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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS

Introduced By: Senators Nesselbush, Jabour, Lynch, McCaffrey, and Archambault

Date Introduced: April 09, 2014

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 7-16-9, 7-16-13, 7-16-15, 7-16-18, 7-16-29, 7-16-35, 7-16-36, 7-  
2   16-37, 7-16-39, 7-16-40, 7-16-42, 7-16-43, 7-16-45, 7-16-47, 7-16-49, 7-16-50, 7-16-51, 7-16-52,  
3   7-16-53 and 7-16-54 of the General Laws in Chapter 7-16 entitled "The Rhode Island Limited  
4   Liability Company Act" are hereby amended to read as follows:

5           **7-16-9. Name -- Fictitious business names. --** (a) The name of each limited liability  
6   company as set forth in its articles of organization [or certificate of authority](#):

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

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

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

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

17          (A) This provision shall not apply if the applicant files with the secretary of state a  
18   certified copy of a final decree of a court of competent jurisdiction establishing the prior right of  
19   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2 other association, the certificate of incorporation or organization of which has been revoked by  
3 the secretary of state as permitted by law, and the revocation has not been withdrawn within one  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 (C) Words and/or abbreviations that are required by statute to identify the particular type  
6 of business entity shall be disregarded when determining if a name is distinguishable upon the  
7 records of the secretary of state.

8 (D) The secretary of state shall promulgate rules and regulations defining the term  
9 "distinguishable upon the record" for the administration of this chapter.

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

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

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

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

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

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

29 (i) The fictitious business name being abandoned;

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

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

33 (5) No domestic or foreign limited liability company transacting business under a  
34 fictitious business name contrary to the provisions of this section, or its assignee, may maintain

1 any action upon or on account of any contract made, or transaction had, in the fictitious business  
2 name in any court of the state until a fictitious business name statement has been filed in  
3 accordance with this section.

4 (6) No limited liability company may be permitted to transact business under a fictitious  
5 business name pursuant to this section which is the same as the name of any corporation, limited  
6 partnership or domestic or foreign limited liability company organized under the laws of, or  
7 registered or qualified to do business in, this state or any name which is filed, reserved or  
8 registered under this title, subject to the following:

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

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

16 (iii) Words and/or abbreviations that are required by statute to identify the particular type  
17 of business entity shall be disregarded when determining if a name is distinguishable upon the  
18 records of the secretary of state.

19 (iv) The secretary of state shall promulgate rules and regulations defining the term  
20 "distinguishable upon the record" for the administration of this chapter.

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

23 **7-16-13. Certificates of correction.** -- (a) If any document filed with the secretary of  
24 state under this chapter contains any ~~typographical error, error of transcription or other technical~~  
25 ~~error~~ inaccurate information or has been defectively executed, the document may be corrected by  
26 filing a certificate of correction.

27 (b) A certificate of correction shall set forth:

28 (1) The title of the document being corrected;

29 (2) The name of each party to the document being corrected;

30 (3) The date that the document being corrected was filed; and

31 (4) The provision in the document as previously filed and as corrected and, if execution  
32 of the document was defective, the manner in which it was defective.

33 (c) A certificate of correction may not make any other change or amendment which  
34 would not have complied in all respects with the requirements of this chapter at the time the

1 document being corrected was filed.

2 (d) A certificate of correction shall be executed in the same manner in which the  
3 document being corrected was required to be executed.

4 (e) A certificate of correction may not:

5 (1) Change the effective date of the document being corrected; or

6 (2) Affect any right or liability accrued or incurred before its filing, except that any right  
7 or liability accrued or incurred by reason of the error or defect being corrected shall be  
8 extinguished by the filing if the person having the right or liability has not detrimentally relied on  
9 the original document.

10 **7-16-15. Managers.** -- (a) Subject to § 7-16-17, ~~The~~ the articles of organization or a  
11 written operating agreement may deny, restrict or enlarge the management rights and duties of  
12 any member or group or class of member and may provide that the business and affairs of the  
13 limited liability company shall be managed by or under the authority of one or more managers  
14 who may, but need not be, members.

15 (b) The articles of organization or written operating agreement may prescribe  
16 qualifications for managers.

17 (c) The number of managers may be specified in or fixed in accordance with the articles  
18 of organization or written operating agreement.

19 **7-16-18. Limitation of liability of managers.** -- (a) Subject to subsection (b), the articles  
20 of organization or operating agreement may eliminate or limit the personal liability of a manager  
21 to the limited liability company or to its members for monetary damages for breach of any duty  
22 provided for in section 7-16-17.

23 (b) No provision permitted under subsection (a) limits or eliminates the liability of a  
24 manager for:

25 (1) Breach of the manager's duty of loyalty to the limited liability company or its  
26 members; provided, however, that a written operating agreement may reasonably limit liability  
27 for breach of a manager's duty of loyalty;

28 (2) Acts or omissions not in good faith or which involve intentional misconduct or a  
29 knowing violation of law;

30 (3) The liability imposed pursuant to the provisions of section 7-16-32; or

31 (4) Any transaction from which the manager derived an improper personal benefit,  
32 unless the transaction was with the informed consent of the members or a majority of the  
33 disinterested managers. No provision eliminating or limiting the personal liability of a manager  
34 will be effective with respect to causes of action arising prior to the inclusion of the provision in

1 the articles of organization or operating agreement.

2 **7-16-29. Distributions upon withdrawal** **Withdrawal of a member; Distributions**  
3 **upon withdrawal.** – A member may withdraw from a limited liability company only at the time  
4 or upon the happening of events specified in and in accordance with a written agreement. Unless  
5 a written agreement provides otherwise, a member shall have no right to withdraw from a limited  
6 liability company prior to the dissolution and winding up of the limited liability company. Upon  
7 the withdrawal of a member, except as otherwise provided in ~~writing in an~~ a written operating  
8 agreement, the withdrawn member and his or her legal representatives, successors and assigns do  
9 not have the right to receive any distribution by reason of the withdrawal but have only the rights  
10 of an assignee to receive distributions as to the withdrawn member's interest during any  
11 continuation of the business of the limited liability company and upon completion of winding up  
12 less any damages recoverable against the withdrawn member if the event of withdrawal violated  
13 the limited liability company's operating agreement. A person's withdrawal as a member does not  
14 of itself discharge the person from any obligation to the limited liability company or the other  
15 members which the person incurred as a member.

16 **7-16-35. Assignment of membership interest.** -- (a) Unless otherwise provided in the  
17 articles of organization or a written operating agreement:

18 (1) A membership interest is assignable in whole or in part;

19 (2) An assignment of a membership interest does not of itself dissolve a limited liability  
20 company or entitle the assignee to participate in the management and affairs of the limited  
21 liability company or to become a member or to exercise any rights or powers of a member;

22 (3) An assignment entitles the assignee to receive, to the extent assigned, only the  
23 distributions to which the assignor would be entitled; ~~and~~

24 (4) A limited liability company need not give effect to an assignee's rights under this  
25 section until the company has notice of the assignment; and

26 ~~(4)~~(5) A member ceases to be a member and to have the power to exercise any rights or  
27 powers of a member on assignment of all of the member's membership interest.

28 (b) Unless otherwise provided in the articles of organization or an operating agreement,  
29 the pledge of or granting of a security interest, lien or other encumbrance in or against any or all  
30 of the membership interest of a member is not deemed an assignment of a membership interest.

31 (c) Unless otherwise provided in the articles of organization or an operating agreement  
32 and except to the extent provided in a written agreement signed by an assignee, until an assignee  
33 of a membership interest becomes a member, the assignee has no liability as a member solely as a  
34 result of the assignment.

1           **7-16-36. Right of assignee to become a member.** -- (a) Except as otherwise provided in  
2 a written operating agreement, an assignee of an interest in a limited liability company may  
3 become a member only if the other members unanimously consent. The consent of a member may  
4 be evidenced in any manner specified in an operating agreement, but in the absence of  
5 specification, consent is evidenced by a written instrument, dated and signed by the member, or  
6 evidenced by a vote taken at a meeting of the members called in accordance with the operating  
7 agreement and maintained with the records of the limited liability company.

8           (b) An assignee who becomes a member has, to the extent assigned, the rights and  
9 powers, and is subject to the restrictions and liabilities, of a member under the articles of  
10 organization, any operating agreement and this chapter.

11           (c) An assignee who becomes a member is liable for any obligations of the assignor to  
12 make contributions and to return distributions under this chapter [of which the assignee had notice](#)  
13 [prior to the time the assignee became a member.](#)

14           (d) Whether or not an assignee of a membership interest becomes a member, the assignor  
15 is not released from the assignor's liability to the limited liability company under section 7-16-25  
16 and section 7-16-32.

17           **7-16-37. Rights of judgment creditor.** -- On application to a court of competent  
18 jurisdiction by any judgment creditor of a member, the court may charge the membership interest  
19 of the member with payment of the unsatisfied amount of judgment with interest. To the extent  
20 charged, the judgment creditor has only the rights of an assignee of the membership interest. This  
21 chapter does not deprive any member of the benefit of any exemption laws applicable to that  
22 member's membership interest. [In each case except as otherwise provided in §§ 7-16-40 and 7-](#)  
23 [16-45, the entry of a charging order is the exclusive remedy by which a judgment creditor of a](#)  
24 [member or of a member's assignee may satisfy a judgment debtor's membership interest. And no](#)  
25 [creditor of a member or of a member's assignee shall have any right to obtain possession of, or](#)  
26 [otherwise exercise legal or equitable remedies with respect to, the property of the limited liability](#)  
27 [company, unless otherwise accepted as a member in accordance with the limited liability](#)  
28 [company's organizational documents.](#)

29           **7-16-39. Dissolution.** -- A limited liability company is dissolved and its affairs shall be  
30 wound up upon the happening of the first to occur of the following:

31           (1) At any time specified in the articles of organization;

32           (2) An event specified in the articles of organization or a written operating agreement to  
33 cause dissolution;

34           (3) By action of members taken pursuant to section 7-16-21(b)(1);

1 (4) On the written consent of a majority of the capital values of the remaining members  
2 after the death, withdrawal, expulsion, bankruptcy, or dissolution of a member, or the occurrence  
3 of any other event that terminates the continued membership of a member in the limited liability  
4 company, unless otherwise provided in the articles of organization or a written operating  
5 agreement; or

6 ~~(5) Unless otherwise provided in the articles of incorporation or a written operating~~  
7 ~~agreement, on the death, withdrawal, expulsion, bankruptcy or dissolution of the last remaining~~  
8 ~~member or any other event that terminates the continued membership of the last remaining~~  
9 ~~member, unless within ninety (90) days the successor(s) in interest of the last remaining member~~  
10 ~~and any assignees of the member's interest and of any other member's interest agree in writing to~~  
11 ~~admit at least one (1) member to continue the business of the limited liability company; or~~

12 ~~(6)~~(5) Entry of a decree of judicial dissolution under section 7-16-40.

13 **7-16-40. Judicial dissolution.** – (a) The superior court has full power to ~~On application~~  
14 ~~by or on behalf of a member, the superior court may~~ decree dissolution of a limited liability  
15 company and liquidate the assets and business of a limited liability company:

16 (1) In an action by a member when it is established that whether or not the business of the  
17 limited liability company has been or could be operated at a profit, dissolution would be  
18 beneficial to the members because:

19 (i) Except as otherwise provided in the articles of organization or a written operating  
20 agreement, the managers are deadlocked in the management of the limited liability company  
21 affairs and the members are unable to break the deadlock; or

22 (ii) The acts of the managers or those in control of the limited liability company are  
23 illegal, oppressive or fraudulent; or

24 (iii) The limited liability company assets are being misapplied or are in danger of being  
25 wasted or lost: or

26 (iv) Except as otherwise provided in the articles of organization or a written operating  
27 agreement, the members holding one-half (1/2) or more of all of the membership interests of the  
28 limited liability company have voted to dissolve the limited liability company; or

29 (v) ~~whenever~~ Whenever it is not reasonably practicable to carry on the business in  
30 conformity with the articles of organization or operating agreement.

31 (2)(i) In an action by a creditor of the limited liability company:

32 (A) When it is established that the limited liability company is insolvent; or

33 (B) When it is established that the limited liability company assets are being misapplied  
34 or are in danger of being wasted or lost.

1 (ii) If it is established that the claim of a creditor of the limited liability company has  
2 been reduced to judgment and an execution on the judgment returned unsatisfied or that the  
3 limited liability company has admitted, in writing, that the claim of a creditor is due and owing,  
4 the establishment of the facts are prima facie evidence of insolvency.

5 (iii) Every petition filed by a creditor for the liquidation of the assets and business of a  
6 limited liability company must contain a statement as to whether the creditor is or is not a  
7 manager or member of the limited liability company. Every petition for the liquidation of the  
8 assets and business of a limited liability company filed by a manager or member of a limited  
9 liability company or by a creditor who is a manager or member, must contain, to the best of the  
10 petitioner's knowledge, information, and belief, the names and addresses of all known creditors of  
11 any class of the limited liability company.

12 (3) When an action has been filed by the attorney general to dissolve a limited liability  
13 company and it is established that liquidation of its business and affairs should precede the entry  
14 of a decree of dissolution.

15 (4)(i) In an action by the assignee of the membership interest of the last remaining  
16 member on the death, withdrawal, expulsion, bankruptcy or dissolution of the last remaining  
17 member or any other event that terminates the continued membership of the last remaining  
18 member; or

19 (ii) In an action by the assignee of a member following not less than ninety (90) days  
20 written notice to the assignee of the membership interest of the last remaining member on the  
21 death, withdrawal, expulsion, bankruptcy or dissolution of the last remaining member or any  
22 other event that terminates the continued membership of the last remaining member, unless the  
23 successor in interest of the last remaining member and any assignees of the interest of any other  
24 members in the company agree in writing to admit at least one member to continue the business  
25 of the limited liability company within such ninety (90) day period.

26 (b) Proceedings under subsections (a)(1), (a)(2) or (a)(4) should be brought in the county  
27 in which the registered or principal office of the limited liability company is situated.

28 (c) It is not necessary to make members parties to any action or proceeding unless relief  
29 is sought against them personally.

30 **7-16-42. Issuance of certificates of revocation.** -- (a) Upon revoking any such certificate  
31 of organization or certificate of registration of ~~the~~ a domestic limited liability company, the  
32 secretary of state shall:

33 (1) Issue a certificate of revocation in duplicate;

34 (2) File one of the certificate in the secretary of state's office;



1 (3) Send to the limited liability company by regular mail a certificate of revocation,  
2 addressed to the resident agent of the limited liability company in this state on file with the  
3 secretary of state's office; provided, however, that if a prior mailing addressed to the address of  
4 the resident agent of the limited liability company in this state currently on file with the secretary  
5 of state's office has been returned to the secretary of state as undeliverable by the United States  
6 Postal Service for any reason, or if the revocation certificate is returned as undeliverable to the  
7 secretary of state's office by the United States Postal Service for any reason, the secretary of state  
8 shall give notice as follows:

9 (i) To the limited liability company, domestic or foreign, at its principal office of record  
10 as shown in its most recent annual report, and no further notice shall be required; or

11 (ii) In the case of a limited liability company which has not yet filed an annual report,  
12 then to the domestic limited liability company at the principal office in the articles of organization  
13 or to the authorized person listed on the articles of organization, or to the foreign limited liability  
14 company at the office required to be maintained by the limited liability company in its state of  
15 organization, and no further notice shall be required.

16 (b) Upon the issuance of the certificate of revocation, the authority of the limited liability  
17 company ~~to transact business in this state ceases~~ continues but only for the purposes and subject  
18 to the limitations set forth in § 7-16-47.

19 **7-16-43. Withdrawal of certificate of revocation.** -- (a) Within ten (10) years after  
20 issuing a certificate of revocation as provided in section 7-16-42(b), the secretary of state may  
21 withdraw the certificate of revocation and retroactively reinstate the limited liability company in  
22 good standing as if its certificate of organization or certificate of registration had not been  
23 revoked except as subsequently provided:

24 (1) ~~On~~ Upon the filing by the limited liability company of ~~the~~ any documents it had  
25 previously failed to file as set forth in subdivisions (3) -- (6) of section 7-16-41(a);

26 (2) ~~On~~ Upon the payment by the limited liability company of a penalty in the amount of  
27 fifty dollars (\$50.00) for each year or part of year that has elapsed since the issuance of the  
28 certificate of revocation; and

29 (3) Upon the filing by the limited liability company of a certificate of good standing  
30 from the Rhode Island division of taxation.

31 (b) If, as permitted by the provisions of this chapter or chapters 1.2, 6, or 12, or 13 of this  
32 title, another limited liability company, business or nonprofit corporation, registered limited  
33 liability partnership or a limited partnership, or in each case domestic or foreign, authorized and  
34 qualified to transact business in this state, bears or has filed a fictitious business name statement

1 as to or reserved or registered a name which is the same as, the name of the limited liability  
2 company with respect to which the certificate of revocation is proposed to be withdrawn, then the  
3 secretary of state shall condition the withdrawal of the certificate of revocation on the reinstated  
4 limited liability company's amending its articles of organization or certificate of registration so as  
5 to designate a name which is not the same as its former name.

6 **7-16-45. Winding up.** -- (a) Except as otherwise provided in the articles of organization  
7 or operating agreement, the members who have not wrongfully dissolved a limited liability  
8 company may wind up the limited liability company's business and affairs.

9 (b) On application by ~~or on behalf of~~ (1) a member following dissolution pursuant to  
10 §§ 7-16-39 or 7-16-40, the member's legal representative or assignee or (2) An assignee of a  
11 membership interest following dissolution pursuant to § 7-16-40(a)(4), the superior court may  
12 wind up the limited liability company's business and affairs, and liquidate and distribute the  
13 limited liability company's assets in accordance with the provisions of this chapter.

14 **7-16-47. ~~Articles of dissolution~~ Effect of dissolution, Issuance of Certificate of**  
15 **Revocation.** -- ~~Not later than thirty (30) days following the dissolution and winding up of the~~  
16 ~~limited liability company for any cause other than that set forth in section 7-16-39(a), articles of~~  
17 ~~dissolution shall be filed in the office of the secretary of state and set forth:~~

- 18 ~~(1) The name of the limited liability company;~~  
19 ~~(2) The date of filing of the original articles of organization;~~  
20 ~~(3) The date of filing of all amendments to the original articles of organization or the~~  
21 ~~most recent restatement, if any, and all subsequent amendments to the articles of organization;~~  
22 ~~(4) The reason for filing the articles of dissolution;~~  
23 ~~(5) The effective date, which shall be a date certain, of the dissolution; and~~  
24 ~~(6) Any other information or provision, not inconsistent with law, which the members or~~  
25 ~~authorized person signing the articles of dissolution elect to set forth.~~

26 (a) Any limited liability company dissolved in any manner under this chapter or any  
27 limited liability company issued a certificate of revocation by the secretary of state under § 7-16-  
28 42 nevertheless continues its existence but may not carry on any business except that appropriate  
29 to wind up and liquidate its business and affairs, including:

- 30 (1) Collecting its assets;  
31 (2) Disposing of its properties  
32 (3) Discharging or making provision for discharging its liabilities;  
33 (4) Distributing its remaining property among its members according to their interests;

34 and

- 1 (5) Doing every other act necessary to wind up and liquidate its business and affairs.
- 2 (b) Dissolution of a limited liability company or issuance by the secretary of state of a
- 3 certificate of revocation to a limited liability company in any manner under this chapter does not:
- 4 (1) Transfer title to the limited liability company's property;
- 5 (2) Prevent transfer of its interests or securities;
- 6 (3) Subject its managers or members to standards of conduct different from those
- 7 prescribed in this chapter;
- 8 (4) Change quorum or voting requirements for its managers or members; change
- 9 provisions for selection, resignation, or removal of its managers; or change provisions for
- 10 amending its operating agreement;
- 11 (5) Prevent commencement of a proceeding by or against the limited liability company in
- 12 its name except as otherwise provided in § 7-16-39.3;
- 13 (6) Abate or suspend a proceeding pending by or against the limited liability company on
- 14 the effective date of dissolution; or
- 15 (7) Terminate the authority of the registered agent of the limited liability company.

16 **7-16-49. ~~Registration of foreign limited liability company~~ Certificate of authority of**  
17 **foreign limited liability company. --** (a) ~~Before transacting business in this state, a foreign~~  
18 ~~limited liability company shall register with~~ No foreign limited liability company has the right to  
19 transact business in this state without procuring and maintaining a certificate of authority from the  
20 secretary of state.

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

- 25 (1) The name of the foreign limited liability company and, if different, the name under
- 26 which it proposes to register and transact business in this state;
- 27 (2) The state or other jurisdiction in which the foreign limited liability company is
- 28 organized and date of the foreign limited liability company's organization;
- 29 (3) The name and address of the resident agent required by section 7-16-11;
- 30 (4) A statement that the secretary of state is appointed the agent of the foreign limited
- 31 liability company for service of process if at any time there is no resident agent or if the resident
- 32 agent cannot be found or served following the exercise of reasonable diligence;
- 33 (5) The address of any office required to be maintained in the state or other jurisdiction
- 34 of its organization by the laws of that state or jurisdiction;

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

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

5 (8) Any additional information that may be necessary or appropriate in order to enable  
6 the secretary of state to determine whether the foreign limited liability company is entitled to  
7 transact business in this state.

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

10 **7-16-50. Issuance of registration of foreign limited liability company.** -- If the  
11 secretary of state accepts the application [for a certificate of authority](#) for filing under section 7-  
12 16-8, the secretary of state shall issue a certificate of ~~registration~~ [authority](#) to the foreign limited  
13 liability company. [Upon the issuance of a certificate of authority by the secretary of state, the](#)  
14 [foreign limited liability company is authorized to transact business in this state for the purposes](#)  
15 [stated in its application, subject, however, to the right of this state to suspend or revoke the](#)  
16 [authority as provided in this chapter.](#) ~~Upon the issuance of a certificate of registration by the~~  
17 ~~secretary of state, the company is authorized to transact business in this state, subject, however, to~~  
18 ~~the right of this state to suspend or revoke the authority as provided in this chapter.~~

19 **7-16-51. ~~Name registration by foreign limited liability company~~ Name of foreign**  
20 **limited liability company.** -- ~~A foreign limited liability company may register with the secretary~~  
21 ~~of state under any~~ [The secretary of state shall not issue a certificate of authority or amended](#)  
22 [certificate of authority to a foreign limited liability company unless such](#) name [is](#) permitted under  
23 section 7-16-9, [such name need not be](#) ~~whether or not it is~~ the name under which ~~it~~ [the foreign](#)  
24 [limited liability company](#) is registered in its state or other jurisdiction of organization. [When a](#)  
25 [foreign limited liability company which is authorized to transact business in this state changes its](#)  
26 [name to one that does not satisfy the requirements of this section, it may not transact business in](#)  
27 [this state under the changed name until it adopts a name satisfying such requirements and obtains](#)  
28 [an amended certificate of authority under § 7-16-52.](#)

29 **7-16-52. ~~Amendments to registration of foreign limited liability company~~**  
30 **Amendments to certificate of authority of foreign limited liability company.** -- If any  
31 statement in the application for ~~registration~~ [a certificate of authority](#) of a foreign limited liability  
32 company was inaccurate when made or a change has occurred, other than a change of mailing  
33 address ~~or a change of the name and/or address of the resident agent~~, the foreign limited liability  
34 company shall promptly file in the office of the secretary of state a certificate signed by a person

1 with authority to do so under the laws of the state or other jurisdiction of its organization  
2 correcting the inaccuracy or indicating the change.

3 ~~7-16-53. Cancellation of registration of foreign limited liability company~~

4 **Cancellation of certificate of authority of foreign limited liability company.** -- A foreign  
5 limited liability company may cancel its ~~registration~~ certificate of authority by filing with the  
6 secretary of state a certificate of cancellation signed by a person with authority to do so under the  
7 laws of the state or other jurisdiction of its organization, or, if the foreign limited liability  
8 company is under the supervision of a receiver or trustee, by the receiver or trustee on behalf of  
9 the foreign limited liability company. In filing a certificate of cancellation, the foreign limited  
10 liability company revokes the authority of its resident agent to accept service of process and  
11 consents that service of process in any action, suit, or proceeding based upon any cause of action  
12 arising in this state during the time the foreign limited liability company was authorized to  
13 transact business in this state may subsequently be made on the foreign limited liability company  
14 by service on the secretary of state. The certificate of cancellation must include the post office  
15 address to which the secretary of state may mail a copy of any process against the foreign limited  
16 liability company that is served on the secretary of state.

17 **7-16-54. Transaction of business by foreign limited liability company without**

18 **registration.** -- (a) A foreign limited liability company transacting business in this state may not  
19 maintain any action, suit or proceeding in any court of this state ~~until it has registered~~ without  
20 procuring and maintaining a certificate of authority in this state.

21 (b) The failure of a foreign limited liability company to ~~register~~ procure and maintain a  
22 certificate of authority in this state does not impair the validity of any contract or act of the  
23 foreign limited liability company or prevent the foreign limited liability company from defending  
24 any action, suit or proceeding in any court of this state.

25 (c) A foreign limited liability company, by transacting business in this state without  
26 ~~registration~~ a certificate of authority, appoints the secretary of state as its agent for service of  
27 process as to claims for relief or causes of action arising out of the transaction of business in this  
28 state.

29 (d) A member of a foreign limited liability company is not liable for the debts and  
30 obligations of the limited liability company solely by reason of the company's having transacted  
31 business in this state without a valid ~~certificate of registration~~ certificate of authority.

32 (e) Without excluding other activities which may not constitute transacting business in  
33 this state, a foreign limited liability company is not considered to be transacting business in this  
34 state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the

1 following activities:

2 (1) Maintaining or defending any action or suit or any administrative or arbitration  
3 proceeding or effecting its settlement or the settlement of claims or disputes;

4 (2) Holding meetings of its managers or members or carrying on any other activities  
5 concerning its internal affairs;

6 (3) Maintaining bank accounts;

7 (4) Maintaining offices or agencies for the transfer, exchange and registration of the  
8 foreign limited liability company's own securities or appointing and maintaining trustees or  
9 depositories with respect to those securities;

10 (5) Effecting sales through independent contractors;

11 (6) Soliciting or ~~obtaining~~ procuring orders, whether by mail or through employees or  
12 agents or otherwise, where the orders require acceptance outside this state before becoming  
13 binding contracts;

14 (7) Creating as borrower or lender or acquiring ~~evidences of debt,~~ indebtedness or  
15 mortgages, or other security interests or liens ~~on~~ in real or personal property;

16 (8) Securing or collecting debts or enforcing any rights in property securing the debts;

17 (9) Transacting any business in interstate commerce;

18 (10) Conducting an isolated transaction completed within a period of thirty (30) days and  
19 not in the course of a number of repeated transactions of like nature;

20 (11) Acting as a general partner of a limited partnership which has filed a certificate of  
21 limited partnership as provided in section 7-13-8 or has registered with the secretary of state as  
22 provided in section 7-13-53; and

23 (12) Acting as a member of a limited liability company or of a foreign limited liability  
24 company which has registered with the secretary of state as provided in section 7-16-49.

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

27 **7-16-39.1. Articles of dissolution.** – Not later than thirty (30) days following the  
28 dissolution and winding up of the limited liability company for any cause other than that set forth  
29 in § 7-16-39 articles of dissolution shall be filed in the office of the secretary of state and set  
30 forth:

31 (1) The name of the company.

32 (2) That all debts, obligations, and liabilities of the company have been paid and  
33 discharged or that adequate provision has been made for the payment.

34 (3) That all the remaining property and assets of the company have been distributed

1 among its members in accordance with their respective rights and interests.

2 (4) That there are no suits pending against the company in any court, or that adequate  
3 provision has been made for the satisfaction of any judgment, order, or decree which may be  
4 entered against it in any pending suit.

5 **7-16-39.2. Filing of articles of dissolution.** – (a) The articles of dissolution are delivered  
6 to the secretary of state. If the secretary of state finds that the articles of dissolution conform to  
7 law, the secretary of state shall, when all fees and franchise taxes have been paid:

8 (1) Endorse on the original the word "Filed" and the month, day, and year of the filing.

9 (2) File the original in his or her office.

10 (3) Issue a certificate of dissolution.

11 (b) The certificate of dissolution is delivered to the representative of the dissolved  
12 company. Upon the issuance of the certificate of dissolution the existence of the company  
13 continues but only for the purposes and subject to the limitations set forth in §§ 7-16-39.3 and 7-  
14 16-47.

15 **7-16-39.3. Survival of remedy after dissolution.** – The dissolution of a company either:

16 (1) By the issuance of a certificate of dissolution by the secretary of state; or

17 (2) By a decree of court when the court has not liquidated the assets and business of the  
18 company as provided in this chapter; or

19 (3) By expiration of its period of duration; does not take away or impair any remedy  
20 available to or against the company, its managers, officers, or members for any right or claim  
21 existing, or any liability incurred, prior to the dissolution if action or other proceeding on the  
22 right, claim, or liability is commenced within two (2) years after the date of the dissolution. Any  
23 action or proceeding by or against the company may be prosecuted or defended by the company  
24 in its name. The members, managers, and officers have power to take any company or other  
25 action that is appropriate to protect the remedy, right, or claim. If the company was dissolved by  
26 the expiration of its period of duration, the company may amend its articles of organization at any  
27 time during the period of two (2) years so as to extend its period of duration.

28 **7-16-40.1. Avoidance of dissolution by membership interest buyout.** – Except as  
29 otherwise provided in the articles of organization or a written operating agreement, whenever a  
30 petition for dissolution of a limited liability company is filed by one or more members  
31 (subsequently in this section referred to as the "petitioner") pursuant to § 7-16-40, one or more of  
32 its other members may avoid the dissolution by filing with the court prior to the commencement  
33 of the hearing, or, in the discretion of the court, at any time prior to a sale or other disposition of  
34 the assets of the limited liability company, an election to purchase the membership interests in the

1 limited liability company owned by the petitioner at a price equal to such membership interests'  
2 fair value. If the membership interests are to be purchased by other members, notice must be sent  
3 to all members of the limited liability company other than the petitioner, giving them an  
4 opportunity to join in the election to purchase the membership interests. If the parties are unable  
5 to reach an agreement as to the fair value of the membership interests, the court shall, upon the  
6 giving of a bond or other security sufficient to assure to the petitioner, payment of the value of the  
7 membership interests, stay the proceeding and determine the value of the membership interest as  
8 of the close of business on the day on which the petition for dissolution was filed. Upon  
9 determining the fair value of the membership interests, the court shall state in its order directing  
10 that the membership interests be purchased, the purchase price and the time within which the  
11 payment is to be made, and may decree any other terms and conditions of sale that it determines  
12 to be appropriate, including payment of the purchase price in installments extending over a period  
13 of time, and, if the membership interests are to be purchased by members, the allocation of  
14 membership interests among members electing to purchase them, which, so far as practicable, are  
15 to be proportional to the membership interests previously owned. The petitioner is entitled to  
16 interest, at the rate on judgments in civil actions, on the purchase price of the membership  
17 interests from the date of the filing of the election to purchase the membership interests, and all  
18 other rights of the petitioner as owner of the membership interests terminate on that date. The  
19 costs of the proceeding, which include reasonable compensation and expenses of appraisers but  
20 not fees and expenses of legal counsel or experts retained by a party, will be allocated between or  
21 among the parties as the court determines. Upon full payment of the purchase price, under the  
22 terms and conditions specified by the court, or at any other time that is ordered by the court, the  
23 petitioner shall transfer the membership interests to each purchaser.

24 **7-16-45.1. Procedure in liquidation of limited liability company by court. -- (a) In**  
25 proceedings to liquidate the assets and business of a limited liability company the court has  
26 general equity jurisdiction and power to issue any orders, injunctions, and decrees that justice and  
27 equity require, to appoint a receiver or receivers pendente lite, with any powers and duties that the  
28 court, from time to time, directs, and to take any other proceedings that are requisite to preserve  
29 the company assets wherever situated, and carry on the business of the limited liability company  
30 until a full hearing can be had.

31 (b) After a hearing and upon any notice that the court directs to be given to all parties to  
32 the proceedings and to any other parties in interest designated by the court, the court may appoint  
33 a liquidating receiver or receivers with authority to take charge of any of the limited liability  
34 company's estate and effects of which he or she has been appointed receiver and to collect the



1 assets of the limited liability company, including all amounts owing to the limited liability  
2 company whether by members on account of any unpaid portion of capital contributions or  
3 otherwise.

4 (c) The hearing date for the appointment of a permanent receiver is not to be more than  
5 twenty-one (21) days after commencement of the action, unless the hearing date is extended by  
6 the court for good cause shown.

7 (d) The liquidating receiver or receivers has authority subject to court order, to sue and  
8 defend in all courts in his or her own name as receiver of the limited liability company, or in its  
9 name, to intervene in any action or proceeding relating to its assets or business, to compromise  
10 any dispute or controversy, to preserve the assets of the limited liability company, to carry on its  
11 business, to sell, convey, and dispose of all or any part of the assets of the limited liability  
12 company wherever situated, either at public or private sale, to redeem any mortgages, security  
13 interests, pledges, or liens of or upon any of its assets, and generally to do all other acts which  
14 might be done by the limited liability company or that is necessary for the administration of his or  
15 her trust according to the course of equity. The assets of the limited liability company or the  
16 proceeds resulting from a sale, conveyance, or other disposition of the assets will be applied to  
17 the expenses of the liquidation and to the payment of the liabilities and obligations of the limited  
18 liability company, and any remaining assets or proceeds will be distributed under the direction of  
19 the court among its members according to their respective rights and interests. The order  
20 appointing the receiver or receivers sets forth their powers and duties. The powers and duties may  
21 be increased or diminished at any time during the proceeding.

22 (e) The court has power to allow from time to time as expenses of the liquidation,  
23 compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the  
24 payment of the compensation out of the assets of the limited liability company or the proceeds of  
25 any sale or disposition of the assets.

26 (f) The court appointing the receiver has exclusive jurisdiction of the limited liability  
27 company and its property, wherever situated, and of all questions arising in the proceedings  
28 concerning the property.

29 **7-16-45.2. Bond of receivers.** – A receiver shall in all cases give any bond that the court  
30 directs with any sureties that the court requires.

31 **7-16-45.3. Filing of claims in liquidation proceedings.** – In proceedings to liquidate the  
32 assets and business of a limited liability company, the court may require all creditors of the  
33 limited liability company to file with the receiver, in any form that the court prescribes, proofs  
34 under oath of their respective claims. If the court requires the filing of claims, it shall fix a date,

1 which is not to be less than four (4) months from the date of the order, as the last day for the  
2 filing of claims, and shall prescribe the notice that is to be given to creditors and claimants of the  
3 fixed date. Prior to the fixed date, the court may extend the time for the filing of claims. Creditors  
4 and claimants failing to file proofs of claim on or before the fixed date may be barred, by court  
5 order, from participating in the distribution of the assets of the limited liability company.

6 **7-16-45.4. Discontinuance of liquidation proceedings.** – The liquidation of the assets  
7 and business of a limited liability company may be discontinued at any time during the  
8 liquidation proceedings when it is established that cause for liquidation no longer exists. In that  
9 event the court dismisses the proceedings, it shall direct the receiver to redeliver to the limited  
10 liability company all its remaining property and assets, and shall order any notice to creditors that  
11 the court deems proper under the circumstances.

12 **7-16-45.5. Decree of involuntary dissolution.** – In proceedings to liquidate the assets  
13 and business of a limited liability company, when the costs and expenses of the proceedings and  
14 all debts, obligations, and liabilities of the limited liability company have been paid and  
15 discharged and all of its remaining property and assets distributed to its members, or in case its  
16 property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, and  
17 obligations, all the property and assets have been applied as far as they will go to their payment,  
18 the court shall enter a decree dissolving the limited liability company, at which time the existence  
19 of the limited liability company ceases.

20 **7-16-45.6. Filing of decree of dissolution.** – In case the court enters a decree dissolving  
21 a limited liability company, it is the duty of the clerk of the court to file a certified copy of the  
22 decree with the secretary of state. There is no fee charged by the secretary of state for that filing.

23 **7-16-45.7. Deposit with state treasury of amount due certain members.** – Upon the  
24 voluntary or involuntary dissolution of a limited liability company, the portion of the assets  
25 distributable to a creditor or member who is unknown or cannot be found, or who is under  
26 disability and there is no person legally competent to receive the distributive portion, will be  
27 reduced to cash and deposited with the general treasury and paid over to the creditor or member  
28 or to his/her legal representative upon satisfactory proof to the general treasury of his/her right to  
29 the payment.

30 **7-16-45.8. Jurisdiction of court to appoint a receiver.** – Upon the establishment of any  
31 of the grounds for liquidation of the assets and business of:

32 (1) A domestic limited liability company; or

33 (2) A foreign limited liability company, to the extent the foreign limited liability  
34 company has assets within the state, and upon the establishment that the liquidation would be

1 appropriate, the superior court has full power to appoint a receiver, with any powers and duties  
2 that the court, from time to time, directs, and to take any other proceedings that the court deems  
3 advisable under the circumstances. The provisions of §§ 7-16-40, 7-16-40.1, 7-16-45 and 7-16-  
4 45.1 through 7-16-45.7, insofar as they are consistent with the nature of the proceeding, shall  
5 apply to the proceeding, and in the proceeding, the court has the full powers of a court of equity  
6 to make or enter any orders, injunctions, and decrees and grant any other relief in the proceeding  
7 that justice and equity require.

8 **7-16-53.1. Revocation of certificate of authority.** – (a) The certificate of authority of a  
9 foreign limited liability company to transact business in this state may be revoked by the  
10 secretary of state under the conditions prescribed in this section when:

11 (1) The limited liability company fails to file its annual report within the time required by  
12 this chapter, or fails to pay any fees, when they become due and payable; or

13 (2) The limited liability company fails to appoint and maintain a registered agent in this  
14 state as required by this chapter; or

15 (3) The limited liability company fails, after changing its registered office or registered  
16 agent to file in the office of the secretary of state a statement of the change as required by this  
17 chapter; or

18 (4) A misrepresentation has been made of any material matter in any application, report,  
19 affidavit or other document submitted by the limited liability company pursuant to this chapter.

20 (b) No certificate of authority of a foreign limited liability company may be revoked by  
21 the secretary of state unless the secretary of state has given the limited liability company not less  
22 than sixty (60) days notice thereof by regular mail addressed to the registered agent of the limited  
23 liability company in this state on file with the secretary of state's office; provided, however, that if  
24 a prior mailing addressed to the registered office of the limited liability company in this state  
25 currently on file with the secretary of state's office has been returned to the secretary of state as  
26 undeliverable by the United States Postal Service for any reason, or if the revocation notice is  
27 returned as undeliverable to the secretary of state's office by the United States Postal Service for  
28 any reason, the secretary of state shall give notice as follows:

29 (1) To the limited liability company at its principal office of record as shown in its most  
30 recent annual report, and no further notice is required; or

31 (2) In the case of a limited liability company which has not yet filed an annual report,  
32 then to the limited liability company at its principal office shown in its application for certificate  
33 of authority, and no further notice is required.

34 **7-16-53.2. Issuance of certificate of revocation.** – (a) Upon revoking any certificate of

1 authority, the secretary of state shall:

2 (1) Issue a certificate of revocation.

3 (2) File the certificate in his or her office.

4 (3) Send to the foreign limited liability company by regular mail the certificate of  
5 revocation, addressed to the registered office of the limited liability company in this state on file  
6 with the secretary of state's office; provided, however, that if a prior mailing addressed to the  
7 registered agent of the limited liability company in this state, currently on file with the secretary  
8 of state's office, has been returned to the secretary of state as undeliverable by the United States  
9 Postal Service for any reason, or if the revocation certificate is returned as undeliverable to the  
10 secretary of state's office by the United States Postal Service for any reason, the secretary of state  
11 shall give notice as follows:

12 (i) To the limited liability company at its principal office of record as shown in its most  
13 recent annual report, and no further notice is required; or

14 (ii) In the case of a limited liability company that has not yet filed an annual report then  
15 to the limited liability company at its principal office shown in its application for certificate of  
16 authority, and no further notice is required.

17 (b) Upon the issuance of the certificate of revocation, the authority of the limited liability  
18 company to transact business in this state ceases.

19 **7-16-53.3. Withdrawal of certificate of revocation.** – (a) Within ten (10) years after  
20 issuing a certificate of revocation as provided in § 7-16-53.2, the secretary of state may withdraw  
21 the certificate of revocation and retroactively reinstate the foreign limited liability company in  
22 good standing as if its certificate of authority had not been revoked, except as subsequently  
23 provided:

24 (1) Upon the filing by the limited liability company of any documents it had previously  
25 failed to file as set forth in §§ 7-16-53.1(a)(1) through 7-16-53.1(a)(4);

26 (2) Upon the payment by the limited liability company of a penalty for each year or part  
27 of a year that has elapsed since the issuance of the certificate of revocation; and

28 (3) Upon the filing by the limited liability company of a certificate of good standing from  
29 the Rhode Island division of taxation.

30 (b) If, as permitted by the provisions of this title, another limited liability company,  
31 limited partnership, corporation or limited liability company, domestic or foreign, qualified to  
32 transact business in this state, bears or has filed a fictitious business name statement with respect  
33 to or reserved or registered a name which is not distinguishable upon the records of the secretary  
34 of state from the name of a limited liability company with respect to which the certificate of

1 revocation is proposed to be withdrawn, then the secretary of state shall condition the withdrawal  
2 of the certificate of revocation upon the reinstated limited liability company's amending its  
3 certificate of authority or otherwise complying with the provisions of this chapter with respect to  
4 the use of a name available to it under the laws of this state so as to designate a name which is  
5 distinguishable upon the records of the secretary of state from its former name.

6 SECTION 3. 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

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- 1           This act would modernize certain provisions of the limited liability company act in light
- 2 of changes made to the uniform limited liability act.
- 3           This act would take effect upon passage.

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