

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.