

10365--B

I N A S S E M B L Y

May 24, 2016

Introduced by M. of A. BRENNAN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the not-for-profit corporation law and the estates, powers and trusts law, in relation to reformation of charitable corporations and trust governance; and to repeal certain provisions of the not-for-profit corporation law and the estates, powers and trusts law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraphs 21, 23, 24 and 25 of paragraph (a) of section
2 102 of the not-for-profit corporation law, subparagraphs 21, 23 and 25
3 as amended by chapter 555 of the laws of 2015 and subparagraph 24 as
4 added by chapter 549 of the laws of 2013, are amended to read as
5 follows:
6 (21) "Independent director" means a director who: (i) is not, and has
7 not been within the last three years, an employee OR A KEY PERSON of the
8 corporation or an affiliate of the corporation, and does not have a
9 relative who is, or has been within the last three years, a key [employ-
10 ee] PERSON of the corporation or an affiliate of the corporation; (ii)
11 has not received, and does not have a relative who has received, in any
12 of the last three fiscal years, more than ten thousand dollars in direct
13 compensation from the corporation or an affiliate of the corporation
14 [(other than reimbursement for expenses reasonably incurred as a direc-
15 tor or reasonable compensation for service as a director as permitted by
16 paragraph (a) of section 202 (General and special powers))]; (iii) is
17 not a current employee of or does not have a substantial financial
18 interest in, and does not have a relative who is a current officer of or
19 has a substantial financial interest in, any entity that has [made
20 payments] PROVIDED PAYMENTS, PROPERTY OR SERVICES to, or received

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 payments, PROPERTY OR SERVICES from, the corporation or an affiliate of
2 the corporation [for] IF THE AMOUNT PAID BY THE CORPORATION TO THE ENTI-
3 TY OR RECEIVED BY THE CORPORATION FROM THE ENTITY FOR SUCH property or
4 services [in an amount which], in any of the last three fiscal years,
5 [exceeds the lesser of twenty-five thousand dollars or two percent of
6 such entity's consolidated gross revenues] EXCEEDED THE LESSER OF TEN
7 THOUSAND DOLLARS OR TWO PERCENT OF SUCH ENTITY'S CONSOLIDATED GROSS
8 REVENUES IF THE ENTITY'S CONSOLIDATED GROSS REVENUE WAS LESS THAN FIVE
9 HUNDRED THOUSAND DOLLARS; TWENTY-FIVE THOUSAND DOLLARS IF THE ENTITY'S
10 CONSOLIDATED GROSS REVENUE WAS FIVE HUNDRED THOUSAND DOLLARS OR MORE BUT
11 LESS THAN TEN MILLION DOLLARS; ONE HUNDRED THOUSAND DOLLARS IF THE ENTI-
12 TY'S CONSOLIDATED GROSS REVENUE WAS TEN MILLION DOLLARS OR MORE; or (iv)
13 is not and does not have a relative who is a current owner, whether
14 wholly or partially, director, officer or employee of the corporation's
15 outside auditor or who has worked on the corporation's audit at any time
16 during the past three years. For purposes of this [subdivision,] SUBPAR-
17 AGRAPH, THE TERMS: "COMPENSATION" DOES NOT INCLUDE REIMBURSEMENT FOR
18 EXPENSES REASONABLY INCURRED AS A DIRECTOR OR REASONABLE COMPENSATION
19 FOR SERVICE AS A DIRECTOR AS PERMITTED BY PARAGRAPH (A) OF SECTION 202
20 (GENERAL AND SPECIAL POWERS) OF THIS CHAPTER; AND "payment" does not
21 include charitable contributions, dues or fees paid to the corporation
22 for services which the corporation performs as part of its nonprofit
23 purposes, OR PAYMENTS MADE BY THE CORPORATION AT FIXED OR NON-NEGOTIABLE
24 RATES OR AMOUNTS FOR SERVICES RECEIVED, provided that such services BY
25 AND TO THE CORPORATION are available to individual members of the public
26 on the same terms, AND SUCH SERVICES RECEIVED BY THE CORPORATION ARE NOT
27 AVAILABLE FROM ANOTHER SOURCE.

28 (23) "Related party" means (i) any director, officer or key [employee]
29 PERSON of the corporation or any affiliate of the corporation[, or any
30 other person who exercises the powers of directors, officers or key
31 employees over the affairs of the corporation or any affiliate of the
32 corporation]; (ii) any relative of any individual described in clause
33 (i) of this [subdivision] SUBPARAGRAPH; or (iii) any entity in which any
34 individual described in clauses (i) and (ii) of this [subdivision]
35 SUBPARAGRAPH has a thirty-five percent or greater ownership or benefi-
36 cial interest or, in the case of a partnership or professional corpo-
37 ration, a direct or indirect ownership interest in excess of five
38 percent.

39 (24) "Related party transaction" means any transaction, agreement or
40 any other arrangement in which a related party has a financial interest
41 and in which the corporation or any affiliate of the corporation is a
42 participant, EXCEPT THAT A TRANSACTION SHALL NOT BE A RELATED PARTY
43 TRANSACTION IF: (I) THE TRANSACTION OR THE RELATED PARTY'S FINANCIAL
44 INTEREST IN THE TRANSACTION IS DE MINIMIS, (II) THE TRANSACTION WOULD
45 NOT CUSTOMARILY BE REVIEWED BY THE BOARD OR BOARDS OF SIMILAR ORGANIZA-
46 TIONS IN THE ORDINARY COURSE OF BUSINESS AND IS AVAILABLE TO OTHERS ON
47 THE SAME OR SIMILAR TERMS, OR (III) THE TRANSACTION CONSTITUTES A BENE-
48 FIT PROVIDED TO A RELATED PARTY SOLELY AS A MEMBER OF A CLASS OF THE
49 BENEFICIARIES THAT THE CORPORATION INTENDS TO BENEFIT AS PART OF THE
50 ACCOMPLISHMENT OF ITS MISSION WHICH BENEFIT IS AVAILABLE TO ALL SIMILAR-
51 LY SITUATED MEMBERS OF THE SAME CLASS ON THE SAME TERMS.

52 (25) "Key [employee] PERSON" means any person [who is in a position to
53 exercise substantial influence over the affairs of the corporation, as
54 referenced in 26 U.S.C. S 4958(f)(1)(A) and further specified in 26 CFR
55 S 53.4958-3(c), (d) and (e), or succeeding provisions to the extent such
56 provisions are applicable], OTHER THAN A DIRECTOR OR OFFICER, WHETHER OR

1 NOT AN EMPLOYEE OF THE CORPORATION, WHO (I) HAS RESPONSIBILITIES, OR
2 EXERCISES POWERS OR INFLUENCE OVER THE CORPORATION AS A WHOLE SIMILAR TO
3 THE RESPONSIBILITIES, POWERS, OR INFLUENCE OF DIRECTORS AND OFFICERS;
4 (II) MANAGES THE CORPORATION, OR A SEGMENT OF THE CORPORATION THAT
5 REPRESENTS A SUBSTANTIAL PORTION OF THE ACTIVITIES, ASSETS, INCOME OR
6 EXPENSES OF THE CORPORATION; OR (III) ALONE OR WITH OTHERS CONTROLS OR
7 DETERMINES A SUBSTANTIAL PORTION OF THE CORPORATION'S CAPITAL EXPENDI-
8 TURES OR OPERATING BUDGET.

9 S 2. Section 114 of the not-for-profit corporation law, as amended by
10 chapter 549 of the laws of 2013, is amended to read as follows:

11 S 114. Visitation of supreme court.

12 Charitable corporations, whether formed under general or special laws,
13 with their books and vouchers, shall be subject to the visitation and
14 inspection of a justice of the supreme court, or of any person appointed
15 by the court for that purpose. If it appears by the verified petition of
16 a member, director, officer or creditor of any such corporation, that
17 it, or its directors, officers, members, key [employees] PERSONS or
18 agents, have misappropriated any of the funds or property of the corpo-
19 ration, or diverted them from the purpose of its incorporation, or that
20 the corporation has acquired property in excess of the amount which it
21 is authorized by law to hold, or has engaged in any business other than
22 that stated in its certificate of incorporation, the court may order
23 that notice of at least eight days, with a copy of the petition, be
24 served on the corporation, the attorney general and the persons charged
25 with misconduct, requiring them to show cause at a time and place speci-
26 fied, why they should not be required to make and file an inventory and
27 account of the property, effects and liabilities of such corporation
28 with a detailed statement of its transactions during the twelve months
29 next preceding the granting of such order. On the hearing of such appli-
30 cation, the court may make an order requiring such inventory, account
31 and statement to be filed, and proceed to take and state an account of
32 the property and liabilities of the corporation, or may appoint a refer-
33 ee for that purpose. When such account is taken and stated, after hear-
34 ing all the parties to the application, the court may enter a final
35 order determining the amount of property so held by the corporation, its
36 annual income, whether any of the property or funds of the corporation
37 have been misappropriated or diverted to any other purpose than that for
38 which such corporation was incorporated, and whether such corporation
39 has been engaged in any activity not covered by its certificate of
40 incorporation. An appeal may be taken from the order by any party
41 aggrieved to the appellate division of the supreme court, and to the
42 court of appeals, as in a civil action. No corporation shall be required
43 to make and file more than one inventory and account in any one year,
44 nor to make a second account and inventory, while proceedings are pend-
45 ing for the statement of an account under this section.

46 S 3. Section 309 of the not-for-profit corporation law, as added by
47 chapter 549 of the laws of 2013, is amended to read as follows:

48 S 309. Personal jurisdiction and service of process on non-domiciliary
49 resident director, officer, key [employee] PERSON or agent.

50 A person, by becoming a director, officer, key [employee] PERSON or
51 agent of a corporation is subject to the personal jurisdiction of the
52 supreme court of the state of New York, and in an action or proceeding
53 by the attorney general under this chapter process may be served upon
54 such person as provided in section three hundred thirteen of the civil
55 practice law and rules.

1 S 4. Paragraphs (a) and (e) of section 712 of the not-for-profit
2 corporation law, paragraph (a) as amended by chapter 549 of the laws of
3 2013 and paragraph (e) as amended by chapter 555 of the laws of 2015,
4 are amended to read as follows:

5 (a) [If the] THE certificate of incorporation [or the], THE by-laws
6 [so provide], OR the board[, by resolution adopted by a majority of the
7 entire board, may designate from among its members an executive commit-
8 tee and other committees] MAY CREATE COMMITTEES OF THE BOARD, each
9 consisting of three or more directors[, and each of which, to the extent
10 provided in the resolution or in the certificate of incorporation or
11 by-laws, shall have all the authority of the board]. THE BOARD SHALL
12 APPOINT THE MEMBERS OF SUCH COMMITTEE OF THE BOARD, EXCEPT THAT IN THE
13 CASE OF ANY EXECUTIVE COMMITTEE OR SIMILAR COMMITTEE HOWEVER DENOMI-
14 NATED, THE APPOINTMENT SHALL BE MADE BY A MAJORITY OF THE ENTIRE BOARD,
15 PROVIDED THAT IN THE CASE OF A BOARD OF THIRTY MEMBERS OR MORE, THE
16 APPOINTMENT SHALL BE MADE BY AT LEAST THREE-QUARTERS OF THE DIRECTORS
17 PRESENT AT THE TIME OF THE VOTE, IF A QUORUM IS PRESENT AT THAT TIME. IN
18 ADDITION, THE BY-LAWS MAY PROVIDE THAT DIRECTORS WHO ARE THE HOLDERS OF
19 CERTAIN POSITIONS IN THE CORPORATION SHALL BE EX-OFFICIO MEMBERS OF
20 SPECIFIC COMMITTEES. EACH SUCH COMMITTEE SHALL HAVE THE AUTHORITY OF THE
21 BOARD TO THE EXTENT PROVIDED IN A BOARD RESOLUTION OR IN THE CERTIFICATE
22 OF INCORPORATION OR BY-LAWS, except that no [such] committee OF ANY KIND
23 shall have authority as to the following matters:

24 (1) The submission to members of any action requiring members'
25 approval under this chapter.

26 (2) The filling of vacancies in the board of directors or in any
27 committee.

28 (3) The fixing of compensation of the directors for serving on the
29 board or on any committee.

30 (4) The amendment or repeal of the by-laws or the adoption of new
31 by-laws.

32 (5) The amendment or repeal of any resolution of the board which by
33 its terms shall not be so amendable or repealable.

34 (6) THE ELECTION OR REMOVAL OF OFFICERS AND DIRECTORS.

35 (7) THE APPROVAL OF A MERGER OR PLAN OF DISSOLUTION.

36 (8) THE ADOPTION OF A RESOLUTION RECOMMENDING TO THE MEMBERS ACTION ON
37 THE SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY
38 ALL THE ASSETS OF A CORPORATION OR, IF THERE ARE NO MEMBERS ENTITLED TO
39 VOTE, THE AUTHORIZATION OF SUCH TRANSACTION.

40 (9) THE APPROVAL OF AMENDMENTS TO THE CERTIFICATE OF INCORPORATION.

41 (e) Committees, other than committees of the board, whether created by
42 the board or by the members, shall be committees of the corporation. No
43 such committee shall have the authority to bind the board. [Provisions
44 of this chapter applicable to officers generally shall apply to members
45 of such committees.] Members of such committees of the corporation, who
46 may be non-directors, shall be elected or appointed in the manner set
47 forth in the by-laws, or if not set forth in the by-laws, in the same
48 manner as officers of the corporation.

49 S 5. Paragraph (c) of section 712-a of the not-for-profit corporation
50 law is REPEALED.

51 S 6. Paragraph (f) of section 713 of the not-for-profit corporation
52 law, as added by chapter 549 of the laws of 2013, is amended to read as
53 follows:

54 (f) No employee of the corporation shall serve as chair of the board
55 or hold any other title with similar responsibilities, UNLESS THE BOARD
56 APPROVES SUCH EMPLOYEE SERVING AS CHAIR OF THE BOARD BY A TWO-THIRDS

VOTE OF THE ENTIRE BOARD AND CONTEMPORANEOUSLY DOCUMENTS IN WRITING THE BASIS FOR THE BOARD APPROVAL; PROVIDED, HOWEVER, THAT NO SUCH EMPLOYEE SHALL BE CONSIDERED AN INDEPENDENT DIRECTOR FOR THE PURPOSES OF THIS CHAPTER.

S 7. Paragraph (a) of section 715 of the not-for-profit corporation law, as amended by chapter 549 of the laws of 2013, is amended and two new paragraphs (i) and (j) are added to read as follows:

(a) No corporation shall enter into any related party transaction unless the transaction is determined by the board, OR AN AUTHORIZED COMMITTEE THEREOF, to be fair, reasonable and in the corporation's best interest at the time of such determination. Any director, officer or key [employee] PERSON who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest.

(I) IN AN ACTION BY ANY PERSON OR ENTITY OTHER THAN THE ATTORNEY GENERAL, IT SHALL BE A DEFENSE TO A CLAIM OF VIOLATION OF ANY PROVISIONS OF THIS SECTION THAT A TRANSACTION WAS FAIR, REASONABLE AND IN THE CORPORATION'S BEST INTEREST AT THE TIME THE CORPORATION APPROVED THE TRANSACTION.

(J) IN AN ACTION BY THE ATTORNEY GENERAL WITH RESPECT TO A RELATED PARTY TRANSACTION NOT APPROVED IN ACCORDANCE WITH PARAGRAPHS (A) OR (B) OF THIS SECTION AT THE TIME IT WAS ENTERED INTO, WHICHEVER IS APPLICABLE, IT SHALL BE A DEFENSE TO A CLAIM OF VIOLATION OF ANY PROVISIONS OF THIS SECTION THAT (1) THE TRANSACTION WAS FAIR, REASONABLE AND IN THE CORPORATION'S BEST INTEREST AT THE TIME THE CORPORATION APPROVED THE TRANSACTION AND (2) PRIOR TO RECEIPT OF ANY REQUEST FOR INFORMATION BY THE ATTORNEY GENERAL REGARDING THE TRANSACTION, THE BOARD HAS: (A) RATIFIED THE TRANSACTION BY FINDING IN GOOD FAITH THAT IT WAS FAIR, REASONABLE AND IN THE CORPORATION'S BEST INTEREST AT THE TIME THE CORPORATION APPROVED THE TRANSACTION; AND, WITH RESPECT TO ANY RELATED PARTY TRANSACTION INVOLVING A CHARITABLE CORPORATION AND IN WHICH A RELATED PARTY HAS A SUBSTANTIAL FINANCIAL INTEREST, CONSIDERED ALTERNATIVE TRANSACTIONS TO THE EXTENT AVAILABLE, APPROVING THE TRANSACTION BY NOT LESS THAN A MAJORITY VOTE OF THE DIRECTORS OR COMMITTEE MEMBERS PRESENT AT THE MEETING; (B) DOCUMENTED IN WRITING THE NATURE OF THE VIOLATION AND THE BASIS FOR THE BOARD'S OR COMMITTEE'S RATIFICATION OF THE TRANSACTION; AND (C) PUT INTO PLACE PROCEDURES TO ENSURE THAT THE CORPORATION COMPLIES WITH PARAGRAPHS (A) AND (B) OF THIS SECTION AS TO RELATED PARTY TRANSACTIONS IN THE FUTURE.

S 8. Paragraph (a) of section 715-a of the not-for-profit corporation law, as added by chapter 549 of the laws of 2013, is amended to read as follows:

(a) Except as provided in paragraph (d) of this section, [every corporation] THE BOARD shall adopt, AND OVERSEE THE IMPLEMENTATION OF, AND COMPLIANCE WITH, a conflict of interest policy to ensure that its directors, officers and key [employees] PERSONS act in the corporation's best interest and comply with applicable legal requirements, including but not limited to the requirements set forth in section seven hundred fifteen of this article.

S 9. Subparagraph 2 of paragraph (b) of section 715-a of the not-for-profit corporation law, as added by chapter 549 of the laws of 2013, is amended to read as follows:

(2) procedures for disclosing a conflict of interest [to the audit committee or, if there is no audit committee,] OR POSSIBLE CONFLICT OF INTEREST to the board OR TO A COMMITTEE OF THE BOARD, AND PROCEDURES FOR THE BOARD OR COMMITTEE TO DETERMINE WHETHER A CONFLICT EXISTS;

1 S 10. Paragraph (a) of section 715-b of the not-for-profit corporation
2 law, as added by chapter 549 of the laws of 2013, is amended to read as
3 follows:

4 (a) Except as provided in paragraph (c) of this section, THE BOARD OF
5 every corporation that has twenty or more employees and in the prior
6 fiscal year had annual revenue in excess of one million dollars shall
7 adopt, AND OVERSEE THE IMPLEMENTATION OF, AND COMPLIANCE WITH, a whist-
8 leblower policy to protect from retaliation persons who report suspected
9 improper conduct. Such policy shall provide that no director, officer,
10 employee or volunteer of a corporation who in good faith reports any
11 action or suspected action taken by or within the corporation that is
12 illegal, fraudulent or in violation of any adopted policy of the corpo-
13 ration shall suffer intimidation, harassment, discrimination or other
14 retaliation or, in the case of employees, adverse employment conse-
15 quence.

16 S 11. Subparagraphs 2 and 3 of paragraph (b) of section 715-b of the
17 not-for-profit corporation law, subparagraph 2 as added by chapter 549
18 of the laws of 2013 and subparagraph 3 as amended by chapter 555 of the
19 laws of 2015, are amended to read as follows:

20 (2) A requirement that an employee, officer or director of the corpo-
21 ration be designated to administer the whistleblower policy and to
22 report to [the audit committee or other committee of independent direc-
23 tors or, if there are no such committees, to] the board OR AN AUTHORIZED
24 COMMITTEE THEREOF, EXCEPT THAT DIRECTORS WHO ARE EMPLOYEES MAY NOT
25 PARTICIPATE IN ANY BOARD OR COMMITTEE DELIBERATIONS OR VOTING RELATING
26 TO ADMINISTRATION OF THE WHISTLEBLOWER POLICY; [and]

27 (3) A REQUIREMENT THAT THE PERSON WHO IS THE SUBJECT OF A WHISTLEBLOW-
28 ER COMPLAINT NOT BE PRESENT AT OR PARTICIPATE IN BOARD OR COMMITTEE
29 DELIBERATIONS OR VOTE ON THE MATTER RELATING TO SUCH COMPLAINT, PROVIDED
30 THAT NOTHING IN THIS SUBPARAGRAPH SHALL PROHIBIT THE BOARD OR COMMITTEE
31 FROM REQUESTING THAT THE PERSON WHO IS SUBJECT TO THE COMPLAINT PRESENT
32 INFORMATION AS BACKGROUND OR ANSWER QUESTIONS AT A COMMITTEE OR BOARD
33 MEETING PRIOR TO THE COMMENCEMENT OF DELIBERATIONS OR VOTING RELATING
34 THERETO; AND

35 (4) A requirement that a copy of the policy be distributed to all
36 directors, officers, employees and to volunteers who provide substantial
37 services to the corporation. For purposes of this subdivision, posting
38 the policy on the corporation's website or at the corporation's offices
39 in a conspicuous location accessible to employees and volunteers are
40 among the methods a corporation may use to satisfy the distribution
41 requirement.

42 S 12. The section heading and paragraph (a) of section 720 of the
43 not-for-profit corporation law, as amended by chapter 549 of the laws of
44 2013, are amended to read as follows:

45 Actions against directors, officers and key [employees] PERSONS.

46 (a) An action may be brought against one or more directors, officers,
47 or key [employees] PERSONS of a corporation to procure a judgment for
48 the following relief:

49 S 13. Subparagraphs 3, 6, 7 and 8 of paragraph (a) of section 8-1.9 of
50 the estates, powers and trusts law, subparagraphs 3, 6 and 7 as amended
51 by chapter 555 of the laws of 2015 and subparagraph 8 as added by chap-
52 ter 549 of the laws of 2013, are amended to read as follows:

53 (3) "Key [employee] PERSON" means any person OTHER THAN A TRUSTEE,
54 WHETHER OR NOT AN EMPLOYEE, who [is in a position to exercise substan-
55 tial influence over the affairs of the trust, as referenced in 26 U.S.C.
56 section 4958(f)(1)(A) and further specified in 26 C.F.R. section

53.4958-3(c), (d) and (e), or succeeding provisions to the extent such provisions are applicable] (I) HAS RESPONSIBILITIES, OR EXERCISES POWERS OF INFLUENCE OVER THE TRUST AS A WHOLE SIMILAR TO THE RESPONSIBILITIES, POWERS, OR INFLUENCE OF TRUSTEES AND OFFICERS; (II) MANAGES THE TRUST, OR A SEGMENT OF THE TRUST THAT REPRESENTS A SUBSTANTIAL PORTION OF THE ACTIVITIES, ASSETS, INCOME OR EXPENSES OF THE TRUST; OR (III) ALONE OR WITH OTHERS CONTROLS OR DETERMINES A SUBSTANTIAL PORTION OF THE TRUST'S CAPITAL EXPENDITURES OR OPERATING BUDGET.

(6) "Related party" means (i) any trustee or key [employee] PERSON of the trust or any affiliate of the trust [or any other person who exercises the powers of a trustee or key employee over the affairs of the trust or any affiliate of the trust]; (ii) any relative of any individual described in clause (i) of this [subdivision] SUBPARAGRAPH; or (iii) an entity in which any individual described in clauses (i) and (ii) of this [subdivision] SUBPARAGRAPH has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct ownership interest in excess of five percent.

(7) "Independent trustee" means a trustee who: (i) is not, and has not been within the last three years, an employee of the trust or an affiliate of the trust, and does not have a relative who is, or has been within the last three years, a key [employee] PERSON of the trust or an affiliate of the trust; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the trust or an affiliate of the trust [(other than reimbursement for expenses or the payment of trustee commissions or reasonable compensation as permitted by law and the governing instrument)]; (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or have a substantial financial interest in, any entity that has [made payments] PROVIDED PAYMENTS, PROPERTY OR SERVICES to, or received payments, PROPERTY OR SERVICES from, the trust or an affiliate of the trust [for] IF THE AMOUNT PAID BY THE TRUST TO THE ENTITY OR RECEIVED BY THE TRUST FROM THE ENTITY FOR SUCH property or services [in an amount which], in any of the last three fiscal years, [exceeds the lesser of twenty-five thousand dollars or two percent of such entity's consolidated gross revenues] EXCEEDED THE LESSER OF TEN THOUSAND DOLLARS OR TWO PERCENT OF SUCH ENTITY'S CONSOLIDATED GROSS REVENUE IF THE ENTITY'S CONSOLIDATED GROSS REVENUE WAS LESS THAN FIVE HUNDRED THOUSAND DOLLARS; TWENTY-FIVE THOUSAND DOLLARS IF THE ENTITY'S CONSOLIDATED GROSS REVENUE WAS FIVE HUNDRED THOUSAND DOLLARS OR MORE BUT LESS THAN TEN MILLION DOLLARS; ONE HUNDRED THOUSAND DOLLARS IF THE ENTITY'S CONSOLIDATED GROSS REVENUE WAS TEN MILLION DOLLARS OR MORE; or (iv) is not and does not have a relative who is a current owner, whether wholly or partially, director, officer or employee of the trust's outside auditor or who has worked on the trust's audit at any time during the past three years. For purposes of this [subdivision,] SUBPARAGRAPH, THE TERMS: "COMPENSATION" DOES NOT INCLUDE REIMBURSEMENT FOR EXPENSES OR THE PAYMENT OF TRUSTEE COMMISSIONS OR REASONABLE COMPENSATION AS PERMITTED BY LAW AND THE GOVERNING INSTRUMENT; AND "payment" does not include charitable contributions, dues or fees paid to the trust for services which the trust performs as part of its nonprofit purposes, OR PAYMENTS MADE BY THE TRUST AT FIXED OR NON-NEGOTIABLE RATES OR AMOUNTS FOR SERVICES RECEIVED, PROVIDED THAT SUCH SERVICES BY AND TO THE TRUST ARE AVAILABLE TO INDIVIDUAL MEMBERS OF THE PUBLIC ON THE SAME

TERMS, AND SUCH SERVICES PROVIDED TO THE TRUST ARE NOT AVAILABLE FROM ANOTHER SOURCE.

(8) "Related party transaction" means any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the trust or any affiliate of the trust is a participant, EXCEPT THAT A TRANSACTION SHALL NOT BE A RELATED PARTY TRANSACTION IF: (I) THE TRANSACTION OR THE RELATED PARTY'S FINANCIAL INTEREST IN THE TRANSACTION IS DE MINIMIS, (II) THE TRANSACTION WOULD NOT CUSTOMARILY BE REVIEWED BY THE BOARD, OR BOARDS OF SIMILAR ORGANIZATIONS, IN THE ORDINARY COURSE OF BUSINESS AND IS AVAILABLE TO OTHERS ON THE SAME OR SIMILAR TERMS, OR (III) THE TRANSACTION CONSTITUTES A BENEFIT PROVIDED TO A RELATED PARTY SOLELY AS A MEMBER OF A CLASS OF THE BENEFICIARIES THAT THE TRUST INTENDS TO BENEFIT AS PART OF THE ACCOMPLISHMENT OF ITS MISSION WHICH BENEFIT IS AVAILABLE TO ALL SIMILARLY SITUATED MEMBERS OF THE SAME CLASS ON THE SAME TERMS.

S 14. Subparagraph 3 of paragraph (b) of section 8-1.9 of the estates, powers and trusts law is REPEALED.

S 15. Subparagraph 1 of paragraph (c) of section 8-1.9 of the estates, powers and trusts law, as added by chapter 549 of the laws of 2013, is amended and two new subparagraphs 7 and 8 are added to read as follows:

(1) Notwithstanding any provision of the trust instrument to the contrary, no trust shall enter into any related party transaction unless the transaction is determined by the trustees, OR AN AUTHORIZED COMMITTEE THEREOF, to be fair, reasonable and in the trust's best interest at the time of such determination. Any trustee, officer or key employee who has an interest in a related party transaction shall disclose in good faith to the trustees, or an authorized committee thereof, the material facts concerning such interest.

(7) IN AN ACTION BY ANY PERSON OR ENTITY OTHER THAN THE ATTORNEY GENERAL, IT SHALL BE A DEFENSE TO A CLAIM OF VIOLATION OF ANY PROVISIONS OF THIS PARAGRAPH THAT A TRANSACTION WAS FAIR, REASONABLE AND IN THE TRUST'S BEST INTEREST AT THE TIME THE TRUST APPROVED THE TRANSACTION.

(8) IN AN ACTION BY THE ATTORNEY GENERAL WITH RESPECT TO A RELATED PARTY TRANSACTION NOT APPROVED IN ACCORDANCE WITH SUBPARAGRAPH ONE OR TWO OF THIS PARAGRAPH AT THE TIME IT WAS ENTERED INTO, WHICHEVER IS APPLICABLE, IT SHALL BE A DEFENSE TO A CLAIM OF VIOLATION OF ANY PROVISIONS OF THIS PARAGRAPH THAT (I) THE TRANSACTION WAS FAIR, REASONABLE AND IN THE TRUST'S BEST INTEREST AT THE TIME THE TRUST APPROVED THE TRANSACTION AND (II) PRIOR TO RECEIPT OF ANY REQUEST FOR INFORMATION BY THE ATTORNEY GENERAL REGARDING THE TRANSACTION, THE TRUSTEES HAVE: (A) RATIFIED THE TRANSACTION BY FINDING IN GOOD FAITH THAT IT WAS FAIR, REASONABLE AND IN THE TRUST'S BEST INTEREST AT THE TIME THE TRUSTEE APPROVED THE TRANSACTION; AND, WITH RESPECT TO ANY RELATED PARTY TRANSACTION INVOLVING A CHARITABLE CORPORATION AND IN WHICH A RELATED PARTY HAS A SUBSTANTIAL FINANCIAL INTEREST, CONSIDERED ALTERNATIVE TRANSACTIONS TO THE EXTENT AVAILABLE, APPROVING THE TRANSACTION BY NOT LESS THAN A MAJORITY VOTE OF THE TRUSTEES OR COMMITTEE MEMBERS PRESENT AT THE MEETING; (B) DOCUMENTED IN WRITING THE NATURE OF THE VIOLATION AND THE BASIS FOR THE TRUSTEES' OR COMMITTEE'S RATIFICATION OF THE TRANSACTION; AND (C) PUT INTO PLACE PROCEDURES TO ENSURE THAT THE TRUSTEE COMPLIES WITH SUBPARAGRAPHS ONE AND TWO OF THIS PARAGRAPH AS TO RELATED PARTY TRANSACTIONS IN THE FUTURE.

S 16. Subparagraph 1 of paragraph (d) of section 8-1.9 of the estates, powers and trusts law, as added by chapter 549 of the laws of 2013, is amended to read as follows:

(1) Except as provided in subparagraph four of this paragraph, every trust shall adopt, AND OVERSEE THE IMPLEMENTATION OF, AND COMPLIANCE WITH, a conflict of interest policy to ensure that its trustees, officers and key [employees] PERSONS act in the best interest of the trust and its beneficiaries and comply with applicable legal requirements, including but not limited to the requirements set forth in this paragraph.

S 17. Clause (B) of subparagraph 2 of paragraph (d) of section 8-1.9 of the estates, powers and trusts law, as added by chapter 549 of the laws of 2013, is amended to read as follows:

(B) procedures for disclosing a conflict of interest [to the audit committee or, if there is no audit committee,] OR POSSIBLE CONFLICT OF INTEREST to the trustees OR TO A COMMITTEE OF THE TRUSTEES, AND PROCEDURES FOR THE TRUSTEES OR COMMITTEE TO DETERMINE WHETHER A CONFLICT EXISTS;

S 18. Subparagraph 1 of paragraph (e) of section 8-1.9 of the estates, powers and trusts law, as added by chapter 549 of the laws of 2013, is amended to read as follows:

(1) Except as provided in subparagraph three of this paragraph, THE TRUSTEES OF every trust that has twenty or more employees and in the prior fiscal year had annual revenue in excess of one million dollars shall adopt, AND OVERSEE THE IMPLEMENTATION OF, AND COMPLIANCE WITH, a whistleblower policy to protect from retaliation persons who report suspected improper conduct. Such policy shall provide that no officer, trustee, employee or volunteer of a trust who in good faith reports any action or suspected action taken by or within the trust that is illegal, fraudulent or in violation of any adopted policy of the trust shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence.

S 19. Clauses (B) and (C) of subparagraph 2 of paragraph (e) of section 8-1.9 of the estates, powers and trusts law, clause (B) as added by chapter 549 of the laws of 2013 and clause (C) as amended by chapter 555 of the laws of 2015, are amended to read as follows:

(B) A requirement that a trustee, officer or employee of the trust be designated to administer, the whistleblower policy and to report to [the audit committee or other committee of independent trustees, or to] the trustees OR AN AUTHORIZED COMMITTEE THEREOF, EXCEPT THAT TRUSTEES WHO ARE EMPLOYEES MAY NOT PARTICIPATE IN ANY BOARD OR COMMITTEE DELIBERATIONS OR VOTING RELATING TO ADMINISTRATION OF THE WHISTLEBLOWER POLICY; [and]

(C) A REQUIREMENT THAT THE PERSON WHO IS THE SUBJECT OF A WHISTLEBLOWER COMPLAINT NOT BE PRESENT AT OR PARTICIPATE IN BOARD OR COMMITTEE DELIBERATION OR VOTE ON THE MATTER RELATING TO SUCH COMPLAINT, PROVIDED THAT NOTHING IN THIS SUBPARAGRAPH SHALL PROHIBIT THE BOARD OR COMMITTEE FROM REQUESTING THAT THE PERSON WHO IS SUBJECT TO THE COMPLAINT PRESENT INFORMATION AS BACKGROUND OR ANSWER QUESTIONS AT A COMMITTEE OR BOARD MEETING PRIOR TO THE COMMENCEMENT OF DELIBERATIONS OR VOTING RELATING THERETO; AND

(D) A requirement that a copy of the policy be distributed to all trustees, officers, employees and volunteers, with instructions on how to comply with the procedures set forth in the policy. For purposes of this subdivision, posting the policy on the corporation's website or at the corporation's offices in a conspicuous location accessible to employees and volunteers are among the methods a corporation may use to satisfy the distribution requirement.

1 S 20. Severability. If any clause, sentence, paragraph, section or
2 part of this act shall be adjudged by any court of competent jurisdic-
3 tion to be invalid, the judgment shall not affect, impair, or invalidate
4 the remainder thereof, but shall be confined in its operation to the
5 clause, sentence, paragraph, section or part thereof directly involved
6 in the controversy in which the judgement shall have been rendered.
7 S 21. This act shall take effect on the one hundred eightieth day
8 after it shall have become a law; provided, however, that the amendments
9 to paragraph (f) of section 713 of the not-for-profit corporation law
10 made by section six of this act shall take effect on the same date and
11 in the same manner as section 132 of chapter 549 of the laws of 2013, as
12 amended, takes effect.