

2011 -- H 5279 AS AMENDED

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

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A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS – LOW
PROFIT LIMITED LIABILITY COMPANIES

Introduced By: Representatives Blazejewski, Keable, Newberry, Marcello, and Petrarca

Date Introduced: February 08, 2011

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 7-16-2 and 7-16-9 of the General Laws in Chapter 7-16 entitled
2 "The Rhode Island Limited Liability Company Act" are hereby amended to read as follows:

3 **7-16-2. Definitions.** -- As used in this chapter, unless the context otherwise requires:

4 (1) "Articles of organization" means documents filed under section 7-16-5 for the
5 purpose of forming a limited liability company.

6 (2) "Authorized person" means a person, whether or not a member, who is authorized by
7 the articles of organization, by an operating agreement, or otherwise, to act on behalf of a limited
8 liability company or foreign limited liability company as an officer, manager or otherwise.

9 (3) "Bankruptcy" means a proceeding under the United States Bankruptcy Code or under
10 state insolvency or receivership law.

11 (4) "Business" means any trade, occupation or other commercial activity engaged in for
12 gain, profit or livelihood for which a corporation can be organized under chapter 1.2 of this title.

13 (5) "Capital contribution" means any cash, property, services rendered, or a promissory
14 note or other binding obligation to contribute cash or property or to perform services which a
15 member contributes to a limited liability company in his or her capacity as a member.

16 (6) "Capital value" means the fair market value in each case as of the date contributed of
17 a member's capital contributions, including a contribution of services previously performed or a
18 contribution of a binding obligation to perform services, reduced by distributions made to the

1 member.

2 (7) "Constituent entity" means each limited liability company, limited partnership or
3 corporation which is a party to a plan of merger or consolidation.

4 (8) "Corporation" means a business corporation formed under chapter 1.2 of this title or
5 a foreign corporation.

6 (9) "Court" includes every court and judge having jurisdiction in the case.

7 (10) "Delivering/Delivered" means either physically transferring a paper document to the
8 secretary of state or transferring a document to the secretary of state by electronic transmission
9 through a medium provided and authorized by the secretary of state.

10 (11) "Filing" means delivered to the secretary of state in either paper format or electronic
11 transmission through a medium provided and authorized by the secretary of state.

12 (12) "Foreign corporation" means a business corporation formed under the laws of any
13 state other than this state or any foreign country.

14 (13) "Foreign limited liability company" means a limited liability company formed under
15 the laws of any state other than this state or any foreign country.

16 (14) "Foreign limited partnership" means a limited partnership formed under the laws of
17 any state other than this state or any foreign country.

18 (15) "Limited liability company" or "domestic limited liability company" means an
19 entity that is organized and existing under the laws of this state pursuant to this chapter.

20 (16) "Limited partnership" means a limited partnership formed under the laws of this
21 state or a foreign limited partnership.

22 (17) "Manager" or "Managers" means a person or persons designated by the members of
23 a limited liability company to manage the limited liability company.

24 (18) "Member" means a person with an ownership interest in a limited liability company
25 with the rights and obligations specified under this chapter.

26 (19) "Membership interest", "ownership interest" or "interest" means a member's rights
27 in the limited liability company, collectively, including the member's share of the profits and
28 losses of the limited liability company, the right to receive distributions of the limited liability
29 company's assets, and any right to vote or participate in management of the limited liability
30 company.

31 (20) "New entity" means the entity into which constituent entities consolidate, as
32 identified in the articles of consolidation provided for in section 7-16-62.

33 (21) "Operating agreement" means any agreement, written or oral, of the members as to
34 the affairs of a limited liability company and the conduct of its business. An operating agreement

1 also includes a document adopted by the sole member of a limited liability company that has only
2 one member and may include as a party one or more managers who are not members.

3 (22) "Person" means a natural person, partnership, limited partnership, domestic or
4 foreign limited liability company, trust, estate, corporation, nonbusiness corporation or other
5 association.

6 (23) "State" means a state, territory or possession of the United States, or the District of
7 Columbia.

8 (24) "Surviving entity" means the constituent entity surviving a merger, as identified in
9 the articles of merger provided for in section 7-16-62.

10 (25) "Signature" or "Signed" or "Executed" means an original signature, facsimile, or an
11 electronically transmitted signature submitted through a medium provided and authorized by the
12 secretary of state.

13 (26) "Electronic transmission" means any form of communication, not directly involving
14 the physical transmission of paper, that creates a record that may be retained, retrieved, and
15 reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a
16 recipient through an automated process.

17 (27) "L3C" or "low-profit limited liability company" means a limited liability company
18 that is organized and existing under the laws of this state under this chapter and which satisfies
19 the requirements of section 7-16-76.

20 **7-16-9. Name -- Fictitious business names.** -- (a) The name of each limited liability
21 company as set forth in its articles of organization:

22 (1) Shall end with either the words "limited liability company" or the upper or lower case
23 letters "l.l.c." with or without punctuation, or, if organized as a low-profit limited liability
24 company, shall end with either the words "low-profit limited liability company" or the
25 abbreviation "L3C" or "13c";

26 (2) Shall be distinguishable upon the records of the secretary of state from:

27 (i) The name of any corporation, nonbusiness corporation or other association, limited
28 partnership or domestic or foreign limited liability company organized under the laws of, or
29 registered or qualified to do business in, this state; or

30 (ii) Any name which is filed, reserved or registered under this title, subject to the
31 following:

32 (A) This provision shall not apply if the applicant files with the secretary of state a
33 certified copy of a final decree of a court of competent jurisdiction establishing the prior right of
34 the applicant to the use of the name in this state; and

1 (B) The name may be the same as the name of a corporation, nonbusiness corporation or
2 other association, the certificate of incorporation or organization of which has been revoked by
3 the secretary of state as permitted by law, and the revocation has not been withdrawn within one
4 year from the date of the revocation.

5 (b) (1) Any domestic or foreign limited liability company organized under the laws of, or
6 registered or qualified to do business in, this state may transact business in this state under a
7 fictitious name provided that it files a fictitious business name statement in accordance with this
8 subsection.

9 (2) A fictitious business name statement shall be filed with the secretary of state and
10 shall be executed by an authorized person of the domestic limited liability company or by a
11 person with authority to do so under the laws of the state or other jurisdiction of its organization
12 of the foreign limited liability company and shall set forth:

13 (i) The fictitious business name to be used; and

14 (ii) The name of the applicant limited liability company, the state or other jurisdiction in
15 which the limited liability company is organized and date of the limited liability company's
16 organization.

17 (3) The fictitious business name statement expires upon the filing of a statement of
18 abandonment of use of a fictitious business name registered in accordance with this subsection or
19 upon the dissolution of the applicant domestic limited liability company or the cancellation of
20 registration of the applicant foreign limited liability company.

21 (4) The statement of abandonment of use of a fictitious business name under this
22 subsection shall be filed with the secretary of state, shall be executed in the same manner and
23 provided in subdivision (2) above and shall set forth:

24 (i) The fictitious business name being abandoned;

25 (ii) The date on which the original fictitious business name statement being abandoned
26 was filed; and

27 (iii) The information set forth in subdivision (2)(ii) of subsection (a).

28 (5) No domestic or foreign limited liability company transacting business under a
29 fictitious business name contrary to the provisions of this section, or its assignee, may maintain
30 any action upon or on account of any contract made, or transaction had, in the fictitious business
31 name in any court of the state until a fictitious business name statement has been filed in
32 accordance with this section.

33 (6) No limited liability company may be permitted to transact business under a fictitious
34 business name pursuant to this section which is the same as the name of any corporation, limited

1 partnership or domestic or foreign limited liability company organized under the laws of, or
2 registered or qualified to do business in, this state or any name which is filed, reserved or
3 registered under this title, subject to the following:

4 (i) This provision does not apply if the applicant files with the secretary of state a
5 certified copy of a final decree of a court of competent jurisdiction establishing the prior right of
6 the applicant to the use of the name in this state; and

7 (ii) The name may be the same as the name of a corporation, nonbusiness corporation or
8 other association, the certificate of incorporation or organization of which has been revoked by
9 the secretary of state as permitted by law and the revocation has not been withdrawn within one
10 year from the date of revocation.

11 (7) A filing fee of fifty dollars (\$50.00) shall be collected by the secretary of state for
12 each statement filed.

13 SECTION 2. Chapter 7-16 of the General Laws entitled "The Rhode Island Limited
14 Liability Company Act" is hereby amended by adding thereto the following section:

15 **7-16-76. Low-profit limited liability company.** – (a) A low-profit limited liability
16 company shall at all times significantly further the accomplishment of one or more charitable or
17 educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue Code of
18 1986, 26 U.S.C. section 170(c)(2)(B), or its successor, and would not have been formed but for
19 the entity's relationship to the accomplishment of charitable or educational purposes.

20 (b) A limited liability company which intends to qualify as a low-profit limited liability
21 company pursuant to the provisions of section 7-16-76 shall so indicate in its articles of
22 organization, and further state that:

23 (1) No significant purpose of the entity is the production of income or the appreciation of
24 property; provided, however, that the fact that an entity produces significant income or capital
25 appreciation shall not, in the absence of other factors, be conclusive evidence of a significant
26 purpose involving the production of income or the appreciation of property.

27 (2) No purpose of the entity is to accomplish one or more political or legislative purposes
28 within the meaning of Section 170(c)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C.
29 section 170(c)(2)(D), or its successor.

30 (c) If an entity that met the requirements of section 7-16-76 at its formation at any time
31 ceases to satisfy any one of the requirements, it shall immediately cease to be a low-profit limited
32 liability company, but by continuing to meet all the other requirements of this chapter, will
33 continue to exist as a limited liability company. The name of the entity must be changed to be in
34 conformance with section 7-16-9.

1 (d) Nothing in section 7-16-76 shall prevent a limited liability company that is not
2 organized under it from electing a charitable or educational purpose in whole or in part for doing
3 business under this chapter.

4 SECTION 3. This act shall take effect on January 1, 2012.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS – LOW
PROFIT LIMITED LIABILITY COMPANIES

- 1 This act would authorize the formation of low-profit limited liability companies under the
- 2 laws of the State of Rhode Island.
- 3 This act would take effect on January 1, 2012.

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