

2008 -- S 2604 SUBSTITUTE A

=====
LC01638/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS -- RHODE
ISLAND NONPROFIT CORPORATION ACT

Introduced By: Senator Maryellen Goodwin

Date Introduced: February 26, 2008

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 7-1-7.1 of the General Laws in Chapter 7-1 entitled "Corporations -
2 General Provisions" is hereby amended to read as follows:

3 **7-1-7.1. Filings to be originals.** -- Filings made under this title at the secretary of state's
4 office are considered original and valid ~~only~~ if they bear either original signatures facsimile or
5 electronic signatures and shall ~~not~~ include but not be limited to any ~~telegram, cablegram,~~
6 ~~radiogram, telephone call,~~ electronically transmitted documents, or similar communications
7 transmitted through a medium provided and authorized by the Secretary of state.

8 SECTION 2. Sections 7-1.2-105 and 7-1.2-106 of the General Laws in Chapter 7-1.2
9 entitled "Rhode Island Business Corporation Act" are hereby amended to read as follows:

10 **7-1.2-105. Execution, filing and recording of instruments.** -- (a) Whenever any
11 instrument is to be filed with the secretary of state or in accordance with this chapter, the
12 instrument must be executed as follows:

13 (1) The articles of incorporation, and any other instrument to be filed before the election
14 of the initial board of directors if the initial directors were not named in the articles of
15 incorporation, must be signed by the incorporator or incorporators (or, in the case of any such
16 other instrument, such incorporator's or incorporators' successors and assigns).

17 (2) All other instruments must be signed:

18 (i) By any authorized officer of the corporation; or

1 (ii) If it appears from the instrument that there are no authorized officers, then by a
2 majority of the directors or by the director or directors authorized by a majority of the directors;
3 or

4 (iii) If it appears from the instrument that there are no authorized officers or directors,
5 then by the holders of record of all outstanding shares, or by those holders of record designated
6 by a majority of all outstanding shares; or

7 (b) Whenever this chapter requires any instrument to be acknowledged, such
8 requirement is satisfied by either:

9 (1) The formal acknowledgment by any individual signing the instrument that it is his or
10 her act and deed or the act and deed of the corporation, and that the facts stated therein are true.
11 This acknowledgment must be made before a individual who is authorized by the law of the place
12 of execution to take acknowledgment; or

13 (2) The signature, without more, of the individual or individuals signing the instrument,
14 in which case such signature or signatures constitutes the affirmation or acknowledgment of the
15 signatory, under penalties of perjury, that the instrument is that individual's act and deed or the
16 act and deed of the corporation, and that the facts stated therein are true.

17 (c) Whenever any instrument is to be filed with the secretary of state or in accordance
18 with this section or chapter, such requirement means that:

19 (1) The signed instrument must be delivered to the office of the secretary of state [in](#)
20 [either paper format or electronic transmission or another medium authorized by the secretary of](#)
21 [state;](#)

22 (2) All taxes and fees authorized by law to be collected by the secretary of state in
23 connection with the filing of the instrument must be tendered to the secretary of state; and

24 (3) Upon delivery of the instrument, the secretary of state shall record the date and time
25 of its delivery. Upon such delivery and tender of the required taxes and fees, the secretary of state
26 shall certify that the instrument has been filed in the secretary of state's office by endorsing upon
27 the signed instrument the word "Filed", and the date and time of its filing. This endorsement is
28 the "filing date" of the instrument, and is conclusive of the date and time of its filing in the
29 absence of actual fraud.

30 (d) Any instrument filed in accordance with subsection (c) of this section is effective
31 upon its filing date. Any instrument may provide that it is not to become effective until a
32 specified time subsequent to the time it is filed, but not later than the 90th day after the date of its
33 filing.

34 (e) If another section of this chapter specifically prescribes a manner of executing,

1 acknowledging or filing a specified instrument or a time when that instrument becomes effective
2 which differs from the corresponding provisions of this section, then such other section governs.

3 (f) Whenever any instrument authorized to be filed with the secretary of state under any
4 provision of this chapter, has been so filed and is an inaccurate record of the corporate action
5 therein referred to, or was defectively or erroneously executed, sealed or acknowledged, the
6 instrument may be corrected by filing with the secretary of state a certificate of correction of the
7 instrument which must be executed, acknowledged and filed in accordance with this section. The
8 certificate of correction must specify the inaccuracy or defect to be corrected and set forth the
9 portion of the instrument in corrected form. The corrected instrument must be specifically
10 designated as such in its heading, specify the inaccuracy or defect to be corrected, and set forth
11 the entire instrument in corrected form. An instrument corrected in accordance with this section is
12 effective as of the date the original instrument was filed, except as to those individuals who are
13 substantially and adversely affected by the correction and as to those individuals the instrument as
14 corrected is effective from its filing date.

15 (g) Notwithstanding that any instrument authorized to be filed with the secretary of state
16 under this chapter is when filed inaccurately, defectively or erroneously executed, sealed or
17 acknowledged, or otherwise defective in any respect, the secretary of state has no liability to any
18 individual for the preclearance for filing, the acceptance for filing or the filing and indexing of
19 such instrument by the secretary of state.

20 (h) Any signature on any instrument authorized to be filed with the secretary of state
21 under this chapter may be a facsimile or an electronically transmitted signature.

22 **7-1.2-106. Definitions.** -- As used in this chapter:

23 (1) "Articles of incorporation" means the original or restated articles of incorporation and
24 all of their amendments including agreements of merger.

25 (2) "Authorized shares" means the shares of all classes which the corporation is
26 authorized to issue.

27 (3) "Corporation" or "domestic corporation" means a corporation for profit subject to the
28 provisions of this chapter, except a foreign corporation.

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

32 (5) "Electronic transmission" means any form of communication, not directly
33 involving the physical transmission of paper, that creates a record that may be retained, retrieved,
34 and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a

1 recipient through an automated process.

2 ~~(5)~~ (6) "Employee" includes officers but not directors. A director may accept duties
3 which also make him or her an employee.

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

6 ~~(6)~~ (8) "Foreign corporation" means a corporation for profit organized under laws other
7 than the laws of this state for a purpose or purposes for which a corporation may be organized
8 under this chapter.

9 ~~(7)~~ (9) "Individual" means a natural person.

10 ~~(8)~~ (10) "Insolvent" means the inability of a corporation to pay its debts as they become
11 due in the usual course of its business.

12 ~~(9)~~ (11) "Person" means an individual or an entity. An entity includes domestic and
13 foreign business corporation, domestic and foreign nonprofit corporation; estate; trust; domestic
14 and foreign unincorporated entity; and a state, the United States and a foreign government.

15 ~~(10)~~ (12) "Shares" means the units into which the proprietary interests in a corporation
16 are divided.

17 ~~(11)~~ (13) "Subscriber" means one who subscribes for shares in a corporation, whether
18 before or after incorporation.

19 ~~(12)~~ (14) "Shareholder" means one who is a holder of record of shares in a corporation.

20 ~~(13)~~ (15) "State" means the state of Rhode Island and Providence Plantations.

21 (16) "Signature" or "Signed" or "Executed" means an original signature, facsimile, or an
22 electronically transmitted signature submitted through a medium provided and authorized by the
23 secretary of state.

24 ~~(14)~~ (17) The singular shall be construed to include the plural, the plural the singular,
25 and the masculine the feminine, when consistent with the intent of this chapter.

26 SECTION 3. Section 7-6-2 of the General Laws in Chapter 7-6 entitled "Rhode Island
27 Nonprofit Corporation Act" is hereby amended to read as follows:

28 **7-6-2. Definitions.** -- As used in this chapter, unless the context otherwise requires, the
29 term:

30 (1) "Articles of incorporation" means the original or restated articles of incorporation or
31 articles of consolidation and all amendments to it, including articles of merger and special acts of
32 the general assembly creating corporations.

33 (2) "Board of directors" means the group of persons vested with the management of the
34 affairs of the corporation (including, without being limited to, a board of trustees) regardless of

1 the name by which the group is designated.

2 (3) "Bylaws" means the code or codes of rules adopted for the regulation or management
3 of the affairs of the corporation regardless of the name or names by which the rules are
4 designated.

5 (4) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the
6 provisions of this chapter, except a foreign corporation.

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

10 ~~(5)~~ (6) "Director" means a member of a board of directors.

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

13 ~~(6)~~ (8) "Foreign corporation" means a nonprofit corporation organized under laws other
14 than the laws of this state.

15 ~~(7)~~ (9) "Insolvent" means inability of a corporation to pay its debts as they become due
16 in the usual course of its affairs.

17 ~~(8)~~ (10) "Member" means one having membership rights in a corporation in accordance
18 with the provisions of its articles of incorporation or bylaws regardless of the name by which the
19 person is designated.

20 ~~(9)~~ (11) "Nonprofit corporation" means a corporation no part of the income or profit of
21 which is distributable to its members, directors, or officers except as otherwise expressly
22 permitted by this chapter.

23 ~~(10)~~ (12) "Volunteer" means an individual performing services for a nonprofit
24 corporation without compensation.

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

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

32 SECTION 4. Section 7-13-1 of the General Laws in Chapter 7-13 entitled "Limited
33 Partnerships" is hereby amended to read as follows:

34 **7-13-1. Definitions.** -- As used in this chapter, unless the context otherwise requires:

1 (1) "Certificates of limited partnership" means the certificate referred to in section 7-13-8
2 and the certificate as amended or restated.

3 (2) "Contribution" means any cash, property, services rendered, or a promissory note or
4 other binding obligation to contribute cash or property or to perform services, which a partner
5 contributes to a limited partnership in his or her capacity as a partner.

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

9 ~~(3)~~ (4) "Event of withdrawal of a general partner" means an event that causes a person to
10 cease to be a general partner as provided in section 7-13-23.

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

13 ~~(4)~~ (6) "Foreign limited partnership" means a partnership formed under the laws of any
14 state other than the state of Rhode Island and having as partners one or more general partners and
15 one or more limited partners.

16 ~~(5)~~ (7) "General partner" means a person who has been admitted to a limited partnership
17 as a general partner in accordance with the partnership agreement and named in the certificate of
18 limited partnership as a general partner.

19 ~~(6)~~ (8) "Limited partner" means a person who has been admitted to a limited partnership
20 as a limited partner in accordance with the partnership agreement and named in the certificate of
21 limited partnership as a limited partner.

22 ~~(7)~~ (9) "Limited partnership" and "domestic limited partnership" mean a partnership
23 formed by two or more persons under the laws of this state and having one or more general
24 partners and one or more limited partners.

25 ~~(8)~~ (10) "Partner" means a limited or general partner.

26 ~~(9)~~ (11) "Partnership agreement" means any written or oral agreement of the partners as
27 to the affairs of a limited partnership and the conduct of its business. A written partnership
28 agreement or another written agreement or writing:

29 (i) May provide that a person is admitted as a limited partner of a limited partnership, or
30 becomes an assignee of a partnership interest or other rights or powers of a limited partner to the
31 extent assigned, and becomes bound by the partnership agreement,

32 (A) If the person (or a representative authorized by the person orally, in writing, or by
33 other action such as payment for a partnership interest) executes the partnership agreement or any
34 other writing evidencing the intent of the person to become a limited partner or assignee, or

1 (B) Without execution, if the person (or a representative authorized by the person orally,
2 in writing, or by other action such as payment for a partnership interest) complies with the
3 conditions for becoming a limited partner or assignee as stated in the partnership agreement or
4 any other writing and requests (orally, in writing, or by other action such as payment for a
5 partnership interest) that the records of the limited partnership reflect the admission or
6 assignment, and

7 (ii) Is not be unenforceable by reason of its not having been signed by a person being
8 admitted as a limited partner or becoming an assignee as provided in subdivision (9) (i), or by
9 reason of its having been signed by a representative as provided in this title.

10 ~~(10)~~ (12) "Partnership interest" means a partner's share of the profits and losses of a
11 limited partnership and the right to receive distributions of partnership assets.

12 ~~(11)~~ (13) "Person" means a natural person, partnership, limited partnership (domestic or
13 foreign), trust, estate, association, or corporation.

14 ~~(12)~~ (14) "State" means a state, territory, or possession of the United States, the District
15 of Columbia, or the Commonwealth of Puerto Rico.

16 (15) "Signature" or "Signed" or "Executed" means an original signature, facsimile, or an
17 electronically transmitted signature submitted through a medium provided and authorized by the
18 secretary of state.

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

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

25 **7-16-2. Definitions.** -- As used in this chapter, unless the context otherwise requires:

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

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

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

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

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

4 (6) "Capital value" means the fair market value in each case as of the date contributed of
5 a member's capital contributions, including a contribution of services previously performed or a
6 contribution of a binding obligation to perform services, reduced by distributions made to the
7 member.

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

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

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

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

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

18 ~~(10)~~ (12) "Foreign corporation" means a business corporation formed under the laws of
19 any state other than this state or any foreign country.

20 ~~(11)~~ (13) "Foreign limited liability company" means a limited liability company formed
21 under the laws of any state other than this state or any foreign country.

22 ~~(12)~~ (14) "Foreign limited partnership" means a limited partnership formed under the
23 laws of any state other than this state or any foreign country.

24 ~~(13)~~ (15) "Limited liability company" or "domestic limited liability company" means an
25 entity that is organized and existing under the laws of this state pursuant to this chapter.

26 ~~(14)~~ (16) "Limited partnership" means a limited partnership formed under the laws of
27 this state or a foreign limited partnership.

28 ~~(15)~~ (17) "Manager" or "Managers" means a person or persons designated by the
29 members of a limited liability company to manage the limited liability company.

30 ~~(16)~~ (18) "Member" means a person with an ownership interest in a limited liability
31 company with the rights and obligations specified under this chapter.

32 ~~(17)~~ (19) "Membership interest", "ownership interest" or "interest" means a member's
33 rights in the limited liability company, collectively, including the member's share of the profits
34 and losses of the limited liability company, the right to receive distributions of the limited liability

1 company's assets, and any right to vote or participate in management of the limited liability
2 company.

3 ~~(18)~~ (20) "New entity" means the entity into which constituent entities consolidate, as
4 identified in the articles of consolidation provided for in section 7-16-62.

5 ~~(19)~~ (21) "Operating agreement" means any agreement, written or oral, of the members
6 as to the affairs of a limited liability company and the conduct of its business. An operating
7 agreement also includes a document adopted by the sole member of a limited liability company
8 that has only one member and may include as a party one or more managers who are not
9 members.

10 ~~(20)~~ (22) "Person" means a natural person, partnership, limited partnership, domestic or
11 foreign limited liability company, trust, estate, corporation, nonbusiness corporation or other
12 association.

13 ~~(21)~~ (23) "State" means a state, territory or possession of the United States, or the
14 District of Columbia.

15 ~~(22)~~ (24) "Surviving entity" means the constituent entity surviving a merger, as
16 identified in the articles of merger provided for in section 7-16-62.

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

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

24 **7-16-5. Formation.** -- (a) One or more persons may form a limited liability company by
25 delivering or causing to be delivered ~~in duplicate~~ executed articles of organization for filing with
26 the secretary of state.

27 (b) When the secretary of state accepts the articles of organization for filing and issues
28 the certificate of organization, the limited liability company is formed under the name and subject
29 to the conditions and provisions stated in its articles of organization.

30 SECTION 6. This act shall take effect upon passage.

=====
LC01638/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS AND PARTNERSHIPS – RHODE
ISLAND NONPROFIT CORPORATION ACT

- 1 This act would allow filings with the secretary of state to be made by electronic
- 2 transmission.
- 3 This act would take effect upon passage.

=====
LC01638/SUB A
=====