

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2006**

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A N A C T

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

Introduced By: Senator F Caprio

Date Introduced: March 15, 2006

Referred To: Senate Commerce, Housing & Municipal Government

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 7-1.2-202, 7-1.2-614, 7-1.2-1004 and 7-1.2-1312 of the General  
2 Laws in Chapter 7-1.2 entitled "Rhode Island Business Corporation Act" are hereby amended to  
3 read as follows:

4           **7-1.2-202. Articles of incorporation.** -- (a) The articles of incorporation must state:

5           (1) A corporate name that satisfies the requirements of section 7-1.2-401.

6           (2) The total number of shares which the corporation has authority to issue, and if the  
7 corporation is to be authorized to issue more than one class of shares;

8           (i) The total number of shares of each class; and

9           (ii) A statement of all or any of the designations and the powers, preferences, and rights,  
10 including voting rights, and the qualifications, limitations, or restrictions of them, which are  
11 permitted by the provisions of this chapter in respect of any class or classes of shares of the  
12 corporation and the fixing of which by the articles of association is desired, and an express grant  
13 of the authority as it may then be desired to grant to the board of directors to fix by vote or votes  
14 any of them that may be desired but which is not fixed by the articles.

15           (3) The address of its initial registered office, and the name of its initial registered agent  
16 at the address.

17           (4) The name and address of each incorporator.

18           (b) The articles of incorporation may state:

1 (1) A par value of authorized shares or classes of shares.

2 (2) Any provisions electing to provide preemptive rights to shareholders pursuant to the  
3 provisions of section 7-1.2-613.

4 (3) Any provision, not inconsistent with law, which the incorporators elect to set forth in  
5 the articles of incorporation for the regulation of the internal affairs of the corporation, including,  
6 but not limited to, a provision eliminating or limiting the personal liability of a director to the  
7 corporation or to its shareholders for monetary damages for breach of the director's duty as a  
8 director; provided that the provision does not eliminate or limit the liability of a director for:

9 (i) Any breach of the director's duty of loyalty to the corporation or its shareholders;

10 (ii) Acts or omissions not in good faith or which involve intentional misconduct or a  
11 knowing violation of law;

12 (iii) Liability imposed pursuant to the provisions of section 7-1.2-811; or

13 (iv) Any transaction from which the director derived an improper personal benefit  
14 (unless the transaction is permitted by section 7-1.2-807); ~~and also including;~~ No provision  
15 eliminating or limiting the personal liability of a director will be effective with respect to causes  
16 of action arising prior to the inclusion of the provision in the articles of incorporation of the  
17 corporation.

18 (v) Any provision which under this chapter is required or permitted to be set forth in the  
19 bylaws.

20 ~~No provision eliminating or limiting the personal liability of a director will be effective~~  
21 ~~with respect to causes of action arising prior to the inclusion of the provision in the articles of~~  
22 ~~incorporation of the corporation.~~

23 (4) If, pursuant to section 7-1.2-105(d), the corporate existence is to begin at a time  
24 subsequent to the issuance of the certificate of incorporation by the secretary of state, the date  
25 when corporate existence begins.

26 (c) The provisions permitted by subsection (b)(3) may also be included in the articles of  
27 incorporation or legislative charter of any existing or future financial institution, insurance  
28 company, public utility, or other quasi public corporation having purposes enumerated as  
29 exceptions to this chapter in section 7-1.2-301.

30 (d) The period of duration of a corporation is perpetual unless otherwise stated in the  
31 articles of incorporation.

32 (e) It is not necessary to set forth in the articles of incorporation any of the corporate  
33 powers enumerated in this chapter.

34 **7-1.2-614. Distributions to shareholders.** -- (a) Distributions of other than shares.

1 (1) The board of directors may authorize and the corporation may make distributions to  
2 its shareholders subject to restriction the articles of incorporation and the limitation in subdivision  
3 (a)(3) of this section.

4 (2) If the board of directors does not fix the record date for determining shareholders  
5 entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of  
6 the corporation's shares), it is the date the board of directors authorizes the distribution.

7 (3) No distribution may be made if, after giving it effect:

8 (i) The corporation would be insolvent; or

9 (ii) The corporation's total assets would be less than the sum of its total liabilities plus  
10 (unless the articles of incorporation permit otherwise) the amount that would be needed, if the  
11 corporation to be dissolved at the time of the distribution, to satisfy the preferential rights upon  
12 dissolution of shareholders whose preferential rights are superior to those receiving the  
13 distribution (unless such preferential rights are waived by a majority of the shareholders entitled  
14 to such preferential rights, voting by class).

15 (4) The board of directors may base a determination that a distribution is not prohibited  
16 under subdivision (a)(3) of this section either on financial statements prepared on the basis of  
17 accounting practices and principles that are reasonable in the circumstances or on a fair valuation  
18 or other method that is reasonable in the circumstances.

19 (5) Except as provided in subdivision (7) of this section, the effect of a distribution under  
20 subdivision (a)(3) of this section is measured:

21 (i) In the case of distribution by purchase, redemption or other acquisition of the  
22 corporation's shares, as of the earlier of (A) the date money or other property is transferred or  
23 debt incurred by the corporation or (B) the date the shareholder ceases to be a shareholder with  
24 respect to the acquired shares;

25 (ii) In the case of any other distribution of indebtedness, as of the date the indebtedness  
26 is distributed; and

27 (iii) In all other cases, as of (A) the date the distribution is authorized if the payment  
28 occurs within one hundred twenty (120) days after the date of authorization or (B) the date the  
29 payment is made if it occurs more than one hundred twenty (120) days after the date of  
30 authorization.

31 (6) A corporation's indebtedness to a shareholder incurred by reason of a distribution  
32 made in accordance with this section is at parity with the corporation's indebtedness to its general,  
33 unsecured creditors except to the extent subordinated by agreement.

34 (7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not

1 considered a liability for purposes of determinations under subdivision (a)(3) of this section if its  
2 terms of the indebtedness provide that payment of principal and interest are made only if and to  
3 the extent that payment of a distribution to shareholders could then be made under this section. If  
4 the indebtedness is issued as a distribution, each payment of principal or interest is treated as a  
5 distribution, the effect of which is measured on the date the payment is actually made.

6 (b) Distributions of shares.

7 (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata  
8 and without consideration to the corporation's shareholders or to the shareholders of one or more  
9 classes or series. An issuance of shares under this subsection is a share distribution.

10 (2) Shares of one class or series may not be issued as a share distribution in respect to  
11 shares of another class or series unless (i) the articles of incorporation so authorize, (ii) a majority  
12 of the votes entitled to be cast by the class or series to be issued approve the issue, or (iii) there  
13 are not outstanding shares of the class or series to be issued.

14 (3) If the board of directors does not fix ~~the~~ a record date for determining shareholders  
15 entitled to share distribution, then it is the date the board of directors authorizes the share  
16 distribution.

17 **7-1.2-1004. Merger of subsidiary corporation.** -- (a) Any corporation owning at least  
18 ninety percent (90%) of the outstanding shares of each class of another corporation may merge  
19 the other corporation into itself without approval by a vote of the shareholders of either  
20 corporation. Its board of directors shall, by resolution, approve a plan of merger stating:

21 (1) The name of the subsidiary corporation and the name of the corporation owning at  
22 least ninety percent (90%) of its shares, which is subsequently in these provisions designated as  
23 the surviving corporation.

24 (2) The manner and basis of converting the shares of the subsidiary corporation (other  
25 than those held by the surviving corporation) into shares or other securities or obligations of the  
26 surviving corporation or of any other corporation, or in whole or in part, into cash or other  
27 consideration to be paid upon the surrender of each share of the subsidiary corporation.

28 (b) A copy of the plan of merger must be mailed to each shareholder of the subsidiary  
29 corporation.

30 (c) Articles of merger must be executed by the surviving corporation by an authorized  
31 ~~officer~~ representative and must state:

32 (1) The plan of merger; and

33 (2) If, pursuant to section 71.2-1005, the merger is to become effective at a time  
34 subsequent to the issuance of the certificate of merger by the secretary of state, the date when the

1 merger is to become effective.

2 (d) On and after the thirtieth (30th) day after the mailing of a copy of the agreement of  
3 merger to shareholders of the subsidiary corporation or upon the waiver of the mailing by the  
4 holders of all outstanding shares, original articles of merger must be delivered to the secretary of  
5 state. If the secretary of state finds that the articles conform to law, the secretary of state shall,  
6 when all fees and franchise taxes have been paid:

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

8 (2) File the original in his office; and

9 (3) Issue a certificate of merger.

10 (e) The secretary of state shall deliver the certificate of merger to the surviving  
11 corporation or its representative.

12 **7-1.2-1312. Withdrawal of certificate of revocation.** -- (a) Within ten (10) years after  
13 issuing a certificate of revocation as provided in section 7-1.2-1311, the secretary of state may  
14 withdraw the certificate of revocation and retroactively reinstate the corporation in good standing  
15 as if its articles of incorporation had not been revoked, except as subsequently provided:

16 (1) Upon the filing by the corporation of the documents it had previously failed to file as  
17 set forth in subdivisions (3) -- (6) of section 7-1.2-1310(a); and

18 (2) Upon the payment by the corporation of a penalty for each year or part of a year that  
19 has elapsed since the issuance of the certificate of revocation.

20 (3) Upon the filing by the corporation of a certificate of good standing from the Rhode  
21 Island division of taxation.

22 (b) If, as permitted by the provisions of this title, another corporation, whether business  
23 or nonprofit, limited partnership, limited liability partnership or limited liability company, or  
24 domestic or foreign, qualified to transact business in this state, bears or has filed a fictitious  
25 business name statement with respect to or reserved or registered a name which is not  
26 distinguishable upon the records of the secretary of state from the name of a corporation with  
27 respect to which the certificate of revocation is proposed to be withdrawn, then the secretary of  
28 state shall condition the withdrawal of the certificate of revocation upon the reinstated  
29 corporation's amending its articles of incorporation or otherwise complying with the provisions of  
30 this chapter with respect to the use of a name available to it under the laws of this state so as to  
31 designate a name which is distinguishable upon the records of the secretary of state from its  
32 former name.

33 (c) Upon the withdrawal of the certificate of revocation and reinstatement of the  
34 corporation in good standing as provided in subsection (a) of this section, title to any real estate,

1 or any interest in real estate, held by the corporation at the time of the issuance of the certificate  
2 of revocation and not conveyed subsequent to the revocation of its articles of incorporation is  
3 deemed to be revested in the corporation without further act or deed.

4 SECTION 2. Sections 7-16-5.1 and 7-16-5.3 of the General Laws in Chapter 7-16  
5 entitled "The Rhode Island Limited Liability Company Act" are hereby amended to read as  
6 follows:

7 **7-16-5.1. Conversion of certain entities to a limited liability company.** -- (a) As used  
8 in this section, the term "other entity" means a business trust or association, a real estate  
9 investment trust, a common-law trust, or any other unincorporated business, excluding a  
10 partnership (whether general or limited) or a foreign limited liability company.

11 (b) Any other entity may convert to a domestic limited liability company by complying  
12 with subsection (h) of this section and filing in the office of the secretary of state in accordance  
13 with section 7-16-8 articles of organization that comply with section 7-16-6 and have been  
14 executed by one or more authorized persons in accordance with section 7-16-7, accompanied by a  
15 certificate of conversion to a limited liability company- duly executed by one or more persons  
16 authorized to act on behalf of the other entity and one or more persons authorized to sign a  
17 certificate of conversion on behalf of the limited liability company.

18 (c) The certificate of conversion to limited liability company shall state:

19 (1) The date on which and jurisdiction where the other entity was first created, formed,  
20 or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its  
21 conversion to a domestic limited liability company;

22 (2) The name of the other entity immediately prior to the filing of the certificate of  
23 conversion to limited liability company;

24 (3) The name of the limited liability company as set forth in its articles of organization  
25 filed in accordance with subsection (b) of this section; and

26 (4) The future effective date or time (which is a date or time certain) of the conversion to  
27 a limited liability company if it is not to be effective upon the filing of the certificate of  
28 conversion to limited liability company and the articles of organization.

29 (d) Upon the filing in the office of the secretary of state of the certificate of conversion to  
30 limited liability company and the articles of organization or upon the future effective date or time  
31 of the certificate of conversion to a limited liability company and the articles of organization, the  
32 other entity shall be converted into a domestic limited liability company and the limited liability  
33 company shall thereafter be subject to all of the provisions of this chapter, except that,  
34 notwithstanding section 7-16-5, the existence of the limited liability company shall be deemed to

1 have commenced on the date the other entity commenced its existence in the jurisdiction in which  
2 the other entity was first created, formed, or otherwise came into being.

3 (e) The conversion of any other entity into a domestic limited liability company shall not  
4 be deemed to affect any obligations or liabilities of the other entity incurred prior to its  
5 conversion to a domestic limited liability company or the personal liability of any person incurred  
6 prior to the conversion.

7 (f) When any conversion shall have become effective under this section, for all purposes  
8 of the laws of the state of Rhode Island, all of the rights, privileges, and powers of the other entity  
9 that has converted, and all property, real, personal, and mixed, and all debts due to such other  
10 entity, as well as all other things and causes of action belonging to the other entity, shall be vested  
11 in the domestic limited liability company and shall thereafter be the property of the domestic  
12 limited liability company as they were of the other entity that has converted, and the title to any  
13 real property vested by deed or otherwise in the other entity shall not revert or be in any way  
14 impaired by reason of this chapter, but all rights of creditors and all liens upon any property of  
15 such other entity shall be preserved unimpaired, and all debts, liabilities, and duties of the other  
16 entity that has converted shall thenceforth attach to the domestic limited liability company and  
17 may be enforced against it to the same extent as if those debts, liabilities, and duties had been  
18 incurred or contracted by it.

19 (g) Unless otherwise agreed, or as required under applicable non-Rhode Island law, the  
20 converting other entity shall not be required to wind up its affairs or pay its liabilities and  
21 distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the other  
22 entity and shall constitute a continuation of the existence of the converting other entity in the  
23 form of a domestic limited liability company.

24 (h) Prior to filing a certificate of conversion to limited liability company the office of the  
25 secretary of state, the conversion shall be approved in the manner provided for by the document,  
26 instrument, agreement, or other writing, as the case may be, governing the internal affairs of the  
27 other entity and the conduct of its business or by applicable law, as appropriate, and a limited  
28 liability company agreement shall be approved by the same authorization required to approve the  
29 conversion.

30 (i) The provisions of this section shall not be construed to limit the accomplishment of a  
31 change in the law governing, or the domicile of, an other entity to the state of Rhode Island by  
32 any other means provided for in a limited liability company agreement or other agreement or as  
33 otherwise permitted by law, including by the amendment of a limited liability company  
34 agreement or other agreement.

1           **7-16-5.3. Conversion of general partnership to a limited liability company.** -- (a) Any  
2 domestic or foreign general partnership ([including registered limited liability partnerships](#)) may  
3 convert to a limited liability company by filing articles of organization that meet the requirements  
4 of section 7-16-6 or by filing an amendment or restatement of articles of organization of an  
5 existing limited liability company that meets the requirements of section 7-16-2, accompanied in  
6 any case by a certificate of conversion to a limited liability company; [duly executed by one or](#)  
7 [more partners of the former general partnership authorized to sign a certificate of conversion and](#)  
8 [one or more persons authorized to sign a certificate of conversion on behalf of the limited liability](#)  
9 [company](#), which shall include the following:

10           (1) The name of the former general partnership and the name of the limited liability  
11 company as set forth in its articles of organization;

12           (2) The date of the initial partnership agreement of the former general partnership and all  
13 amendments of the agreement, and the jurisdiction where the [former general partnership](#) ~~other~~  
14 ~~entity~~ was first created, formed or otherwise came into being, and if it has changed, its  
15 jurisdiction immediately prior to its conversion; and

16           (3) A statement that the conversion has been approved by the partners in the manner  
17 provided in the partnership agreement for amendments to the partnership agreement or, if no such  
18 provision is made in the partnership agreement, by all partners.

19           (b) Nothing in this section shall be construed to require, or be deemed to constitute, a  
20 dissolution or termination of the general partnership prior to its conversion to a limited liability  
21 company as permitted in this section.

22           (c) Following the conversion of the general partnership to a limited liability company:

23           (1) The limited liability company shall upon and after conversion possess all the rights,  
24 privileges, immunities, powers, and franchises, of a public as well as a private nature, of the  
25 former general partnership and shall be subject to all the restrictions, disabilities, and duties of the  
26 former general partnership to the extent those rights, privileges, immunities, powers, franchises,  
27 restrictions, disabilities, and duties were applicable to the former general partnership and to the  
28 extent those rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties  
29 are applicable to the limited liability company after the conversion.

30           (2) All property, real, personal and mixed, and all debts due on whatever account,  
31 including promises to make capital contributions, and all other choices in action and all and every  
32 other interest of or belonging to the former general partnership shall be vested in the limited  
33 liability company after the conversion without further act or deed;

34           (3) The title to all real estate and any interest in it vested in any former general

1 partnership and the limited liability company shall not revert or be in any way impaired by reason  
2 of the conversion;

3 (4) The limited liability company shall be responsible and liable for all liabilities and  
4 obligations of the former general partnership, and any claim existing or action or proceeding  
5 pending by or against the former general partnership may be prosecuted as if the conversion had  
6 not taken place, or the limited liability company may be substituted in the action;

7 (5) Neither the rights of creditors nor any liens on the property of the former general  
8 partnership shall be impaired by the conversion;

9 (6) Nothing in this section shall abridge or impair any rights that may otherwise be  
10 available to the partners under the partnership agreement of the former general partnership,  
11 except as amended in connection with the conversion, and under applicable law; and

12 (7) The limited liability company shall be deemed to be the successor of the general  
13 partnership and to have succeeded by operation of law to the interest in all property, real, personal  
14 and mixed or any interest therein of the former general partnership.

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

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LC02775/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

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

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- 1           This act would clarify provisions relating to indemnification of directors by a business
- 2 corporation and also provisions relating to distributions to shareholder of a business corporation.
- 3           This act would take effect upon passage.

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LC02775/SUB A  
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