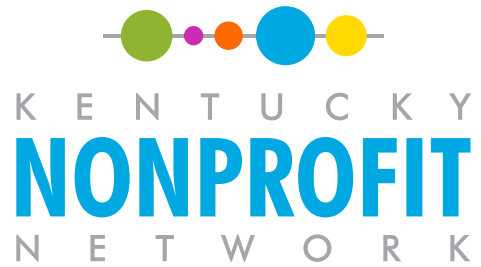


IMPORTANT UPDATES

to Kentucky's Nonprofit Laws



House Bill 443 modernizes laws by providing best practices, necessary clarification and statutory flexibility regarding a number of organizational and operational requirements for nonprofits. The law was passed unanimously by the Kentucky General Assembly, signed into law by the Governor on April 26, 2018 and is effective as of July 14, 2018.

THE UPDATE	NEXT STEPS
<p>Board of Directors</p> <p>Clarifies that an organization's bylaws may set a range for the number of required board members - an exact number need not be stated.</p>	<p>No action required, but you may choose to amend your bylaws to allow for a flexible range of board members as opposed to a fixed number. If the bylaws provide for a range, the exact number may be set (within that range) from time to time by resolution of the board.</p>
<p>Appointment of Committee Members</p> <p>Prior law could be read to suggest that only the full board of directors could appoint committee members. The board is now permitted to delegate the authority to appoint or remove committee members to one or more of its directors.</p>	<p>No action required, although some may choose to take advantage of this greater flexibility. Committees must still be established by the full board and it is generally best practice for the full board to appoint their membership, but there may be instances (such as in the case of vacancies) where it may be preferable for an individual or smaller group to act (such as a committee chair).</p>
<p>Composition of Board Members</p> <p>Provides clarification regarding the distinction between committees of the board of directors and advisory committees, clarifying that membership on board committees is open to non-board members (although non-board members cannot vote on matters that bind the corporation).</p>	<p>Depending on your bylaws, no action may be required. It is not uncommon in the nonprofit sector (and is often considered a best practice) for non-board members to be added to board committees. While most of the members of such committees should also be board members, adding non-members allows the committee to gain expertise and groom others to be board members. Seldom do such committees have the legal authority to "bind" the organization, but in decisions where they do, the non-board member's vote should not be considered. For example, if a committee has 5 members, 2 of whom are not board members, one board members and two non-members should not be able to override the remaining two board members.</p>

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THE UPDATE

NEXT STEPS

Advisory Committees

Many nonprofits utilize advisory committees. Kentucky law did not specifically authorize nonprofits to have advisory committees. Now it does.

No action required. The changes to the law offer a great deal of flexibility in the case of advisory committees, which by their nature cannot legally bind the corporation and can only serve in an advisory capacity. Advisory committees allow nonprofits to take advantage of additional expertise and resources, as well as cultivate future board members for succession planning.

Removal of Board Members

Allows for the board member removal procedures to be included in the corporation's bylaws (previously the law could be read to require such removal provisions to be included in the articles of incorporation).

No action required so long as removal procedures are already in either your articles of incorporation or bylaws. If they are only in your bylaws, you can now rest easy. If your organization does not address removal, this is a governance best practice and should be considered.

Conflicts of Interest

Establishes more detailed provisions (identical to Kentucky business statutes and generally consistent with IRS requirements) for defining and addressing board member conflicts of interest, including adding a mechanism for board approval where a conflict exists.

No action should be required. Most nonprofits already do not (and should not) permit conflicted directors to vote on matters posing their conflict.

Member Inspection Rights

Allows nonprofits to restrict member inspection of certain books and records by including such limitation in the articles of incorporation or bylaws.

When the original state membership inspection statute was enacted, the federal law providing public access to IRS Form 990 did not exist. This document contains detailed information on finances, compensation, conflicts of interest, etc. Membership organizations should examine their governance documents and determine if an amendment to the articles of incorporation or bylaws is in order – striking a balance between transparency and unlimited inspection rights by individuals outside of the governing board of directors. Organizations with active and voting dues-paying members may wish to develop standards that allow members access to relevant information as appropriate.

Distribution of Assets

Prior law has been interpreted by some to prohibit transfers between charities due to the fact that one charity was a member of another. This barrier has been eliminated and other aspects of the prior statute have been clarified.

No action should be required.