

2013 -- S 1049

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS

Introduced By: Senator Catherine Cool Rumsey

Date Introduced: July 03, 2013

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 7 of the General Laws entitled "CORPORATIONS,
2 ASSOCIATIONS, AND PARTNERSHIPS" is hereby amended by adding thereto the following
3 chapter:

4 CHAPTER 5.3

5 BENEFIT CORPORATIONS

6 **7-5.3-1. Application and effect of chapter.** -- (a) This chapter shall be applicable to all
7 benefit corporations.

8 (b) The existence of a provision of this chapter shall not of itself create an implication
9 that a contrary or different rule of law is applicable to a corporation that is not a benefit
10 corporation. This chapter shall not affect a statute or rule of law that is applicable to a corporation
11 that is not a benefit corporation.

12 (c) Except as otherwise provided in this chapter, all provisions of the general corporation
13 law, including the Rhode Island Business Corporation Act, chapter 1.2 of this title, applicable to
14 domestic business corporations are applicable to corporations organized under this chapter. A
15 benefit corporation may be subject simultaneously to this chapter and chapters 5.1 of this title.
16 The provisions of this chapter shall control over the provisions of any other chapter to this title to
17 which a benefit corporation is subject.

18 (d) A provision of the articles of incorporation or bylaws of a benefit corporation may not
19 limit, be inconsistent with, or supersede a provision of this chapter.

1 **7-5.3-2. Definitions. -- As used in this chapter:**

2 (1) "Benefit corporation" means a corporation for profit with purposes set forth in section
3 7-5.3-6 that is subject to this chapter.

4 (2) "Benefit director" means either:

5 (i) The director designated as the benefit director of a benefit corporation under section 7-
6 5.3-8; or

7 (ii) A person with one or more of the powers, duties or rights of a benefit director to the
8 extent provided in the bylaws under subsection 7-5.3-8(f).

9 (3) "Benefit enforcement proceeding" means any claim or action or proceeding for:

10 (i) Failure of a benefit corporation to pursue or create general public benefit or a specific
11 public benefit purpose set forth in its articles; or

12 (ii) Violation of any obligation, duty, or standard of conduct under this chapter.

13 (4) "Benefit officer" means the individual, if any, designated as the benefit officer of a
14 benefit corporation under section 7-5.3-10.

15 (5) "General public benefit" means a material positive impact on society and the
16 environment, taken as a whole, assessed against a third-party standard, from the business and
17 operations of a benefit corporation.

18 (6) "Independent" means having no material relationship with a benefit corporation or a
19 subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make
20 an individual not independent. A material relationship between an individual and a benefit
21 corporation or any of its subsidiaries will be conclusively presumed to exist if any of the
22 following apply:

23 (i) The individual is, or has been within the last three (3) years, an employee other than a
24 benefit officer of the benefit corporation or a subsidiary.

25 (ii) An immediate family member of the individual is, or has been within the last three (3)
26 years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary.

27 (iii) There is beneficial or record ownership of five percent (5%) or more of the
28 outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire
29 equity interests in the benefit corporation had been exercised, by:

30 (A) The individual; or

31 (B) An entity;

32 (I) Of which the individual is a director, an officer, or a manager; or

33 (II) In which the individual owns beneficially or of record five percent (5%) or more of
34 the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in

1 the entity had been exercised.

2 (7) "Minimum status vote" means:

3 (i) In the case of a corporation, in addition to any other required approval or vote, the
4 satisfaction of the following conditions:

5 (A) The shareholders of every class or series shall be entitled to vote as a class on the
6 corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the
7 voting rights of any class or series.

8 (B) The corporate action must be approved by vote of the shareholders of each class or
9 series entitled to cast at least two-thirds (2/3) of the votes that all shareholders of the class or
10 series are entitled to cast on the action.

11 (ii) In the case of a domestic entity other than a corporation, in addition to any other
12 required approval, vote, or consent, the satisfaction of the following conditions:

13 (A) The holders of every class or series of equity interest in the entity that are entitled to
14 receive a distribution of any kind from the entity shall be entitled to vote on or consent to the
15 action regardless of any otherwise applicable limitation on the voting or consent rights of any
16 class or series.

17 (B) The action must be approved by vote or consent of the holders described in
18 subparagraph (A) entitled to cast at least two-thirds (2/3) of the votes or consents that all of those
19 holders are entitled to cast on the action.

20 (8) "Publicly traded corporation" means a corporation that has shares listed on a national
21 securities exchange or traded in a market maintained by one or more members of a national
22 securities association.

23 (9) "Specific public benefit" includes:

24 (i) Providing low-income or underserved individuals or communities with beneficial
25 products or services;

26 (ii) Promoting economic opportunity for individuals or communities beyond the creation
27 of jobs in the normal course of business;

28 (iii) Protecting or restoring the environment;

29 (iv) Improving human health;

30 (v) Promoting the arts, sciences, or advancement of knowledge;

31 (vi) Increasing the flow of capital to entities with a purpose to benefit society or the
32 environment; and

33 (vii) Conferring any other particular benefit on society or the environment.

34 (10) "Subsidiary" means, in relation to a person, an entity in which the person owns

1 beneficially or of record fifty percent (50%) or more of the outstanding equity interests,
2 calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

3 (11) "Third-party standard" means a recognized standard for defining, reporting, and
4 assessing corporate social and environmental performance that is:

5 (i) Comprehensive because it assesses the effect of the business and its operations upon
6 the interests listed in paragraphs 7-5.3-7(a)(1)(ii), (iii), (iv) and (v).

7 (ii) Developed by an entity that is not controlled by the benefit corporation.

8 (iii) Credible because it is developed by an entity that both:

9 (A) Has access to necessary expertise to assess overall corporate social and
10 environmental performance; and

11 (B) Uses a balanced multi-stakeholder approach to develop the standard, including a
12 reasonable public comment period.

13 (iv) Transparent because the following information is publicly available:

14 (A) About the standard:

15 (I) The criteria considered when measuring the overall social and environmental
16 performance of a business.

17 (II) The relative weightings, if any, of those criteria.

18 (B) About the development and revision of the standard:

19 (I) The identity of the directors, officers, material owners, and the governing body of the
20 entity that developed and controls revisions to the standard.

21 (II) The process by which revisions to the standard and changes to the membership of the
22 governing body are made.

23 (III) An accounting of the revenue and sources of financial support for the entity, with
24 sufficient detail to disclose any relationships that could reasonably be considered to present a
25 potential conflict of interest.

26 **7-5.3-3. Incorporation of benefit corporation. --** A benefit corporation shall be
27 incorporated in accordance with section 7-1.2-202, and, if applicable, chapter 7-5.1 but its articles
28 of incorporation must also state that it is a benefit corporation and disclose the fiscal year end of
29 the corporation.

30 **7-5.3-4. Election of benefit corporation status. --** (a) An existing corporation may
31 become a benefit corporation under this chapter by amending its articles of incorporation so that
32 they contain, in addition to the requirements of section 7-1.2-202, a statement that the corporation
33 is a benefit corporation. In order to be effective, the amendment must be adopted by at least the
34 minimum status vote.

1 (b) If an entity that is not a benefit corporation is a party to a merger or conversion and
2 the surviving or resulting entity in the merger or consolidation is to be a benefit corporation, the
3 merger or conversion must be approved by the entity by at least the minimum status vote.

4 **7-5.3-5. Termination of benefit corporation status. --** (a) A benefit corporation may
5 terminate its status as such and cease to be subject to this chapter by amending its articles of
6 incorporation to delete the provision required by section 7-5.3-3 or section 7-5.3-4 to be stated in
7 the articles of a benefit corporation. In order to be effective, the amendment must be adopted by
8 at least the minimum status vote.

9 (b) If a merger or conversion would have the effect of terminating the status of a business
10 corporation as a benefit corporation, the merger or conversion must be adopted by at least the
11 minimum status vote in order to be effective. Any sale, lease, exchange, or other disposition of all
12 or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and
13 regular course of business, shall not be effective unless the transaction is approved by at least the
14 minimum status vote.

15 **7-5.3-6. Corporate purposes. --** (a) A benefit corporation shall have a purpose of
16 creating general public benefit. This purpose is in addition to its purpose under section 7-1.2-301

17 (b) The articles of incorporation of a benefit corporation may identify one or more
18 specific public benefits that it is the purpose of the benefit corporation to create in addition to its
19 purposes under section 7-1.2-301 and subsection (a). The identification of a specific public
20 benefit under this subsection does not limit the purpose of a benefit corporation to create general
21 public benefit under subsection (a).

22 (c) The creation of general public benefit and specific public benefit under subsections
23 (a) and (b) is in the best interests of the benefit corporation.

24 (d) A benefit corporation may amend its articles of incorporation to add, amend, or delete
25 the identification of a specific public benefit that it is the purpose of the benefit corporation to
26 create. In order to be effective, the amendment must be adopted by at least the minimum status
27 vote.

28 **7-5.3-7. Standard of conduct for directors. --** (a) In discharging the duties of their
29 respective positions and in considering the best interests of the benefit corporation, the board of
30 directors, committees of the board, and individual directors of a benefit corporation:

31 (1) Shall consider the effects of any action or inaction upon:

32 (i) The shareholders of the benefit corporation;

33 (ii) The employees and work force of the benefit corporation, its subsidiaries, and its
34 suppliers;

1 (iii) The interests of customers as beneficiaries of the general public benefit or specific
2 public benefit purposes of the benefit corporation;

3 (iv) Community and societal factors, including those of each community in which offices
4 or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;

5 (v) The local and global environment;

6 (vi) The short-term and long-term interests of the benefit corporation, including benefits
7 that may accrue to the benefit corporation from its long-term plans and the possibility that these
8 interests may be best served by the continued independence of the benefit corporation; and

9 (vii) The ability of the benefit corporation to accomplish its general public benefit
10 purpose and any specific public benefit purpose; and

11 (2) May consider other pertinent factors or the interests of any other group that they deem
12 appropriate; but

13 (3) Need not give priority to the interests of a particular person or group referred to in
14 subdivision (1) or (2) over the interests of any other person or group unless the benefit
15 corporation has stated in its articles of incorporation its intention to give priority to certain
16 interests related to its accomplishment of its general public benefit purpose or of a specific public
17 benefit purpose identified in its articles.

18 (b) The consideration of interests and factors in the manner required by subsection (a)
19 does not constitute a violation of section 7-1.2-801.

20 (c) Except as provided in the articles of incorporation, a director is not personally liable
21 for monetary damages for:

22 (1) Any action or inaction in the course of performing the duties of a director under
23 subsection (a) if the director performed the duties of office in compliance with section 7-1.2-801
24 and this section; or

25 (2) Failure of the benefit corporation to pursue or create a general public benefit or a
26 specific public benefit.

27 (d) A director does not have a duty to a person that is a beneficiary of the general public
28 benefit purpose or a specific public benefit purpose of a benefit corporation arising from the
29 status of the person as a beneficiary.

30 (e) A director who makes a business judgment in good faith fulfills the duty under this
31 section if the director:

32 (1) Is not interested in the subject of the business judgment;

33 (2) Is informed with respect to the subject of the business judgment to the extent the
34 director reasonably believes to be appropriate under the circumstances; and

1 (3) Rationally believes that the business judgment is in the best interests of the benefit
2 corporation.

3 **7-5.3-8. Benefit director. --** (a) The board of directors of a benefit corporation that is a
4 publicly traded corporation shall, and the board of any other benefit corporation may, include a
5 director, who:

6 (1) Shall be designated the benefit director; and

7 (2) Shall have, in addition to the powers, duties, rights, and immunities of the other
8 directors of the benefit corporation, the powers, duties, rights, and immunities provided in this
9 chapter.

10 (b) The benefit director shall be elected, and may be removed, in the manner provided by
11 chapter 7-1.2. Except as provided in subsections (f) and (g), the benefit director shall be an
12 individual who is independent. The benefit director may serve as the benefit officer at the same
13 time as serving as the benefit director. The articles of incorporation or bylaws of a benefit
14 corporation may prescribe additional qualifications of the benefit director not inconsistent with
15 this subsection.

16 (c) The benefit director shall prepare, and the benefit corporation shall include in the
17 annual benefit report to shareholders required by section 7-5.3-12, the opinion of the benefit
18 director on all of the following:

19 (1) Whether the benefit corporation acted in accordance with its general public benefit
20 purpose and any specific public benefit purpose in all material respects during the period covered
21 by the report.

22 (2) Whether the directors and officers complied with subsection 7-5.3-7(a) and 7-5.3-
23 9(a), respectively.

24 (3) If, in the opinion of the benefit director, the benefit corporation or its directors or
25 officers failed to act or comply in the manner described in subdivisions (1) and (2), a description
26 of the ways in which the benefit corporation or its directors or officers failed to act or comply.

27 (d) The act or inaction of an individual in the capacity of a benefit director shall
28 constitute for all purposes an act or inaction of that individual in the capacity of a director of the
29 benefit corporation.

30 (e) Regardless of whether the articles of incorporation of a benefit corporation include a
31 provision eliminating or limiting the personal liability of directors authorized by subdivision 7-
32 1.2-202(b)(3), a benefit director shall not be personally liable for an act or omission in the
33 capacity of a benefit director unless the act or omission constitutes self-dealing, willful
34 misconduct, or a knowing violation of law.

1 (f) If the articles of incorporation of a benefit corporation provide that the powers and
2 duties conferred or imposed upon the board of directors shall be exercised or performed by a
3 person other than the directors as permitted by subsection 7-1.2-801(a), the articles must provide
4 that the persons or shareholders who perform the duties of the board of directors include a person
5 with the powers, duties, rights and immunities of a benefit director. A person that exercises one or
6 more of the powers, duties or rights of a benefit director under this subsection:

7 (1) Does not need to be independent of the benefit corporation;

8 (2) Shall have the immunities of a benefit director; and

9 (3) May share the powers, duties, and rights of a benefit director with one or more other
10 persons.

11 (g) The benefit director of a professional corporation or consumer cooperative does not
12 need to be independent.

13 **7-5.3-9. Standard of conduct for officers.** -- (a) Each officer of a benefit corporation
14 shall consider the interests and factors described in subsection 7-5.3-7(a) in the manner provided
15 in that subsection if:

16 (1) The officer has discretion to act with respect to a matter; and

17 (2) It reasonably appears to the officer that the matter may have a material effect on the
18 creation by the benefit corporation of general public benefit or a specific public benefit identified
19 in the articles of incorporation of the benefit corporation.

20 (b) The consideration by an officer of interests and factors in the manner described in
21 subsection (a) shall not constitute a violation of the duties of the officer.

22 (c) Except as provided in the articles of incorporation, an officer is not personally liable
23 for monetary damages for:

24 (1) An action or inaction as an officer in the course of performing the duties of an officer
25 under subsection (a) if the officer performed the duties of the position in compliance with
26 subsection 7-1.2-812(b) and this section; or

27 (2) Failure of the benefit corporation to pursue or create a general public benefit or a
28 specific public benefit.

29 (d) An officer does not have a duty to a person that is a beneficiary of the general public
30 benefit purpose or a specific public benefit purpose of a benefit corporation arising from the
31 status of the person as a beneficiary.

32 (e) An officer who makes a business judgment in good faith fulfills the duty under this
33 section if the officer:

34 (1) Is not interested in the subject of the business judgment;

1 (2) Is informed with respect to the subject of the business judgment to the extent the
2 officer reasonably believes to be appropriate under the circumstances; and

3 (3) Rationally believes that the business judgment is in the best interests of the benefit
4 corporation.

5 **7-5.3-10. Benefit officer--** (a) A benefit corporation may have an officer designated as
6 the benefit officer.

7 (b) A benefit officer shall have:

8 (1) The powers and duties relating to the purpose of the corporation to create general
9 public benefit or specific public benefit provided:

10 (i) By the bylaws; or

11 (ii) Absent controlling provisions in the bylaws, by resolutions or orders of the board of
12 directors.

13 (2) The duty to prepare the benefit report required by section 7-5.3-12.

14 **7-5.3-11. Right of action. --** (a) Except in a benefit enforcement proceeding, no person
15 may bring an action or assert a claim against a benefit corporation or its directors or officers with
16 respect to:

17 (1) Failure to pursue or create general public benefit or a specific public benefit set forth
18 in its articles of incorporation; or

19 (2) Violation of an obligation, duty, or standard of conduct under this chapter.

20 (b) A benefit corporation shall not be liable for monetary damages under this chapter for
21 any failure of the benefit corporation to pursue or create general public benefit or a specific public
22 benefit.

23 (c) A benefit enforcement proceeding may be commenced or maintained only:

24 (1) Directly by the benefit corporation; or

25 (2) Derivatively in accordance with the procedures in section 7-1.2-711 by:

26 (i) A person or group of persons that owned beneficially or of record at least two percent
27 (2%) of the total number of shares of a class or series outstanding at the time of the act or
28 omission complained of;

29 (ii) A director;

30 (iii) A person or group of persons that owned beneficially or of record five percent (5%)
31 or more of the outstanding equity interests in an entity of which the benefit corporation is a
32 subsidiary at the time of the act or omission complained of; or

33 (iv) Other persons as specified in the articles of incorporation or bylaws of the benefit
34 corporation.

1 (d) For purposes of this section, a person is the beneficial owner of shares or equity
2 interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the
3 beneficial owner.

4 **7-5.3-12. Preparation of annual benefit report. --** (a) A benefit corporation shall
5 prepare an annual benefit report including all of the following:

6 (1) A narrative description of:

7 (i) The ways in which the benefit corporation pursued general public benefit during the
8 year and the extent to which general public benefit was created.

9 (ii) Both:

10 (A) The ways in which the benefit corporation pursued a specific public benefit that the
11 articles of incorporation state it is the purpose of the benefit corporation to create; and

12 (B) The extent to which that specific public benefit was created.

13 (iii) Any circumstances that have hindered the creation by the benefit corporation of
14 general public benefit or specific public benefit.

15 (iv) The process and rationale for selecting or changing the third-party standard used to
16 prepare the benefit report.

17 (2) An assessment of the overall social and environmental performance of the benefit
18 corporation against a third-party standard:

19 (i) Applied consistently with any application of that standard in prior benefit reports; or

20 (ii) Accompanied by an explanation of the reasons for:

21 (A) Any inconsistent application; or

22 (B) The change to that standard from the one used in the immediately prior report.

23 (3) The name of the benefit director and the benefit officer, if any, and the address to
24 which correspondence to each of them may be directed.

25 (4) The compensation paid by the benefit corporation during the year to each director in
26 the capacity of a director.

27 (5) The statement of the benefit director described in subsection 7-5.3-8(c).

28 (6) A statement of any connection between the organization that established the third-
29 party standard, or its directors, officers or any holder of five percent (5%) or more of the
30 governance interests in the organization, and the benefit corporation or its directors, officers or
31 any holder of five percent (5%) or more of the outstanding shares of the benefit corporation,
32 including any financial or governance relationship which might materially affect the credibility of
33 the use of the third-party standard.

34 (7) If the benefit corporation has dispensed with, or restricted the discretion or powers of,

1 the board of directors, a description of:

2 (i) The persons that exercise the powers, duties, and rights and who have the immunities
3 of the board of directors; and

4 (ii) The benefit director, as required by subsection 7-5.3-8(f).

5 (b) If, during the year covered by a benefit report, a benefit director resigned from or
6 refused to stand for reelection to the position of benefit director, or was removed from the
7 position of benefit director, and the benefit director furnished the benefit corporation with any
8 written correspondence concerning the circumstances surrounding the resignation, refusal, or
9 removal, the benefit report shall include that correspondence as an exhibit.

10 (c) Neither the benefit report nor the assessment of the performance of the benefit
11 corporation in the benefit report required by subdivision (a)(2) needs to be audited or certified by
12 a third party.

13 **7-5.3-13. Availability of annual benefit report. --** (a) A benefit corporation shall send
14 its annual benefit report to each shareholder on the earlier of:

15 (1) One hundred twenty (120) days following the end of the fiscal year of the benefit
16 corporation; or

17 (2) The same time that the benefit corporation delivers any other annual report to its
18 shareholders.

19 (b) A benefit corporation shall post all of its benefit reports on the public portion of its
20 Internet website, if any, but the compensation paid to directors and financial or proprietary
21 information included in the benefit reports may be omitted from the benefit reports as posted.

22 (c) If a benefit corporation does not have an Internet website, the benefit corporation shall
23 provide a copy of its most recent benefit report, without charge, to any person that requests a
24 copy, but the compensation paid to directors and financial or proprietary information included in
25 the benefit report may be omitted from the copy of the benefit report provided.

26 (d) Concurrently with the delivery of the benefit report to shareholders under subsection
27 (c), the benefit corporation shall deliver a copy of the benefit report to the secretary of state for
28 filing, but the compensation paid to directors and financial or proprietary information included in
29 the benefit report may be omitted from the benefit report as delivered to the secretary of state.
30 The secretary of state shall charge a fee of ten dollars (\$10.00) for filing a benefit report.

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS

- 1 This act would allow for the creation of benefit corporations.
- 2 This act would take effect upon passage.

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