

2016 -- S 2863 SUBSTITUTE A

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

Introduced By: Senator Hanna M. Gallo

Date Introduced: March 31, 2016

Referred To: Senate Commerce

(Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 7-11-302 and 7-11-303 of the General Laws in Chapter 7-11
2 entitled "Rhode Island Uniform Securities Act" are hereby amended to read as follows:

3 **7-11-302. Registration by filing.** -- (a) Securities for which a registration statement has
4 been filed under the Securities Act of 1933, 15 U.S.C. § 77a et seq., in connection with the
5 offering of the securities may be registered by filing, whether or not they are also eligible for
6 registration under § 7-11-303 or § 7-11-304, if the following conditions are satisfied:

7 (1) The issuer is organized under the laws of the United States or a state or, if the issuer
8 is not organized under the laws of the United States or a state, it has appointed a duly authorized
9 agent in the United States for service of process;

10 (2) The issuer has actively engaged in business operations in the United States for a
11 period of at least thirty-six (36) consecutive calendar months immediately before the filing of the
12 federal registration statement;

13 (3) The issuer has registered a class of equity securities under § 12(b) or 12(g) of the
14 Securities Exchange Act of 1934, 15 U.S.C. §§ 781(b) or (g), which class of securities is held of
15 record by five hundred (500) or more persons;

16 (4) The issuer has:

17 (i) (A) A total net worth of four million dollars (\$4,000,000); or

18 (B) A total net worth of two million dollars (\$2,000,000) and net pretax income from
19 operations before allowances for extraordinary items, for at least two (2) of the three (3)

1 preceding fiscal years;

2 (ii) Not less than four hundred thousand (400,000) units of the class of security
3 registered under § 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, held by the public,
4 excluding securities held by officers and directors of the issuer, underwriters, and persons
5 beneficially owning ten percent (10%) or more of that class of security; and

6 (iii) Outstanding warrants and options held by the underwriters and executive officers
7 and directors of the issuer in an amount not exceeding ten percent (10%) of the total number of
8 shares to be outstanding after completion of the offering of the securities being registered;

9 (5) The issuer has been subject to the requirements of § 12 of the Securities Exchange
10 Act of 1934 and has filed all the material required to be filed under §§ 13 and 14 of that Act, 15
11 U.S.C. §§ 78m and 78n, for at least thirty-six (36) calendar months immediately before the filing
12 of the federal registration statement and the issuer has filed in a timely manner all reports required
13 to be filed during the twelve (12) calendar months immediately before the filing of the federal
14 registration statement;

15 (6) For a period of at least thirty (30) days during the three (3) months preceding the
16 offering of the securities registered there have been at least four (4) market makers for the class of
17 equity securities registered under § 12 of the Securities Exchange Act of 1934;

18 (7) Each of the underwriters participating in the offering of the securities, and each
19 broker dealer who will offer the securities in this state, is a member of, or is subject to the rules of
20 fair practice of, a national association of securities dealers with respect to the offering and the
21 underwriters have contracted to purchase the securities offered in a principal capacity;

22 (8) The aggregate commissions or discounts to be received by the underwriters will not
23 exceed ten percent (10%) of the aggregate price at which the securities being registered are
24 offered to the public;

25 (9) Neither the issuer nor any of its subsidiaries, since the end of the last fiscal year
26 preceding the filing of the registration statement, have:

27 (i) Failed to pay a dividend or sinking fund installment on preferred stock;

28 (ii) Defaulted on indebtedness for borrowed money; or

29 (iii) Defaulted on the rental of one or more long term leases; which defaults in the
30 aggregate are material to the financial position of the issuer and its subsidiaries, taken as a whole;
31 and

32 (10) In the case of equity securities, the price at which the securities will be offered to
33 the public is not less than five dollars (\$5.00) per share.

34 (b) A registration statement under this section must contain the following information

1 and be accompanied by the following documents in addition to the information specified in § 7-
2 11-305(c) and the consent to service of process required by § 7-11-708:

3 (1) A statement demonstrating eligibility for registration by filing;

4 (2) The name, address, and form of organization of the issuer;

5 (3) With respect to a person on whose behalf a part of the offering is to be made in a
6 nonissuer distribution: name and address; the amount of securities of the issuer held by the person
7 as of the date of the filing of the registration statement; and a statement of the reasons for making
8 the offering;

9 (4) A description of the securities being registered; and

10 (5) A copy of the latest prospectus filed with the registration statement under and
11 satisfying the requirements of § 10 of the Securities Exchange Act of 1933, 15 U.S.C. § 77j.

12 (c) If the information and documents required to be filed by subsection (b) have been on
13 file with the director for at least five (5) business days, or any shorter period as the director allows
14 by rule or order and the applicable registration fee has been paid before the effectiveness of the
15 federal registration statement, a registration statement under this section automatically becomes
16 effective concurrently with the effectiveness of the federal registration statement. If the federal
17 registration statement becomes effective before the conditions in this subsection are satisfied and
18 they are not waived, the registration statement becomes effective when the conditions are
19 satisfied. The registrant shall promptly notify the director by telephone or ~~telegram~~ [electronic](#)
20 [mail](#) of the date and time when the federal registration statement becomes effective and any
21 content of the price amendment and shall promptly file a post effective amendment containing the
22 information and documents in the price amendment. The director shall promptly acknowledge
23 receipt of notification and effectiveness of the registration statement as of the date and time the
24 registration statement became effective with the securities and exchange commission.

25 **7-11-303. Registration by coordination.** -- (a) Securities for which a registration
26 statement has been filed under the Securities Act of 1933, 15 U.S.C. § 77a et seq., in connection
27 with the offering of the securities may be registered by coordination.

28 (b) A registration statement under this section contains the following information and is
29 accompanied by the following documents in addition to the information specified in § 7-11-
30 305(c) and the consent to service of process required by § 7-11-708:

31 (1) ~~Two (2) copies~~ [An electronically filed copy or paper copy](#) of the latest form of
32 prospectus filed under the Securities Act of 1933, 15 U.S.C. § 77a et seq.;

33 (2) If the director requires by rule or order: a copy of the articles of incorporation and
34 bylaws or their substantial equivalents, currently in effect; a copy of any agreement with or

1 among underwriters; a copy of an indenture or other instrument governing the issuance of the
2 securities to be registered; and a specimen, copy, or description of the securities;

3 (3) If the director requests and subject to § 7-11-703(b)(2), any other information, or
4 copies of any other document, filed under the Securities Act of 1933; and

5 (4) An undertaking to forward promptly, and not later than the first business day after the
6 day they are forwarded to or filed with the securities and exchange commission, all future
7 amendments to the federal registration statement and/or prospectus, other than an amendment that
8 delays the effective date of the registration statement.

9 (c) A registration statement under this section automatically becomes effective when the
10 federal registration statement becomes effective if all the following conditions are satisfied:

11 (1) No stop order is in effect and no proceeding is pending under § 7-11-306;

12 (2) The registration statement has been on file with the director for at least ten (10) days
13 or any shorter period the director specifies by rule or order, but if the registration statement is not
14 filed with the director within ten (10) days after the initial filing under the Securities Act of 1933,
15 15 U.S.C. § 77a et seq., the registration statement has been on file with the director for thirty (30)
16 days or any shorter period the director specifies by rule or order; and

17 (3) A statement of the maximum and minimum proposed offering prices and the
18 maximum underwriting discounts and commission has been on file for two (2) full business days
19 or any shorter period the director specifies by rule or order, and the offering is made within those
20 limitations.

21 (d) The registrant shall promptly notify the director by telephone or ~~telegram~~ [electronic](#)
22 [mail](#) of the date and time when the federal registration statement became effective and any
23 content of the price amendment and shall promptly file a post effective amendment containing the
24 information and documents in the price amendment.

25 (e) Upon failure to receive the required notification and post effective amendment with
26 respect to the price amendment, the director may enter a stop order, without notice or hearing,
27 retroactively denying effectiveness to the registration statement or suspending its effectiveness
28 until the registrant complies with subsection (d). The director shall promptly notify the registrant
29 by telephone or ~~telegram~~ [electronic mail](#), and promptly confirm by letter or ~~telegram~~ [electronic](#)
30 [mail](#) if the director notifies by telephone, of the issuance of the order. If the registrant proves
31 compliance with the requirements of subsection (d) as to notice and post effective amendment,
32 the stop order is void as of its entry.

33 (f) The director may waive by rule or order either or both of the conditions specified in
34 subsections (c)(2) and (c)(3).

1 (g) If the federal registration statement becomes effective before all the conditions in
2 subsection (c) are satisfied and they are not waived, the registration statement automatically
3 becomes effective when all the conditions are satisfied. If the registrant advises the director of the
4 date when the federal registration statement is expected to become effective, the director shall
5 promptly advise the registrant by telephone or ~~telegram, at the registrant's expense,~~ [electronic](#)
6 [mail](#) whether all the conditions are satisfied and whether the director then contemplates the
7 institution of a proceeding under § 7-11-306; but the advice by the director does not preclude the
8 institution of a proceeding for a stop order suspending the effectiveness of the registration
9 statement. A stop order issued under this subsection is not retroactive.

10 (h) The director may waive or modify by rule or order the application of a requirement
11 of this section if a provision of an amendment, repeal, or other alteration of the securities
12 registration provisions of the Securities Act of 1933, 15 U.S.C. § 77a et seq., or the regulations
13 adopted under that Act, render the waiver or modification appropriate for further coordination of
14 state and federal registration.

15 SECTION 2. Sections 19-28.1-3, 19-28.1-6, 19-28.1-8, 19-28.1-12, 19-28.1-14 and 19-
16 28.1-29 of the General Laws in Chapter 19-28.1 entitled "Franchise Investment Act" are hereby
17 amended to read as follows:

18 **19-28.1-3. Definitions.** -- When used in this act, unless the context otherwise requires:

19 (1) "Act" means the Rhode Island Franchise Investment Act.

20 (2) "Advertisement" means a communication published in connection with an offer or
21 sale of a franchise.

22 (3) "Affiliate" means a person controlling, controlled by, or under common control with
23 another person, every officer or director of the person, and every person occupying a similar
24 status or performing similar functions.

25 (4) "~~Business Calendar~~ day" means ~~a day other than a Saturday, Sunday, or federal~~
26 ~~holiday~~ [every day of the week, including weekends.](#)

27 (5) "Director" means the director of business regulation.

28 (6) "Disclosure document" means the uniform franchise offering circular as adopted and
29 amended by the North American securities administrators association, inc.

30 (7) "Franchise" means

31 (i) An oral or written agreement, either express or implied, which:

32 (A) Grants the right to distribute goods or provide services under a marketing plan
33 prescribed or suggested in substantial part by the franchisor;

34 (B) Requires payment of a franchise fee in excess of five hundred dollars (\$500) to a

1 franchisor or its affiliate; and

2 (C) Allows the franchise business to be substantially associated with a trademark, service
3 mark, trade name, logotype, advertising, or other commercial symbol of or designating the
4 franchisor or its affiliate; or

5 (ii) A master franchise.

6 (8) "Franchisee" means a person to whom a franchise is granted. Franchisee includes:

7 (i) A subfranchisor with regard to its relationship with a franchisor; and

8 (ii) A subfranchisee with regard to its relationship with a subfranchisor;

9 (9) "Franchise fee" means a direct or indirect payment to purchase or operate a franchise.

10 Franchise fee does not include:

11 (i) Payment of a reasonable service charge to the issuer of a credit card by an
12 establishment accepting the credit card;

13 (ii) Payment to a trading stamp company by a person issuing trading stamps in
14 connection with a retail sale; or

15 (iii) Agreement to purchase at a bona fide wholesale price a reasonable quantity of
16 tangible goods for resale.

17 (10) "Franchisor" means a person who grants a franchise. Franchisor includes a
18 subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this act.

19 (11) "Fraud" and "deceit" are not limited to common law fraud and deceit.

20 (12) "Marketing plan" means a plan or system concerning a material aspect of
21 conducting business. Indicia of a marketing plan include:

22 (i) Price specifications, special pricing systems or discount plans;

23 (ii) Sales or display equipment or merchandising devices;

24 (iii) Sales techniques;

25 (iv) Promotional or advertising materials or cooperative advertising;

26 (v) Training regarding the promotion, operation or management of the business; or

27 (vi) Operational, managerial, technical or financial guidelines or assistance.

28 (13) "Master franchise" means an agreement express or implied, oral or written, by
29 which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

30 (14) "Offer" or "offer to sell" means every attempt to offer or to dispose of, or
31 solicitation of an offer to buy, a franchise or interest in a franchise for value.

32 (15) "Order" means a consent, authorization, approval, or prohibition, issued by the
33 director in a specific matter.

34 (16) "Person" means an individual or any other legal or commercial entity.

1 (17) "Publish" means to circulate generally by mail, or print media or electronic media,
2 or otherwise to disseminate generally to the public.

3 (18) "Registration application" means an initial franchise application on the uniform
4 franchise registration application as adopted and amended by the North American securities
5 administrators association, inc. and the amendment or renewal of the application.

6 (19) "Sale" or "sell" means every contract or agreement of sale of, contract to sell, or a
7 disposition of a franchise or interest in a franchise for value.

8 (20) "Salesperson" means a person employed by or representing a franchisor in effecting
9 or attempting to effect the offer or sale of a franchise.

10 (21) "Subfranchisee" means a person who is granted a franchise or subfranchise from the
11 subfranchisor.

12 (22) "Subfranchisor" means a person who is granted a master franchise.

13 (23) "This state" means Rhode Island.

14 **19-28.1-6. Exemption from registration.** -- The following transactions are exempt from
15 the provisions of § 19-28.1-5:

16 (1) The offer or sale of a franchise if all of the following conditions are satisfied:

17 (i) Either the franchisor's most recent audited financial statements show a net worth of at
18 least ten million dollars (\$10,000,000) or the franchisor is at least eighty percent (80%) owned by
19 a person that unconditionally guarantees the franchisor's performance, that consents to service of
20 process in this state and whose most recent audited financial statements show a net worth of at
21 least ten million dollars (\$10,000,000);

22 (ii) The franchisor or person owning at least eighty percent (80%) of the franchisor had
23 and currently has at least twenty-five (25) franchisees that have conducted substantially the same
24 franchised business to be offered or sold at no fewer than twenty-five (25) locations for the entire
25 five (5) year period immediately preceding the offer or sale of the franchise;

26 (iii) The offeree receives the disclosure document at least ~~ten (10) business~~ fourteen (14)
27 calendar days prior to the execution by the offeree of any binding agreement or at least ~~ten (10)~~
28 ~~business~~ fourteen (14) calendar days prior to the direct or indirect receipt of a franchise fee by the
29 franchisor from the offeree, which ever first occurs; and

30 (iv) The franchisor annually files a notice of exemption with the director. The notice of
31 exemption shall include the disclosure documents and the fee prescribed by § 19-28.1-29 and
32 shall be filed prior to an offer or sale of a franchise in this state. The exemption expires fifteen
33 (15) months from the date of the most recent audited financial statement filed unless the director
34 prescribes a different period by rule or order.

1 (2) The offer or sale of a franchise by a franchisee who is not an affiliate of the
2 franchisor for the franchisee's own account if the franchisee's entire franchise is sold and the sale
3 is not effected by or through the franchisor. A sale is not effected by or through a franchisor
4 merely because a franchisee signs agreements with terms which do not materially differ from the
5 agreements with the existing franchisee or because a franchisor has a right to approve or
6 disapprove the sale or requires payment of a reasonable transfer fee. This exemption applies to
7 the offer or sale of a master franchise if the entire master franchise is sold.

8 (3) The offer or sale of a franchise to a person who has been for at least two (2) years, an
9 officer, director, partner or affiliate of the franchisor for that person's own account.

10 (4) The offer or sale of a franchise to a purchaser for the purchaser's own account who:

11 (i) Has a net worth of at least one million dollars (\$1,000,000) (in the case of a natural
12 person, including the property of the purchaser's spouse but excluding primary residence,
13 personal vehicles and personal effects) or had an individual income, or joint income including
14 that person's spouse in excess of two hundred thousand dollars (\$200,000) in each of the two (2)
15 most recent years and has a reasonable expectation of reaching the same income level in the
16 current year; and

17 (ii) Has the knowledge and experience in financial and business matters that the person
18 is capable of evaluating the merits and risks of the franchise.

19 (5) The offer or sale to an existing franchisee of an additional franchise that is
20 substantially the same as the franchise that the franchisee has operated for at least two (2) years at
21 the time of the offer or sale.

22 (6) The offer or sale of a franchise involving a renewal, extension, modification or
23 amendment of an existing franchise agreement if there is no interruption in the operation of the
24 franchised business and there is no material change in the franchise relationship. For purposes of
25 this subdivision, an interruption in the operation of the franchised business solely for the purpose
26 of renovating or relocating that business is not a material change in the franchise relationship or
27 an interruption in the operation of the franchise business.

28 (7) The offer or sale of a franchise by an executor, administrator, sheriff, marshal,
29 receiver, trustee, trustee in bankruptcy, guardian or conservator on behalf of a person other than
30 the franchisor or the estate of the franchisor.

31 (8) The offer of a franchise by the franchisor during the period of registration has expired
32 and is pending renewal under § 19-28.1-9 or an application to amend a registration under § 19-
33 28.1-11, if the offeree receives the newly registered disclosure document at least ~~ten (10) business~~
34 fourteen (14) calendar days before the offeree's execution of any binding agreement or at least ~~ten~~

1 ~~(10) business~~ fourteen (14) calendar days prior to the receipt of a franchise fee by the franchisor
2 from the offeree, whichever first occurs. Changes from the documents last registered must be
3 marked to show changes.

4 (9) The offer or sale of rights to a person to sell goods or services within or adjacent to a
5 retail establishment as a department or division; provided that the person is not required to
6 purchase goods or services from the operator of the retail establishment.

7 (10) The offer and sale of a franchise that the director by rule or order exempts when
8 registration is not necessary or appropriate in the public interest or for the protection of
9 prospective franchisees.

10 **19-28.1-8. Delivery requirements.** -- (a) It is unlawful to sell any franchise in this state
11 without first providing a copy of a disclosure document reflecting all material changes together
12 with a copy of all proposed agreements relating to the sale of the franchise, unless otherwise
13 provided in subsection (b), to the prospective franchisee, ~~at the earlier of~~ not less than:

14 (1) ~~The prospective franchisee's first personal business meeting with the franchisor~~
15 ~~which is held for the purpose of discussing the sale or possible sale of a franchise; or~~

16 (2) ~~Ten (10) business~~ Fourteen (14) calendar days prior to the execution of an agreement
17 or payment of any consideration relating to the franchise relationship.

18 (b) The delivery requirements in subsection (a) do not apply to the offer or sale of a
19 franchise which is exempt under § 19-28.1-6(2), (3), (6), or (8).

20 **19-28.1-12. Advertising.** -- No person may publish in this state any advertisement
21 offering to sell a franchise required to be registered under this act unless they maintain the
22 advertising materials for five (5) years, consistent with §19-28.1-13 ~~the advertisement and~~
23 ~~required filing fee have been filed with the director at least five (5) business days prior to its first~~
24 ~~publication.~~

25 **19-28.1-14. Jurisdiction and venue.** -- A provision ~~is~~ of a franchise agreement
26 restricting jurisdiction or venue to a forum outside this state or requiring the application of the
27 laws of another state is void with respect to a claim otherwise enforceable under this act.

28 **19-28.1-29. Fees.** -- (a) The director shall charge and collect the fees fixed by this
29 section. The director shall not refund fees.

30 (b) The fee for filing an application for initial registration of a franchise under § 19-28.1-
31 9 is six hundred dollars (\$600).

32 (c) The fee for filing a notice of exemption under § 19-28.1-6 is three hundred sixty
33 dollars (\$360).

34 (d) The fee for filing an application for renewal of a registration under § 19-28.1-9 is

1 three hundred dollars (\$300).

2 (e) The fee for filing a request for an amendment to an application under § 19-28.1-11 is
3 one hundred twenty dollars (\$120).

4 (f) The fee for filing a request for an interpretive opinion under § 19-28.1-27(c) is three
5 hundred dollars (\$300).

6 (g) ~~The fee for filing advertising is ten dollars (\$10.00) per item.~~

7 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

1 This act would amend the statutes regarding securities and franchises in order to allow for
2 electronic filings and to remove the filing fee for advertising.

3 This act would take effect upon passage.

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