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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: Senators Jabour, Metts, and McCaffrey

Date Introduced: February 16, 2011

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 7-16-2, 7-16-9 and 7-16-49 of the General Laws in Chapter 7-16
2 entitled "The Rhode Island Limited Liability Company Act" are hereby amended to read as
3 follows:

4 **7-16-2. Definitions.** -- As used in this chapter, unless the context otherwise requires:

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

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

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

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

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

17 (6) "Capital value" means the fair market value in each case as of the date contributed of
18 a member's capital contributions, including a contribution of services previously performed or a

1 contribution of a binding obligation to perform services, reduced by distributions made to the
2 member.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (21) "Operating agreement" means any agreement, written or oral, of the members as to

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

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

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

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

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

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

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

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

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

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

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

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

33 (A) This provision shall not apply if the applicant files with the secretary of state a
34 certified copy of a final decree of a court of competent jurisdiction establishing the prior right of

1 the applicant to the use of the name in this state; and

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

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

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

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

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

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

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

25 (i) The fictitious business name being abandoned;

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

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

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

34 (6) No limited liability company may be permitted to transact business under a fictitious

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

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

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

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

14 **7-16-49. Registration of foreign limited liability company.** -- (a) Before transacting
15 business in this state, a foreign limited liability company shall register with the secretary of state.

16 (b) In order to register, a foreign limited liability company shall submit to the secretary
17 of state, in duplicate, an application for registration as a foreign limited liability company, signed
18 by a person with authority to do so under the laws of the state or other jurisdiction of its
19 organization and setting forth:

20 (1) The name of the foreign limited liability company and, if different, the name under
21 which it proposes to register and transact business in this state;

22 (2) The state or other jurisdiction in which the foreign limited liability company is
23 organized and date of the foreign limited liability company's organization;

24 (3) The name and address of the resident agent required by section 7-16-11;

25 (4) A statement that the secretary of state is appointed the agent of the foreign limited
26 liability company for service of process if at any time there is no resident agent or if the resident
27 agent cannot be found or served following the exercise of reasonable diligence;

28 (5) The address of any office required to be maintained in the state or other jurisdiction
29 of its organization by the laws of that state or jurisdiction;

30 (6) A mailing address for the foreign limited liability company;

31 (7) A statement of whether the limited liability company is to be managed by its
32 members or by one or more managers, and if the limited liability company has managers at the
33 time of its application, the name and address of each manager; and

34 (8) Any additional information that may be necessary or appropriate in order to enable

1 the secretary of state to determine whether the foreign limited liability company is entitled to
2 transact business in this state.

3 (9) A statement indicating whether the company has been duly organized in its state of
4 formation as a low-profit limited liability company.

5 SECTION 2. Chapter 716 of the General Laws entitled "The Rhode Island Limited
6 Liability Company Act" is hereby amended by adding thereto the following section:

7 **7-16-76. Low-profit limited liability company.** – (a) A low-profit limited liability
8 company shall at all times significantly further the accomplishment of one or more charitable or
9 educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue Code of
10 1986, 26 U.S.C. section 170(c)(2)(B), or its successor, and would not have been formed but for
11 the entity's relationship to the accomplishment of charitable or educational purposes.

12 (b) A limited liability company which intends to qualify as a low-profit limited liability
13 company pursuant to the provisions of section 7-16-76 shall so indicate in its articles of
14 organization, shall organize under the provisions of section 7-16-6, and shall further state that:

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

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

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

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

30 (e) Except as otherwise provided in this subsection, all provisions of the Rhode Island
31 Limited Liability Act, Chapter 7-16 of this title, applicable to domestic limited liability
32 companies are applicable to low-profit limited liability companies.

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

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