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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS -- RHODE
ISLAND BUSINESS CORPORATIONS ACT, AND RHODE ISLAND LIMITED LIABILITY
ACT

Introduced By: Senator William A. Walaska

Date Introduced: March 07, 2007

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 7-1.2-814, 7-1.2-1302 and 7-1.2-1303 of the General Laws in
2 Chapter 7-1.2 entitled "Rhode Island Business Corporation Act" are hereby amended to read as
3 follows:

4 **7-1.2-814. Indemnification.** -- (a) Definitions. - As used in this section:

5 (1) "Director" or "officer" means any individual who is or was a director or officer of the
6 corporation and any individual who, while a director or officer of the corporation, is or was
7 serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent
8 of another foreign or domestic corporation, limited liability company, partnership, joint venture,
9 trust, other enterprise, employee benefit plan, or other entity. A director or officer is considered to
10 be serving an employee benefit plan at the corporation's request if his or her duties to the
11 corporation also impose duties on, or otherwise involve services by, him or her to the plan or
12 participants or beneficiaries of the plan. "Director" or "officer" includes, unless the context
13 requires otherwise, the estate or personal representative of the director or officer.

14 (2) "Corporation" includes:

15 (i) Any domestic or foreign corporation, profit or nonprofit;

16 (ii) Any domestic or foreign predecessor entity of the corporation in a merger or other
17 transaction in which the predecessor's existence ceased upon consummation of the transaction;

18 and

1 (iii) Any of the classes of quasi public corporations with purposes enumerated as
2 exceptions in section 7-1.2-301 to the extent that the corporations are not subject to other
3 provisions of the general laws or special acts authorizing indemnification of their directors and
4 officers.

5 (3) "Expenses" include attorneys' fees.

6 (4) "Liability" means the obligation to pay a judgment, penalties, fines (including an
7 excise tax assessed with respect to an employee benefit plan), settlements, or reasonable expenses
8 actually incurred by the person in connection with the proceeding.

9 (5) "Official capacity" means:

10 (i) When used with respect to a director, the office of director in the corporation; and

11 (ii) When used with respect to an officer, as contemplated in subsection (i), the office in
12 a corporation held by the officer. "Official capacity" does not include service for an individual
13 other than a director, as contemplated in subdivision (a)(1), the elective or appointive office in the
14 corporation held by the officer or the employment or agency relationship undertaken by the
15 employee or agent on behalf of the corporation, but in each case does not include service for any
16 other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or
17 employee benefit plan.

18 (6) "Party" includes an individual who was, is, or is threatened to be made, a named
19 defendant or respondent in a proceeding.

20 (7) "Proceeding" means any threatened, pending or completed action, suit, or
21 proceeding, whether civil, criminal, administrative, or investigative.

22 (b) Permissible indemnification.

23 (1) Except as otherwise provided in this section, a corporation has power to indemnify
24 any individual made a party to any proceeding by reason of the fact that he or she is or was a
25 director if:

26 (i) He or she conducted himself or herself in good faith; and

27 (ii) He or she reasonably believed;

28 (A) ~~The~~ In the case of conduct in his or her official capacity with the corporation, that
29 his or her conduct was in its best interests; and

30 (B) All other cases, that his or her conduct was at least not opposed to the corporations
31 best interests; and

32 (iii) In the case of any criminal proceeding, he or she had no reasonable cause to believe
33 his or her conduct was unlawful; or

34 (iv) He or she engaged in conduct for which broader indemnification has been made

1 permissible or obligatory under a provision of the articles of incorporation.

2 (2) A director's conduct with respect to an employee benefit plan for a purpose he or she
3 reasonably believed to be in the interests of the participants and beneficiaries of the plan is
4 deemed to be for a purpose which is not opposed to the best interests of the corporation in
5 accordance with (b)(1)(ii)(B).

6 (3) The termination of any proceeding by judgment, order, settlement, conviction, or
7 upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the individual
8 did not meet the requisite standard of conduct set forth in this subsection.

9 (4) Unless ordered by a court under subsection (d) of this section, a corporation may not
10 indemnify a director:

11 (i) In connection with a proceeding by or in the right of the corporation, except for
12 reasonable expenses incurred in connection with the proceeding (if it is determined that the
13 director has met the relevant standard of conduct under (b)(1)(i) and (ii)), or

14 (ii) In connection with any proceeding for which the director was adjudged liable to the
15 corporation on the basis that he or she received an improper personal benefit, whether or not
16 involving action in his or her official capacity.

17 (c) Mandatory Indemnification. - Unless limited by the articles of incorporation, a
18 director who has been wholly successful, on the merits or otherwise, in the defense of any
19 proceeding referred to in subsection (b) of this section is indemnified against reasonable expenses
20 incurred by him or her in connection with the proceeding.

21 (d) Court-ordered indemnification.

22 (1) A court of appropriate jurisdiction, upon application of a director and any notice that
23 the court requires, has authority to order indemnification in the following circumstances:

24 (i) If the court determines a director is entitled to reimbursement under subsection (d) of
25 this section, the court shall order indemnification, in which case the director is also entitled to
26 recover the expenses of securing the reimbursement; or

27 (ii) If the court determines that the director is fairly and reasonably entitled to
28 indemnification in view of all the relevant circumstances, whether or not he or she has met the
29 standard of conduct set forth in subdivision (b)(1) or (b)(2) or has been adjudged liable in the
30 circumstances described in paragraph (b)(4)(ii), the court may order such indemnification as the
31 court shall deem proper, except that indemnification with respect to any proceeding by or in the
32 right of the corporation or in which liability has been adjudged in the circumstances described in
33 paragraph (b)(4)(i) are limited to expenses.

34 (2) A court of appropriate jurisdiction may be the same court in which the proceeding

1 involving the director's liability took place.

2 (e) Advance for expenses. - Reasonable expenses incurred by a director who is a party to
3 a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of
4 the proceeding upon receipt by the corporation of:

5 (1) A written affirmation by the director of his or her good faith belief that he or she has
6 met the standard of conduct necessary for indemnification by the corporation as authorized in this
7 section; and

8 (2) A written undertaking by or on behalf of the director to repay the amount if the court
9 determines that he or she has not met that standard of conduct, and after a determination that the
10 facts then known to those making the determination would not preclude indemnification under
11 this section. The undertaking required by this subdivision must be an unlimited general obligation
12 of the director but need not be secured and may be accepted without reference to financial ability
13 to make repayment. Determinations and authorizations of payments under this subsection are
14 made in the manner specified in subsection (f).

15 (f) Determination and authorization of indemnification.

16 (1) No indemnification under subsection (b) may be made by the corporation unless
17 authorized in the specific case after a determination has been made that indemnification of the
18 director is permissible in the circumstances because he or she has met the standard of conduct set
19 forth in subsection (b). The determination must be made:

20 (i) By the board of directors by a majority vote of a quorum consisting of directors not at
21 the time parties to the proceeding; or

22 (ii) If such a quorum cannot be obtained, then by a majority vote of a committee of the
23 board, duly designated to act in the matter by a majority vote of the full board (in which
24 designation directors who are parties may participate), consisting solely of two (2) or more
25 directors not at the time parties to the proceeding; or

26 (iii) By special legal counsel, selected by the board of directors or a committee of the
27 board by vote as set forth in paragraph (f)(1)(i) or (f)(1)(ii), or, if the requisite quorum of the full
28 board cannot be obtained for the vote and the committee cannot be established, by a majority vote
29 of the full board (in which selection directors who are parties may participate); or

30 (iv) By the shareholders.

31 (2) Authorization of indemnification and determination as to reasonableness of expenses
32 are made in the same manner as the determination that indemnification is permissible, except that
33 if the determination that indemnification is permissible is made by special legal counsel,
34 authorization of indemnification and determination as to reasonableness of expenses must be

1 made in a manner specified in paragraph (f)(1)(iii) for the selection of the counsel. Shares held by
2 directors who are parties to the proceeding may not be voted on the subject matter under this
3 subsection.

4 (g) Variation by Corporate Action. - The indemnification provided by this section is not
5 deemed exclusive of any other rights to which those seeking indemnification are entitled under
6 any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to
7 action in his official capacity and as to action in another capacity while holding office, and
8 continues as to an individual who has ceased to be a director, officer, partner, trustee, employee,
9 or agent and inures to the benefit of the heirs, executors, and administrators of an individual.
10 Nothing contained in this section limits the corporation's power to pay or reimburse expenses
11 incurred by a director in connection with his or her appearance as a witness in a proceeding at a
12 time when he or she has not been made a named defendant or respondent in the proceeding.

13 (h) Officers. - Unless limited by the articles of incorporation:

14 (1) An officer of the corporation is indemnified under this section as and to the same
15 extent provided for a director, and is entitled to the same extent as a director to seek
16 indemnification pursuant to the provisions of this section;

17 (2) A corporation has the power to indemnify and to advance expenses to an officer,
18 employee, or agent of the corporation to the same extent that it may indemnify and advance
19 expenses to directors pursuant to this section; and

20 (3) A corporation, in addition, has the power to indemnify and to advance expenses to an
21 officer, employee, or agent who is not a director to a further extent, consistent with law, that is
22 provided by its articles of incorporation, bylaws, general or specific action of its board of
23 directors, or contract.

24 (i) Insurance. - A corporation has the power to purchase and maintain insurance on
25 behalf of any individual who is or was a director, officer, employee, or agent of the corporation,
26 or who, while a director, officer, employee, or agent of the corporation, is or was serving at the
27 request of the corporation as a director, officer, partner, trustee, employee, or agent of another
28 foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee
29 benefit plan, against any liability asserted against him or her and incurred by him or her in any
30 corporate capacity or arising out of his or her status as a director, officer, employee, or agent of
31 the corporation, whether or not the corporation would have the power to indemnify him or her
32 against the liability under the provisions of this section.

33 (j) Shareholder approval. - Any indemnification of, or advance of expenses to, a director
34 in accordance with this section, if arising out of a proceeding by or in the right of the corporation,

1 must be reported, in writing, to the shareholders with or before the notice of the next
2 shareholders' meeting.

3 **7-1.2-1302. Voluntary dissolution by consent of shareholders.** -- (a) A corporation
4 may be voluntarily dissolved by the written consent of all of its shareholders entitled to vote
5 thereon.

6 (b) Upon the adoption of the resolution:

7 ~~(1) The corporation shall execute and file articles of dissolution in accordance with~~
8 ~~sections 7-1.2-1308 and 7-1.2-1309.~~

9 ~~(2)~~ (1) The corporation shall immediately deliver notice of the ~~filing~~ adoption of such
10 resolution to each known creditor of the corporation.

11 ~~(3)~~ (2) The corporation shall proceed to collect its assets, sell or otherwise dispose of
12 those of its properties that are not to be distributed in kind to its shareholders, pay, satisfy, and
13 discharge its liabilities and obligations and do all other acts required to liquidate its business and
14 affairs. After paying or adequately providing for the payment of all its obligations, the
15 corporation distributes the remainder of its assets, either in cash or in kind, among its
16 shareholders according to their respective rights and interests.

17 ~~(4)~~ (3) The corporation, at any time during the liquidation of its business and affairs, may
18 apply to a court of competent jurisdiction within the state and county in which the registered
19 office or principal place of business of the corporation is situated, to have the liquidation
20 continued under the supervision of the court as provided in this chapter.

21 (c) Upon the completion of the actions set forth in subsection 7-1.2-1302(b) above, the
22 corporation shall execute and file articles of dissolution in accordance with the provisions of
23 sections 7-1.2-1308 and 7-1.2-1309.

24 **7-1.2-1303. Voluntary dissolution by act of corporation.** -- A corporation may be
25 dissolved by the act of the corporation, when authorized in the following manner:

26 (1) The board of directors adopts a resolution recommending that the corporation be
27 dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of
28 the shareholders, which may be either an annual or a special meeting.

29 (2) Written notice is given to each shareholder entitled to vote at the meeting within the
30 time and in the manner provided in this chapter for the giving of notice of meetings of
31 shareholders, and, whether the meeting is an annual or special meeting, states that the purpose, or
32 one of the purposes, of the meeting is to consider the advisability of dissolving the corporation.

33 (3) At the meeting a vote of shareholders entitled to vote at the meeting is taken on a
34 resolution to dissolve the corporation. The resolution is adopted upon receiving the affirmative

1 vote of the holders of a majority of the shares of the corporation entitled to vote on the resolution,
2 unless any class of shares is entitled to vote on the resolution as a class, in which event approval
3 of the resolution also requires the affirmative vote of the holders of a majority of the shares of
4 each class of shares entitled to vote as a class and of the total shares entitled to vote on the
5 resolution.

6 ~~(4) Upon the adoption of the resolution, the corporation shall execute and file articles of~~
7 ~~dissolution in accordance with sections 7-1.2-1308 and 7-1.2-1309.~~

8 (5) (4) The corporation shall immediately deliver notice of the ~~filing~~ adoption of such
9 resolution by a vote of the shareholders to each known creditor of the corporation.

10 (6) (5) The corporation shall proceed to collect its assets, sell or otherwise dispose of
11 those of its properties that are not to be distributed in kind to its shareholders, pay, satisfy, and
12 discharge its liabilities and obligations and do all other acts required to liquidate its business and
13 affairs. After paying or adequately providing for the payment of all its obligations, the
14 corporation distributes the remainder of its assets, either in cash or in kind, among its
15 shareholders according to their respective rights and interests.

16 (7) (6) The corporation, at any time during the liquidation of its business and affairs, may
17 apply to a court of competent jurisdiction within the state and county in which the registered
18 office or principal place of business of the corporation is situated, to have the liquidation
19 continued under the supervision of the court as provided in this chapter.

20 (7) Upon the completion of actions set forth in subsections 7-1.2-1303(1)-(6) above, the
21 corporation shall execute and file articles of dissolution in accordance with the provisions of
22 sections 7-1.2-1308 and 7-1.2-1309.

23 SECTION 2. Section 7-16-59 of the General Laws in Chapter 7-16 entitled "The Rhode
24 Island Limited Liability Company Act" is hereby amended to read as follows:

25 **7-16-59. Merger or consolidation.** -- Any provision of chapters ~~1-1~~ 1.2 and 13, of this
26 title to the contrary notwithstanding:

27 (1) Any one or more domestic or foreign limited liability companies may merge or
28 consolidate with or into any one or more domestic or foreign limited liability companies, limited
29 partnerships or corporations; and

30 (2) Any one or more limited partnerships or corporations may merge or consolidate with
31 or into any one or more domestic or foreign limited liability companies.

32 SECTION 3. This act shall take effect upon passage.

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS -- RHODE
ISLAND BUSINESS CORPORATIONS ACT, AND RHODE ISLAND LIMITED LIABILITY
ACT

1 This act would clarify indemnity provisions and procedures for dissolution under the
2 Rhode Island Business Corporation Act, and update references to such act in The Rhode Island
3 Limited Liability Company Act.

4 This act would take effect upon passage.

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