxes and soliciting dealers' fees, paid by the interested shareholder for any shares of any class of voting stock acquired by it within the five (5) year period immediately prior to the announcement date, over

    b. The market value per share of the same class of voting stock on the first day in such five (5) year period on which the interested shareholder acquired any shares of the same class of voting stock.

(c) In making any price calculation under this section, appropriate adjustments shall be made to reflect any reclassification, including any reverse stock split; recapitalization; reorganization; or any similar transaction which has the effect of reducing the number of outstanding shares of the stock. The consideration to be received by holders of any class or series of outstanding stock is to be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series of stock. If the interested shareholder has paid for shares of any class of stock with varying forms of consideration, the form of consideration for such class of stock shall be either cash or the form used to acquire the largest number of shares of such class or series of stock previously acquired by it;

(d) 1. After the interested shareholder has become an interested shareholder and prior to the consummation of such business combination:

    a. There shall have been no failure to declare and pay, at the regular date therefor, any full periodic dividends, whether or not cumulative, on any outstanding preferred stock of the corporation;

b. There shall have been no reduction in the annual rate of dividends paid on any class or series of stock of the corporation that is not preferred stock, except as necessary to reflect any subdivision of the stock; and an increase in such annual rate of dividends as necessary to reflect any reclassification, including any reverse stock split; recapitalization; reorganization; or any similar transaction which has the effect of reducing the number of outstanding shares of the stock; and

c. The interested shareholder did not become the beneficial owner of any additional shares of stock of the corporation, except as part of the transaction which resulted in such interested shareholder becoming an interested shareholder or by virtue of proportionate stock splits or stock dividends.

2. The provisions of sub-subparagraphs a. and b. of subparagraph 1. of this paragraph do not apply if no interested shareholder or an affiliate or associate of the interested shareholder voted as a director of the corporation in a manner inconsistent with such sub-subparagraphs and the interested shareholder, within ten (10) days after any act or failure to act inconsistent with such sub-subparagraphs, notifies the board of directors of the corporation in writing that the interested shareholder disapproves thereof and requests in good faith that the board of directors rectify such act or failure to act.

(3) (a) Whether or not such business combinations are authorized or consummated in whole or in part after July 13, 1984, or after the interested shareholder became an interested shareholder, the requirements of KRS 271B.12-210 do not apply to business combinations that specifically, generally, or generally by types, as to specifically identified or unidentified existing or future interested shareholders or their affiliates or associates, have been approved or exempted therefrom by resolution of the board of directors of the corporation prior to two (2) months after July 13, 1984, or such earlier date as may be irrevocably established by resolution of the board of directors; and

(b) Unless by its terms a resolution adopted under this subsection is made irrevocable, it may be altered or repealed by the board of directors, but this shall not affect any business combinations that have been consummated, or are the subject of an existing agreement entered into, prior to the alteration or repeal.

(4) (a) Unless the articles of incorporation or bylaws of the corporation specifically provide otherwise, the requirements of KRS 271B.12-210 do not apply to business combinations of a corporation that, on July 13, 1984, had an existing interested shareholder, whether a business combination is with the existing shareholder or with any other person who becomes an interested shareholder, after July 13, 1984, or their present or future affiliates, unless, at any time after

July 13, 1984, the board of directors of the corporation elects by resolution, adopted by a majority of the continuing directors at a meeting of the board of directors at which a quorum consisting of at least a majority of the continuing directors is present, to be subject, in whole or in part, specifically, generally, or generally by types, as to specifically identified or unidentified interested shareholders, to the requirements of KRS 271B.12-210;

(b) The articles of incorporation or bylaws of the corporation may provide that if the board of directors adopts a resolution under paragraph (a) of this subsection, the resolution shall be subject to approval of the shareholders in the manner and by the vote specified in the articles of incorporation or the bylaws;

(c) An election under this subsection may be added to but may not be altered or repealed except by an amendment to the articles of incorporation adopted by a vote of shareholders meeting the requirements of subsection (5)(a)2. of this section; and

(d) If a corporation elects under this subsection to be included within the provisions of KRS 271B.12-210 generally, without qualification or limitation, it shall file with the secretary of state articles of amendment, including a copy of the resolution making the election and a statement describing the manner in which the resolution was adopted. The articles of amendment shall be executed in the manner required by KRS 271B.10-060.

(5) (a) Unless the articles of incorporation of the corporation provide otherwise, the requirements of a shareholder vote and board approval in KRS 271B.12-210 do not apply to any business combination of:

1. A corporation which does not have on the date any interested shareholder became an interested shareholder:

a. Five hundred (500) or more beneficial owners of its stock;

b. Its principal executive office located in this state; and

c. One (1) or more of the following:

(i) More than two hundred (200) beneficial owners of its stock residing in this state;

(ii) More than ten percent (10%) of the beneficial owners of its stock residing in this state;

(iii) More than ten percent (10%) of its outstanding stock owned by residents of this state;

(iv) More than one hundred (100) employees of the corporation and its subsidiaries working within this state; or

(v) Assets located in this state and owned by, or owned by a person or entity controlled by, the corporation with a value of at least one million dollars ($1,000,000);

2. A corporation whose original articles of incorporation have a provision, or whose shareholders adopt an amendment to the articles of

incorporation after July 13, 1984, by a vote of at least eighty percent (80%) of the votes entitled to be cast by outstanding shares of voting stock of the corporation, voting together as a single voting group and two-thirds (2/3) of the votes entitled to be cast by persons, if any, who are not interested shareholders of the corporation, voting together as a single voting group, expressly electing not to be governed by KRS 271B.12-210; or

3. An investment company registered under the federal Investment Company Act of 1940, as amended; a bank or a bank holding company as defined in the federal Bank Holding Company Act of 1956, as amended; a savings and loan holding company as defined in the federal Savings and Loan Holding Company Amendments of 1967, as amended; and a domestic insurer as defined under KRS 304.1-070; and

(b) For purposes of subparagraph 1. of paragraph (a) of this subsection, all shareholders of a corporation who have executed an agreement to which the corporation is an executing party governing the purchase and sale of stock of the corporation or a voting trust agreement governing stock of the corporation shall be considered a single beneficial owner of the stock covered by the agreement.

Effective: January 1, 1989

History: Amended 1988 Ky. Acts ch. 22, sec. 3, effective July 15, 1988; and ch. 23, sec. 176, effective January 1, 1989. -- Created 1984 Ky. Acts ch. 355, sec. 3, effective July 13, 1984.

Formerly codified as KRS 271A.398.

271B.12-230 KRS 271B.12-200 to 271B.12-220 prevail over other provisions of KRS Chapter 271B -- Severability of provisions.

(1) The provisions of KRS 271B.12-200 to 271B.12-220 are in addition to and do not repeal any other provisions of KRS Chapter 271B that govern any corporate actions described in KRS 271B.12-200 to 271B.12-220; provided, that in the event of a direct conflict between any provision of KRS 271B.12-200 to 271B.12-220 and any other provision of KRS Chapter 271B, the provision of KRS 271B.12-200 to 271B.12-220 shall prevail.

(2) It shall be considered that, for the purposes of KRS 446.090, it is the intent of the general assembly in enacting KRS 271B.12-200 to 271B.12-220 that any clause, sentence, subparagraph, paragraph, subsection, section, or other part of the above-stated sections or the application thereof to any person or circumstances held to be invalid shall not affect, impair or invalidate the remainder of the stated sections or the application of that part held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, or other part thereof directly involved in that holding or to the person or circumstances therein involved.

Effective: July 1, 1988

History: Amended 1988 Ky. Acts ch. 22, sec. 4, effective July 1, 1988. -- Created 1984 Ky. Acts ch. 355, sec. 4, effective July 13, 1984.

Formerly codified as KRS 271A.399.

271B.13-010 Definitions for subtitle.

As used in this subtitle:

(1) "Corporation" means the issuer of the shares held by a dissenter, except that in the case of a merger where the issuing corporation is not the surviving corporation, then, after consummation of the merger, "corporation" shall mean the surviving corporation.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under KRS 271B.13-020 and who exercises that right when and in the manner required by KRS 271B.13-200 to 271B.13-280.

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable. In any transaction subject to the requirements of KRS 271B.12-210 or exempted by KRS 271B.12-220(2), "fair value" shall be at least an amount required to be paid under KRS 271B.12-220(2) in order to be exempt from the requirements of KRS 271B.12-210.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(5) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 341, sec. 9, effective July 15, 1998. -- Created 1988 Ky. Acts ch. 23, sec. 123, effective January 1, 1989.

271B.13-020 Right to dissent.

(1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party:

1. If shareholder approval is required for the merger by KRS 271B.11-030 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

2. If the corporation is a subsidiary that is merged with its parent under KRS 271B.11-040;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;

(d) Consummation of a plan of conversion of the corporation into a limited liability company or statutory trust;

(e) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

1. Alters or abolishes a preferential right of the shares to a distribution or in dissolution;

2. Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

3. Excludes or limits the right of the shares to vote on any matter other than a limitation by dilution through issuance of shares or other securities with similar voting rights;

4. Reduces the number of shares owned by the shareholder to a fraction of a share, if the fractional share so created is to be acquired for cash under KRS 271B.6-040; or

5. In a public benefit corporation, changes the public benefit provisions;

(f) Any transaction subject to the requirements of KRS 271B.12-210 or exempted by KRS 271B.12-220(2);

(g) Any election by a corporation to become a public benefit corporation or pursuant to the merger of a corporation with and into a public benefit corporation; or

(h) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for his shares under this chapter shall not challenge the corporate action creating his entitlement except by an application for injunctive relief prior to the consummation of the corporate action.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 28, sec. 8, effective June 29, 2017. -- Amended 2015 Ky. Acts ch. 34, sec. 11, effective June 24, 2015. -- Amended 2012 Ky. Acts ch. 81, sec. 93, effective July 12, 2012. -- Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 67, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 67, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 124, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.13-030 Dissent by nominees and beneficial owners.

(1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he shall dissent with respect to all shares beneficially owned by any one (1) person and notify the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection shall be determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(a) He submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) He does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 125, effective January 1, 1989.

271B.13-200 Notice of dissenters' rights.

(1) If proposed corporate action creating dissenters' rights under KRS 271B.13-020 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this subtitle and the corporation shall undertake to provide a copy of this subtitle to any shareholder entitled to vote at the shareholders' meeting upon request of that shareholder.

(2) If corporate action creating dissenters' rights under KRS 271B.13-020 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in KRS 271B.13-220.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 126, effective January 1, 1989.

271B.13-210 Notice of intent to demand payment.

(1) If proposed corporate action creating dissenters' rights under KRS 271B.13-020 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(a) Shall deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

(b) Shall not vote his shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) of this section shall not be entitled to payment for his shares under this chapter.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 127, effective January 1, 1989.

271B.13-220 Dissenters' notice.

(1) If proposed corporate action creating dissenters' rights under KRS 271B.13-020 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of KRS 271B.13-210.

(2) The dissenters' notice shall be sent no later than ten (10) days after the date the proposed corporate action was authorized by the shareholders, or, if no shareholder authorization was obtained, by the board of directors, and shall:

- (a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;
- (b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
- (c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he acquired beneficial ownership of the shares before that date;
- (d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty (30), nor more than sixty (60) days after the date the notice provided in subsection (1) of this section is delivered; and
- (e) Be accompanied by a copy of this subtitle.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 128, effective January 1, 1989.

271B.13-230 Duty to demand payment.

(1) A shareholder who is sent a dissenters' notice described in KRS 271B.13-220 shall demand payment, certify whether he acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to subsection (2)(c) of KRS 271B.13-220, and deposit his certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits his share certificates under subsection (1) of this section shall retain all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, shall not be entitled to payment for his shares under this subtitle.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 129, effective January 1, 1989.

271B.13-240 Share restrictions.

(1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under KRS 271B.13-260.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares shall retain all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 130, effective January 1, 1989.

271B.13-250 Payment.

(1) Except as provided in KRS 271B.13-270, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with KRS 271B.13-230 the amount the corporation estimates to be the fair value of his shares, plus accrued interest.

(2) The payment shall be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) A statement of the corporation's estimate of the fair value of the shares;

(c) An explanation of how the interest was calculated; and

(d) A statement of the dissenter's right to demand payment under KRS 271B.13-280.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 131, effective January 1, 1989.

271B.13-260 Failure to take action.

(1) If the corporation does not take the proposed action within sixty (60) days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under KRS 271B.13-220 and repeat the payment demand procedure.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 132, effective January 1, 1989.

271B.13-270 After-acquired shares.

(1) A corporation may elect to withhold payment required by KRS 271B.13-250 from a dissenter unless he was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section, after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under KRS 271B.13-280.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 133, effective January 1, 1989.

271B.13-280 Procedure if shareholder dissatisfied with payment or offer.

(1) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate (less any payment under KRS 271B.13-250), or reject the corporation's offer under KRS 271B.13-270 and demand payment of the fair value of his shares and interest due, if:

(a) The dissenter believes that the amount paid under KRS 271B.13-250 or offered under KRS 271B.13-270 is less than the fair value of his shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under KRS 271B.13-250 within sixty (60) days after the date set for demanding payment; or

(c) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty (60) days after the date set for demanding payment.

(2) A dissenter waives his right to demand payment under this section unless he shall notify the corporation of his demand in writing under subsection (1) of this section within thirty (30) days after the corporation made or offered payment for his shares.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 134, effective January 1, 1989.

271B.13-300 Court action.

(1) If a demand for payment under KRS 271B.13-280 remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the Circuit Court of the county where a corporation's principal office (or, if none in this state, its registered office) is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section shall be plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters shall be entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding shall be entitled to judgment:

 (a) For the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation; or

 (b) For the fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under KRS 271B.13-270.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 135, effective January 1, 1989.

271B.13-310 Court costs and counsel fees.

(1) The court in an appraisal proceeding commenced under KRS 271B.13-300 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under KRS 271B.13-280.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all dissenters, if the court finds the corporation did not substantially comply with the requirements of KRS 271B.13-200 to 271B.13-280; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subtitle.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 136, effective January 1, 1989.

271B.14-010 Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) Either:

(a) That none of the corporation's shares has been issued; or

(b) That the corporation has not commenced business;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(6) That a majority of the incorporators or initial directors authorized the dissolution.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 137, effective January 1, 1989.

271B.14-020 Dissolution by board of directors and shareholders.

(1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (3)) of this section require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted shall be approved by a majority of all votes entitled to be cast on that proposal.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 138, effective January 1, 1989.

271B.14-030 Articles of dissolution.

(1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing an original and three (3) exact or conformed copies of articles of dissolution setting forth:

  (a) The name of the corporation;

  (b) The date dissolution was authorized;

  (c) If dissolution was approved by the shareholders:

    1. The number of votes entitled to be cast on the proposal to dissolve; and

    2. Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and

  (d) If voting by voting groups was required, the information required by subsection (1)(c) of this section shall be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) The Secretary of State shall immediately forward one (1) of the exact or conformed copies of the articles of dissolution to the secretary of revenue.

(3) A corporation shall be dissolved upon the effective date of its articles of dissolution.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 139, effective January 1, 1989.

271B.14-040 Revocation of dissolution.

(1) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

(2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

  (a) The name of the corporation;

  (b) The effective date of the dissolution that was revoked;

  (c) The date that the revocation of dissolution was authorized;

  (d) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;

  (e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

  (f) If shareholder action was required to revoke the dissolution, the information required by subsection (1)(c) or (1)(d) of KRS 271B.14-030.

(4) Revocation of dissolution shall be effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it shall have the effect provided in KRS 14A.7-030(3).

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 81, sec. 94, effective July 12, 2012. -- Created 1988 Ky. Acts ch. 23, sec. 140, effective January 1, 1989.

271B.14-050 Effect of dissolution.

(1) A dissolved corporation shall continue its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities, including as appropriate, entering into agreements with creditors for the satisfaction thereof;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation shall not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in Subtitle 8 of this chapter;

(d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;

(g) Terminate the authority of the registered agent of the corporation;

(h) Alter the obligations and responsibilities of the corporation as prescribed by applicable federal or state law with regard to the filing or examination of all federal and state tax returns or the payment, assessment, or collection of any federal or state tax due with respect to those returns; or

(i) Abate or suspend KRS 271B.6-220.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 81, sec. 95, effective July 12, 2012. -- Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 68, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 68, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 141, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2010 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.14-060 Known claims against dissolved corporation.

(1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice shall:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation shall be barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline;

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" shall not include a contingent liability, a claim based on an event occurring after the effective date of dissolution or any liability to the Commonwealth or the United States for any state or federal tax liability.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 142, effective January 1, 1989.

271B.14-070 Unknown claims against dissolved corporation.

(1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice shall:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two (2) years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under KRS 271B.14-060;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to him.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 143, effective January 1, 1989.

271B.14-200 Repealed, 2011.

Catchline at repeal: Grounds for administrative dissolution.

History: Amended 2010 Ky. Acts ch. 133, sec. 7, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 144, effective January 1, 1989.

271B.14-210 Repealed, 2011.

Catchline at repeal: Procedure for and effect of administrative dissolution.

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 69, effective July 15, 2010; amended ch. 133, sec. 8, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 69, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 145, effective January 1, 1989.

271B.14-220 Repealed, 2011.

Catchline at repeal: Reinstatement following administrative dissolution or revocation under prior law -- Exception -- Amendment to extend or delete period of duration.

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 70, effective July 15, 2010; amended ch. 133, sec. 9, effective July 15, 2010; and repealed ch. 151, sec. 151 effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 62, sec. 1, effective July 1, 2008; and ch. 137, sec. 70, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 85, sec. 668, effective June 20, 2005. -- Amended 1992 Ky. Acts ch. 161, sec. 1, effective April 1, 1992. -- Created 1988 Ky. Acts ch. 23, sec. 146, effective January 1, 1989.

271B.14-225 Permissibility of merger of subsequent reincorporation with reinstated prior corporation -- Effect.

The General Assembly finds and declares it to be the public policy of the Commonwealth of Kentucky that each corporation which was refused reinstatement either orally or in writing and subsequently reincorporated as a second corporation may reinstate the first corporation and merge the second corporation into the first corporation. The first corporation shall then be treated as if it had continuous and uninterrupted existence and that the administrative dissolution or revocation had never occurred.

Effective: April 1, 1992

History: Created 1992 Ky. Acts ch. 161, sec. 3, effective April 1, 1992.

271B.14-230 Repealed, 2011.

Catchline at repeal: Appeal from denial of reinstatement.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Amended 1992 Ky. Acts ch. 161, sec. 2, effective April 1, 1992. -- Created 1988 Ky. Acts ch. 23, sec. 147, effective January 1, 1989.

271B.14-300 Grounds for judicial dissolution.

The Circuit Court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired;

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 148, effective January 1, 1989.

271B.14-310 Procedure for judicial dissolution.

(1) Venue for a proceeding by the Attorney General to dissolve a corporation shall lie in Franklin County. Venue for a proceeding brought by any other party named in KRS 271B.14-300 shall lie in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(2) It shall not be necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 149, effective January 1, 1989.

271B.14-320 Receivership or custodianship.

(1) A court in a judicial proceeding brought to dissolve a corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian shall have exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

1. May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

2. May sue and defend in his own name as receiver of the corporation in all courts of this state; and

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of assets.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 150, effective January 1, 1989.

271B.14-330 Decree of dissolution.

(1) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in KRS 271B.14-300 exist, it may enter a decree dissolving the corporation, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it. The dissolution shall be effective upon the latter of the filing of the decree by the Secretary of State or such later date as is specified in the decree.

(2) The effect of the dissolution shall be as set forth in KRS 271B.14-050.

(3) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs, including as provided in KRS 271B.14-320, and the notification of claimants in accordance with KRS 271B.14-060 and 271B.14-070.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 81, sec. 96, effective July 12, 2012. -- Amended 2011 Ky. Acts ch. 29, sec. 10, effective June 8, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 151, effective January 1, 1989.

271B.14-400 Deposit with State Treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the State Treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer or other appropriate state official shall pay him or his representative that amount.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 152, effective January 1, 1989.

271B.15-010 Annual report.

A foreign corporation transacting business in this Commonwealth is subject to KRS 14A.6-010.

Effective: January 1, 2011

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 71, effective July 15, 2010; and ch. 151, sec. 55, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 71, effective June 26, 2007. -- Amended 1990 Ky. Acts ch. 199, sec. 1, effective July 13, 1990. -- Created 1988 Ky. Acts ch. 23, sec. 153, effective January 1, 1989.

Legislative Research Commission Note (1/1/2011). This section was repealed and reenacted without change to the existing language by 2010 Ky. Acts ch. 51, effective 7/15/10, and repealed and reenacted with the new language by 2010 Ky. Acts ch. 151, effective 1/1/2011. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment by ch. 51 not serve to void amendments made by other bills, and these Acts do not appear to be in conflict, therefore, they have been codified together.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

271B.15-020 Repealed, 2011.

Catchline at repeal: Consequences of transacting business without authority.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 154, effective January 1, 1989.

271B.15-030 Repealed, 2011.

Catchline at repeal: Application for certificate of authority -- Requirement for agent's written acceptance of appointment.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Amended 1998 Ky. Acts ch. 341, sec. 10, effective July 15, 1998. -- Created 1988 Ky. Acts ch. 23, sec. 155, effective January 1, 1989.

271B.15-040 Repealed, 2011.

Catchline at repeal: Amended certificate of authority.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 156, effective January 1, 1989.

271B.15-050 Repealed, 2011.

Catchline at repeal: Effect of certificate of authority.

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 72, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 72, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 157, effective January 1, 1989.

271B.15-060 Repealed, 2011.

Catchline at repeal: Corporate name of foreign corporation.

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 73, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Amended 2007 Ky. Acts ch. 137, sec. 73, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 149, sec. 227, effective July 12, 2006. -- Created 1988 Ky. Acts ch. 23, sec. 158, effective January 1, 1989.

271B.15-070 Repealed, 2011.

Catchline at repeal: Registered office and registered agent of foreign corporation -- Requirement for agent's written acceptance of appointment.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Amended 1998 Ky. Acts ch. 341, sec. 11, effective July 15, 1998. -- Created 1988 Ky. Acts ch. 23, sec. 159, effective January 1, 1989.

271B.15-080 Repealed, 2011.

Catchline at repeal: Change of registered office or registered agent of foreign corporation.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 160, effective January 1, 1989.

271B.15-090 Repealed, 2011.

Catchline at repeal: Resignation of registered agent of foreign corporation.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 161, effective January 1, 1989.

271B.15-100 Repealed, 2011.

Catchline at repeal: Service on foreign corporation.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 162, effective January 1, 1989.

271B.15-200 Repealed, 2011.

Catchline at repeal: Withdrawal of foreign corporation.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 163, effective January 1, 1989.

271B.15-300 Repealed, 2011.

Catchline at repeal: Grounds for revocation.

History: Amended 2010 Ky. Acts ch. 133, sec. 10, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 164, effective January 1, 1989.

271B.15-310 Repealed, 2011.

Catchline at repeal: Procedure for an effective revocation.

History: Amended 2010 Ky. Acts ch. 133, sec. 11, effective July 15, 2010; and repealed ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 165, effective January 1, 1989.

271B.15-320 Repealed, 2011.

Catchline at repeal: Appeal from revocation.

History: Repealed 2010 Ky. Acts ch. 151, sec. 151, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 166, effective January 1, 1989.

271B.16-010 Corporate records.

(1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors creating one (1) or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

(d) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(e) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under KRS 271B.16-200;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its most recent annual report delivered to the Secretary of State under KRS 14A.6-010.

Effective: January 1, 2011

History: Amended 2010 Ky. Acts ch. 151, sec. 123, effective January 1, 2011. -- Created 1988 Ky. Acts ch. 23, sec. 167, effective January 1, 1989.

271B.16-020 Inspection of records by shareholders.

(1) A shareholder of a corporation shall be entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (5) of KRS 271B.16-010 if he gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy.

(2) A shareholder of a corporation shall be entitled to inspect and copy during regular business hours at a reasonable location specified by the corporation any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) His demand is made in good faith and for a proper purpose;

(b) He describes with reasonable particularity his purpose and the records he desires to inspect; and

(c) The records are directly connected with his purpose.

(4) The right of inspection granted by this section shall not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section shall not affect:

(a) The right of a shareholder to inspect records under KRS 271B.7-200 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

(b) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

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

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 168, effective January 1, 1989.

271B.16-030 Scope of inspection right.

(1) A shareholder's agent or attorney shall have the same inspection and copying rights as the shareholder he represents.

(2) The right to copy records under KRS 271B.16-020 shall include, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge shall not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under subsection (2)(c) of KRS 271B.16-020 by providing him with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 169, effective January 1, 1989.

271B.16-040 Court-ordered inspection.

(1) If the corporation does not allow a shareholder who complies with subsection (1) of KRS 271B.16-020 to inspect and copy any records required by that subsection to be available for inspection, the Circuit Court of the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (2) and (3) of KRS 271B.16-020 may apply to the Circuit Court of the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 170, effective January 1, 1989.

271B.16-200 Financial statements for shareholders.

Upon the written request of any shareholder or holder of voting trust certificates for shares of a corporation the corporation shall mail to such shareholder or holder of voting trust certificates its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 171, effective January 1, 1989.

271B.16-210 Other reports to shareholders -- Other requirements of a public benefit corporation.

(1) If a corporation indemnifies or advances expenses to a director under KRS 271B.8-510 to 271B.8-540 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(2) A public benefit corporation shall no less than annually provide its stockholders with a statement as to the corporation's promotion of the public benefit or public benefits identified in the articles of incorporation and of the best interests of those materially affected by the corporation's conduct. The statement shall include:

   (a) The objectives that the board of directors has established to promote the public benefit or public benefits and interests;

   (b) The standards that the board of directors has adopted to measure the corporation's progress in promoting the public benefit or public benefits and interests;

   (c) Objective factual information based on those standards regarding the corporation's success in meeting the objectives for promoting the public benefit or public benefits and interests; and

   (d) An assessment of the corporation's success in meeting the objectives and promoting the public benefit or public benefits and interests.

(3) The articles of incorporation or bylaws of a public benefit corporation may require that the corporation:

   (a) Make the statement described in subsection (2) of this section available to the public; or

   (b) Use a third-party standard in connection with, or attain a periodic third-party certification addressing, the corporation's promotion of the public benefit or public benefits identified in the articles of incorporation or the best interests of those materially affected by the corporation's conduct.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 28, sec. 9, effective June 29, 2017. -- Created 1988 Ky. Acts ch. 23, sec. 172, effective January 1, 1989.

271B.16-220 Annual report.

Each domestic corporation and each foreign corporation qualified to transact business in this Commonwealth is subject to KRS 14A.6-010.

Effective: January 1, 2011

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 74, effective July 15, 2010; amended ch. 133, sec. 12, effective July 15, 2011; and repealed and reenacted ch. 151, sec. 56, effective January 1, 2011. -- Amended 2010 Ky. Acts ch. 133, sec. 12, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 74, effective June 26, 2007. -- Created 1988 Ky. Acts ch. 23, sec. 173, effective January 1, 1989.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts ch. 133, and repealed and reenacted by 2010 Ky. Acts ch. 51, both effective 7/15/2010. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment not serve to void the amendment, and these Acts do not appear to be in conflict; therefore, they have been codified together. Effective 1/1/2011, this section was also repealed and reenacted by the omnibus Kentucky Business Entity Act, 2010 Ky. Acts ch. 151.

271B.17-010 Application of chapter.

(1) This chapter shall apply to any corporation formed under the laws of this state unless the statutes relating to a corporation of that kind either are inconsistent with this chapter or state that the provisions of this chapter do not apply to it.

(2) Subject to the provisions of subsection (1) of this section, corporations may be organized under this chapter for any lawful purpose or purposes.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 191, effective January 1, 1989.

271B.17-020 Application to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on January 1, 1989, shall be subject to this chapter but shall not be required to obtain a new certificate of authority to transact business under this chapter.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 192, effective January 1, 1989.

271B.17-030 Savings provisions.

(1) Except as provided in subsection (2) of this section, the repeal of a statute by 1988 Acts Ch. 23, sec. 248 does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by 1988 Acts Ch. 23, sec. 248 is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 193, effective January 1, 1989.

271B.17-040 Severability of provisions.

If any provision of this chapter or its application to any person or circumstances is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 84, effective January 1, 1989.

271B.17-050 Acceleration and applicability of effective date.

(1) On January 1, 1989, and thereafter, this chapter shall apply to all domestic corporations in existence on the effective date that were incorporated under the present statutes or any prior law and those incorporated on or after January 1, 1989, to the extent provided in KRS 271B.17-010.

(2) Before January 1, 1989, the provisions of this chapter shall not apply to any domestic corporation except in accordance with the following:

(a) The corporation's board of directors may adopt a resolution electing to have the provisions of this chapter (except for KRS 271B.1-220, 271B.2-010, 271B.2-030 to 271B.2-070, 271B.3-010 and 271B.16-220) apply to the corporation.

(b) The resolution shall specify a date (after July 15, 1988, and before January 1, 1989) on and after which the provisions will apply to the corporation.

(c) The resolution shall be filed in the office of the Secretary of State before the date specified in subsection (2)(b) of this section.

(3) The provisions of this chapter (except for KRS 271B.1-220, 271B.2-010, 271B.2-030 to 271B.2-070, 271B.3-010 and 271B.16-220) apply to each domestic corporation that complies with all the conditions prescribed in subsection (2) of this section. In addition, such a corporation shall continue to comply with the requirements of KRS 271A.396, 271A.397, 271A.398, 271A.399, 271A.615, 271A.620, 271A.625, 271A.630, and 271A.635 until January 1, 1989, but it is not subject to the provisions of KRS 271A.010 to 271A.395; KRS 271A.400 to 271A.610; and KRS 271A.640 to 271A.675.

Effective: January 1, 1989

History: Created 1988 Ky. Acts ch. 23, sec. 194, effective January 1, 1989.

271B.18-010 Validity of facsimile signature for corporation debt security.

On any bond, note, debenture or other debt security issued by a corporation, the signature of the officers of the corporation acting in connection with the issuance, and the seal of the corporation may be facsimiles if the instrument is authenticated or countersigned by a trustee or transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon a bond, note, debenture or other debt security shall have ceased to be such officer before such bond, note, debenture or other debt security is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

History: Created 1972 Ky. Acts ch. 274, sec. 138.

Formerly codified as KRS 271A.685.

271B.18-020 Retroactive validation of existing domestic corporations.

The corporate existence of each domestic corporation which, upon July 1, 1974, is listed as an existing corporation on the current corporate index maintained in the office of the secretary of state and is then engaged in the usual course of its business shall be, and it hereby is, validated retroactively to the date of its incorporation and continued for the period specified in its articles of incorporation and the amendments thereto, or for a period of one year from July 1, 1974, whichever is greater, unless thereafter it is voluntarily dissolved or liquidated pursuant to law, or its separate existence ceases pursuant to KRS 271A.380, or it has its corporate powers revoked pursuant to KRS 271A.470, or its charter is repealed or vacated pursuant to KRS Chapter 415.

Effective: Created 1972 Ky. Acts ch. 274, sec. 139.

Formerly codified as KRS 271A.690.

271B.18-030   Acceptance of present Constitution.

Any corporation which was in existence at the time of the adoption of the present Constitution of this state and subsequent thereto has filed in the office of the Secretary of State any amendment of its charter or articles of incorporation shall thereby be deemed to have filed therein an acceptance of the provisions of that Constitution.

Effective: Created 1972 Ky. Acts ch. 274, sec. 140.

Formerly codified as KRS 271A.695.

271B.18-040 Purpose of filing articles of incorporation.

The purpose of the provisions of this chapter requiring the filing or recording of the articles of incorporation, amendments thereto, and other papers, is to afford all persons the opportunity of acquiring knowledge of the contents thereof, but no person dealing with the corporation shall be charged with constructive notice of the contents of any such articles or papers by reason of such filing or recording.

Effective: Created 1972 Ky. Acts ch. 274, sec. 141.

Formerly codified as KRS 271A.700.

271B.18-050 Revocation of charters and grants since 1856.

All corporate charters granted and grants made to corporations since February 14, 1856, may be revoked by the General Assembly, unless a contrary intent is plainly expressed; but no revocation or repeal shall impair other rights previously vested.

History: Created 1972 Ky. Acts ch. 274, sec. 143.

Formerly codified as KRS 271A.710.

271B.18-060 Incorporation for purposes of establishing a foreign trade zone within this state.

Any corporation may be organized and chartered under the provisions of this chapter or under the provisions of KRS 273.161 to 273.400 for the purposes of establishing, operating, and maintaining a foreign trade zone within this state, under the provisions of 19 U.S.C.A. 81, as amended or reenacted, and may apply to the board created under the federal act for a grant of the privilege of establishing, operating, and maintaining such a zone. If the application is granted, the corporation may accept the grant and establish, operate, and maintain such a zone subject to the federal act, as amended or reenacted, and rules adopted thereunder.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 305, sec. 2, effective July 13, 1984.

Formerly codified as KRS 271A.715.

271B.18-070 Additional penalties for violation of KRS 506.010, 506.030, 506.040, 521.020, or 521.050.

(1) If a domestic corporation is convicted of a violation of KRS 506.010, 506.030, 506.040, 521.020, or 521.050, or if an officer, employee, or agent of the corporation is convicted of violating any section specified above under circumstances which bring corporate liability under KRS 502.050(1)(b), the court shall order that the charter of the corporation be suspended for a period of not more than five (5) years for a first offense, ten (10) years for a second offense, and permanently for a third or subsequent offense.

(2) If a foreign corporation is convicted of a violation of any section specified in subsection (1) of this section, or if an officer, employee, or agent of the corporation is convicted of violating any section specified in subsection (1) of this section under circumstances which bring corporate liability under KRS 502.050(1)(b), the court shall order that the corporation not be permitted to do business in Kentucky for the appropriate period specified in subsection (1) of this section.

(3) The penalties specified in this section shall be in addition to any other penalty specified by law for the commission of the offenses listed in subsection (1) of this section.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 477, sec. 6, effective July 15, 1994.