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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 -- RHODE
ISLAND BUSINESS CORPORATIONS ACT

Introduced By: Representative Michael J. Marcello

Date Introduced: March 04, 2014

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 7-1.2-1301 of the General Laws in Chapter 7-1.2 entitled "Rhode
2 Island Business Corporation Act" is hereby amended to read as follows:

3 **7-1.2-1301. Voluntary dissolution by incorporators.** -- (a) A corporation which has not
4 commenced business and which has not issued any shares, may be voluntarily dissolved by its
5 incorporators at any time in the following manner:

6 (1) Articles of dissolution are executed by a majority of the incorporators, and verified
7 by them, and state:

8 (i) The name of the corporation.

9 (ii) The date of issuance of its certificate of incorporation.

10 (iii) That none of its shares have been issued.

11 (iv) That the corporation has not commenced business.

12 (v) That the amount, if any, actually paid in on subscriptions for its shares, less any part
13 of the amount disbursed for necessary expenses, has been returned to those entitled to it.

14 (vi) That no debts of the corporation remain unpaid.

15 (vii) That a majority of the incorporators elect that the corporation be dissolved.

16 (2) The original articles of dissolution are delivered to the secretary of state. If the
17 secretary of state finds that the articles of dissolution conform to law, the secretary of state shall,
18 when all fees and franchise taxes have been paid:

- 1 (i) Endorse on the original the word "Filed," and the month, day, and year of the filing.
2 (ii) File the original in his or her office.
3 (iii) Issue a certificate of dissolution.

4 (3) If the corporation is dissolved prior to the effective date stated on the articles of
5 incorporation, no franchise taxes shall be due.

6 (b) The certificate of dissolution is delivered to the incorporators or their representative.
7 Upon the issuance of the certificate of dissolution by the secretary of state, the existence of the
8 corporation continue but only for the purposes and subject to the limitations set forth in §§ 7-1.2-
9 1324 and 7-1.2-1325. ~~ceases.~~

10 SECTION 2. Section 7-1.2-1309 of the General Laws in Chapter 7-1.2 entitled "Rhode
11 Island Business Corporation Act" is hereby amended to read as follows:

12 **7-1.2-1309. Filing of articles of dissolution.** -- (a) The articles of dissolution are
13 delivered to the secretary of state. If the secretary of state finds that the articles of dissolution
14 conform to law, the secretary of state shall, when all fees and franchise taxes have been paid:

- 15 (1) Endorse on the original the word "Filed," and the month, day, and year of the filing.
16 (2) File the original in his or her office.
17 (3) Issue a certificate of dissolution.

18 (b) The certificate of dissolution is delivered to the representative of the dissolved
19 corporation. Upon the issuance of the certificate of dissolution the existence of the corporation
20 ~~ceases, except for the purpose of suits, other proceedings, and appropriate corporate action by~~
21 ~~shareholders, directors, and officers as provided in this chapter~~ continues but only for the
22 purposes and subject to the limitations set forth in §§ 7-1.2-1324 and 7-1.2-1325.

23 SECTION 3. Section 7-1.2-1311 of the General Laws in Chapter 7-1.2 entitled "Rhode
24 Island Business Corporation Act" is hereby amended to read as follows:

25 **7-1.2-1311. Issuance of certificates of revocation.** -- (a) Upon revoking any certificate
26 of incorporation, the secretary of state shall:

- 27 (1) Issue a certificate of revocation;
28 (2) File the certificate in his or her office; and
29 (3) Send to the corporation by regular mail a copy of the certificate of revocation,
30 addressed to the registered office of the corporation in this state on file with the secretary of
31 state's office; provided, however, that if a prior mailing addressed to the registered office of the
32 corporation in this state currently on file with the secretary of state's office has been returned to
33 the secretary of state as undeliverable by the United States Postal Service for any reason, or if the
34 revocation certificate is returned as undeliverable to the secretary of state's office by the United

1 States Postal Service for any reason, the secretary of state shall give notice as follows:

2 (i) To the corporation at its principal office of record as shown in its most recent annual
3 report, and no further notice is required; or

4 (ii) In the case of a domestic corporation which has not yet filed an annual report, then to
5 any one of the incorporators listed on the articles of incorporation, and no further notice is
6 required.

7 (b) Upon the issuance of the certificate of revocation, the existence of the corporation
8 continues but only for the purposes and subject to the limitations set forth in §§ 7-1.2-1324 and 7-
9 1.2-1325 ~~the authority of the corporation to transact business in this state ceases.~~

10 ~~(c) Notwithstanding anything to the contrary, the issuance of a certificate of revocation~~
11 ~~of a corporation does not terminate the authority of its registered agent.~~

12 SECTION 4. Section 7-1.2-1312 of the General Laws in Chapter 7-1.2 entitled "Rhode
13 Island Business Corporation Act" is hereby amended to read as follows:

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

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

20 (2) Upon the payment by the corporation of a penalty for each year or part of a year that
21 has elapsed since the issuance of the certificate of revocation; and

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

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

1 ~~(c) Upon the withdrawal of the certificate of revocation and reinstatement of the~~
2 ~~corporation in good standing as provided in subsection (a) of this section, title to any real estate,~~
3 ~~or any interest in real estate, held by the corporation at the time of the issuance of the certificate~~
4 ~~of revocation and not conveyed subsequent to the revocation of its articles of incorporation is~~
5 ~~deemed to be re-vested in the corporation without further act or deed.~~

6 SECTION 5. Section 7-1.2-1320 of the General Laws in Chapter 7-1.2 entitled "Rhode
7 Island Business Corporation Act" is hereby amended to read as follows:

8 **7-1.2-1320. Decree of involuntary dissolution.** -- In proceedings to liquidate the assets
9 and business of a corporation, when the costs and expenses of the proceedings and all debts,
10 obligations, and liabilities of the corporation have been paid and discharged and all of its
11 remaining property and assets distributed to its shareholders, or in case its property and assets are
12 not sufficient to satisfy and discharge the costs, expenses, debts, and obligations, all the property
13 and assets have been applied as far as they will go to their payment, the court shall enter a decree
14 dissolving the corporation, at which time the existence of the corporation continues but only for
15 the purposes and subject to the limitations set forth in §§ 7-1.2-1324 and 7-1.2-1325 ~~ceases.~~

16 SECTION 6. Section 7-1.2-1324 of the General Laws in Chapter 7-1.2 entitled "Rhode
17 Island Business Corporation Act" is hereby amended to read as follows:

18 **7-1.2-1324. Survival of remedy after dissolution.** -- The dissolution of a corporation
19 either:

20 (a) By the issuance of a certificate of dissolution by the secretary of state pursuant to §§
21 7-1.2-1301 or 7-1.2-1309; or

22 (b) By a decree of court ~~when the court has not liquidated the assets and business of the~~
23 ~~corporation as provided in this chapter~~ pursuant to § 7-1.2-1320; or

24 (c) By expiration of its period of duration; does not take away or impair any remedy
25 available to or against the corporation, its directors, officers, or shareholders, for any right or
26 claim existing, or any liability incurred, prior to the dissolution if action or other proceeding on
27 the right, claim, or liability is commenced within two (2) years after the date of the dissolution.
28 Any action or proceeding by or against the corporation may be prosecuted or defended by the
29 corporation in its corporate name. The shareholders, directors, and officers have power to take
30 any corporate or other action that is appropriate to protect the remedy, right, or claim. If the
31 corporation was dissolved by the expiration of its period of duration, the corporation may amend
32 its articles of incorporation at any time during the period of two (2) years so as to extend its
33 period of duration.

34 SECTION 7. Section 7-1.2-1325 of the General Laws in Chapter 7-1.2 entitled "Rhode

1 Island Business Corporation Act" is hereby amended to read as follows:

2 ~~7-1.2-1325. Continuation of certain corporate powers.~~ **Effect of dissolution and**
3 **revocation of articles of incorporations.** – (a) Any corporation dissolved in any manner under

4 this chapter or any corporation whose existence is terminated under section 44-12-8 or any
5 corporation whose articles of incorporation are revoked by the secretary of state under section 7-
6 1.2-1310 nevertheless continues its corporate existence but may not carry on any business except
7 what is appropriate to wind up and liquidate its business and affairs, including:

- 8 (1) Collecting its assets;
- 9 (2) Disposing of its properties that are not distributed in kind to its shareholders;
- 10 (3) Discharging or making provision for discharging its liabilities;
- 11 (4) Distributing its remaining property among its shareholders according to their
12 interests; and
- 13 (5) Doing every other act necessary to wind up and liquidate its business and affairs.

14 (b) Dissolution of a corporation in any manner under this chapter or termination of any
15 corporation's existence under § 44-12-8 or revocation of a corporation's articles of incorporation
16 does not:

- 17 (1) Transfer title to the corporation's property;
- 18 (2) Prevent transfer of its shares or securities, although the authorization to dissolve may
19 provide for closing the corporation's share transfer records;
- 20 (3) Subject its directors or officers to standards of conduct different from those prescribed
21 in this chapter;
- 22 (4) Change quorum or voting requirements for its board of directors or shareholders;
23 change provisions for selection, resignation, or removal of its directors or officers or both; or
24 change provisions for amending its bylaws;
- 25 (5) Prevent commencement of a proceeding by or against the corporation in its corporate
26 name except as otherwise provided in § 7-1.2-1324;
- 27 (6) Abate or suspend a proceeding pending by or against the corporation on the effective
28 date of dissolution; or
- 29 (7) Terminate the authority of the registered agent of the corporation.

30 ~~for five (5) years after the date of the dissolution, termination, or revocation for the~~
31 ~~purpose of enabling it to settle and close its affairs, to dispose of and convey its property, to~~
32 ~~discharge its liabilities, and to distribute its assets, but not for the purpose of continuing the~~
33 ~~business for which it was organized. The shareholders, directors, and officers have power to take~~
34 ~~any corporate or other action that is appropriate to carry out the purposes of this section.~~

1 SECTION 8. This act shall apply to all corporations as defined in Chapter 7-1.2,
2 including all such corporations for which dissolution or revocation proceedings are pending or for
3 which a certificate of dissolution or a certificate of revocation has been issued by the secretary of
4 state or a decree of dissolution has been issued by the superior court prior to the effective date
5 hereof.

6 SECTION 9. 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 -- RHODE
ISLAND BUSINESS CORPORATIONS ACT

- 1 This act would clarify the distinction between dissolution of a corporation and revocation
- 2 of its charter and the results of such events.
- 3 This act would take effect upon passage.

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