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I N S E N A T E

May 15, 2012

Introduced by Sens. MARCELLINO, RANZENHOFER -- (at request of the Attorney General) -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, the estates, powers and trusts law, the surrogate's court procedure act, the racing, pari-mutuel wagering and breeding law, the executive law, the education law, the religious corporations law, the benevolent orders law, the public authorities law, the insurance law, the private housing finance law, the banking law, the general business law, the mental hygiene law and the public lands law, in relation to reform of charitable organizations; 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. This act shall be known and may be cited as the "non-profit
2 revitalization act".

3 S 1-a. Subparagraph 6 of paragraph (a) of section 102 of the not-for-
4 profit corporation law is amended, and twelve new subparagraphs 3-a,
5 3-b, 6-a, 9-a, 9-b, 19, 20, 21, 22, 23, 24 and 25 are added to read as
6 follows:

7 (3-A) "CHARITABLE CORPORATION" MEANS ANY CORPORATION FORMED, OR FOR
8 THE PURPOSES OF THIS CHAPTER, DEEMED TO BE FORMED, FOR CHARITABLE
9 PURPOSES.

10 (3-B) "CHARITABLE PURPOSES" OF A CORPORATION MEANS PURPOSES CONTAINED
11 IN THE CERTIFICATE OF INCORPORATION OF THE CORPORATION THAT ARE CHARITA-
12 BLE, EDUCATIONAL, RELIGIOUS, SCIENTIFIC, LITERARY, CULTURAL OR FOR THE
13 PREVENTION OF CRUELTY TO CHILDREN OR ANIMALS, AND ANY LAWFUL BUSINESS
14 PURPOSE TO ACHIEVE THE FOREGOING.

15 (6) "Director" means any member of the governing board of a corpo-
16 ration, whether designated as director, trustee, manager, governor, or
17 by any other title. The term "board" means "board of directors" OR ANY
18 OTHER BODY CONSTITUTING A "GOVERNING BOARD" AS DEFINED IN THIS SECTION.

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

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1 (6-A) "ENTIRE BOARD" MEANS THE TOTAL NUMBER OF DIRECTORS ENTITLED TO
2 VOTE WHICH THE CORPORATION WOULD HAVE IF THERE WERE NO VACANCIES. IF THE
3 BY-LAWS OF ANY CORPORATION PROVIDE THAT THE BOARD MAY CONSIST OF A RANGE
4 BETWEEN A MINIMUM AND MAXIMUM NUMBER OF DIRECTORS, THEN THE "ENTIRE
5 BOARD" SHALL CONSIST OF THE NUMBER OF DIRECTORS WITHIN SUCH RANGE THAT
6 WERE ELECTED AT THE MOST RECENTLY HELD ELECTION OF DIRECTORS.

7 (9-A) "NON-CHARITABLE CORPORATION" MEANS ANY CORPORATION FORMED UNDER
8 THIS CHAPTER FOR NON-CHARITABLE PURPOSES.

9 (9-B) "NON-CHARITABLE PURPOSES" OF A CORPORATION MEANS ANY LAWFUL
10 NON-BUSINESS PURPOSE, OTHER THAN ANY CHARITABLE PURPOSE AS DEFINED IN
11 THIS SECTION, INCLUDING, BUT NOT LIMITED TO, ANY ONE OR MORE OF THE
12 FOLLOWING NON-PECUNIARY PURPOSES: CIVIC, PATRIOTIC, POLITICAL, SOCIAL,
13 FRATERNAL, ATHLETIC, AGRICULTURAL, HORTICULTURAL, ANIMAL HUSBANDRY, AND
14 FOR A PROFESSIONAL, COMMERCIAL, INDUSTRIAL, TRADE OR SERVICE ASSOCI-
15 ATION.

16 (19) AN "AFFILIATE" OF A CORPORATION MEANS ANY ENTITY CONTROLLED BY,
17 IN CONTROL OF, OR UNDER COMMON CONTROL WITH SUCH CORPORATION.

18 (20) "INDEPENDENT AUDITOR" MEANS ANY CERTIFIED PUBLIC ACCOUNTANT
19 PERFORMING THE AUDIT OF THE FINANCIAL STATEMENTS OF A CORPORATION
20 REQUIRED BY SUBDIVISION ONE OF SECTION ONE HUNDRED SEVENTY-TWO-B OF THE
21 EXECUTIVE LAW.

22 (21) "INDEPENDENT DIRECTOR" MEANS A DIRECTOR WHO IN THE PAST THREE
23 YEARS: (I) WAS NOT EMPLOYED BY, AND DID NOT HAVE A RELATIVE WHO WAS
24 EMPLOYED BY, THE CORPORATION OR AN AFFILIATE OF THE CORPORATION; (II)
25 WAS NOT EMPLOYED BY, AND DOES NOT HAVE A RELATIVE WHO WAS EMPLOYED BY,
26 ANY ENTITY THAT MADE PAYMENTS TO, OR RECEIVED PAYMENTS FROM, THE CORPO-
27 RATION OR ANY AFFILIATE OF THE CORPORATION FOR GOODS, PROPERTY OR
28 SERVICES EXCEEDING TEN THOUSAND DOLLARS; (III) HAS NOT HAD, AND DOES NOT
29 HAVE A RELATIVE WHO HAS HAD, A MATERIAL FINANCIAL INTEREST IN ANY ENTITY
30 THAT MADE PAYMENTS TO, OR RECEIVED PAYMENTS FROM, THE CORPORATION OR ANY
31 AFFILIATE OF THE CORPORATION FOR GOODS, PROPERTY OR SERVICES EXCEEDING
32 TEN THOUSAND DOLLARS; AND (IV) HAS NOT RECEIVED, AND DOES NOT HAVE ANY
33 RELATIVE WHO HAS RECEIVED, ANY OTHER COMPENSATION, PAYMENT OF BENEFIT
34 HAVING MONETARY VALUE FROM THE CORPORATION OR ANY AFFILIATE OF THE
35 CORPORATION, OTHER THAN REIMBURSEMENT FOR EXPENSES REASONABLY INCURRED
36 AS A DIRECTOR OR REASONABLE COMPENSATION FOR SERVICE AS A DIRECTOR AS
37 PERMITTED BY PARAGRAPH (A) OF SECTION TWO HUNDRED TWO OF THIS CHAPTER.

38 (22) "RELATIVE" OF AN INDIVIDUAL MEANS THE (I) SPOUSE, ANCESTOR, CHIL-
39 DREN, GRANDCHILDREN, GREAT GRANDCHILDREN, BROTHER OR SISTER (WHETHER BY
40 THE WHOLE- OR HALF-BLOOD) OF THE INDIVIDUAL; AND (II) THE SPOUSES OF
41 CHILDREN, GRANDCHILDREN, GREAT GRANDCHILDREN, BROTHER OR SISTER (WHETHER
42 BY THE WHOLE- OR HALF-BLOOD) OF THE INDIVIDUAL.

43 (23) "RELATED PARTY" MEANS (I) ANY DIRECTOR, OFFICER OR KEY EMPLOYEE
44 OF THE CORPORATION OR ANY AFFILIATE OF THE CORPORATION; (II) ANY RELA-
45 TIVE OF ANY DIRECTOR, OFFICER OR KEY EMPLOYEE OF THE CORPORATION OR ANY
46 AFFILIATE OF THE CORPORATION; OR (III) AN ENTITY IN WHICH ANY INDIVIDUAL
47 DESCRIBED IN CLAUSES (I) AND (II) OF THIS SUBPARAGRAPH HAS A THIRTY-FIVE
48 PERCENT OR GREATER OWNERSHIP OR BENEFICIAL INTEREST.

49 (24) "RELATED PARTY TRANSACTION" MEANS ANY TRANSACTION, AGREEMENT OR
50 ANY OTHER ARRANGEMENT IN WHICH A RELATED PARTY HAS A FINANCIAL INTEREST
51 AND IN WHICH THE CORPORATION OR ANY AFFILIATE OF THE CORPORATION IS A
52 PARTICIPANT.

53 (25) "KEY EMPLOYEE" MEANS ANY PERSON WHO IS NOT AN OFFICER OF THE
54 CORPORATION AND IS IN A POSITION TO EXERCISE SUBSTANTIAL INFLUENCE OVER
55 THE AFFAIRS OF THE CORPORATION, AS REFERENCED IN 26 U.S.C.

1 S4958(F)(1)(A) AND FURTHER SPECIFIED IN 26 CFR S 53.4958-3(C) AND (D),
2 OR SUCCEEDING PROVISIONS.

3 S 2. Paragraphs (a), (b) and (c) of section 103 of the not-for-profit
4 corporation law, paragraph (a) as amended by chapter 807 of the laws of
5 1973, paragraph (b) as amended by chapter 847 of the laws of 1970, and
6 paragraph (c) as amended by chapter 961 of the laws of 1972, are amended
7 to read as follows:

8 (a) Except as otherwise provided in this section, this chapter
9 applies to every domestic corporation as herein defined, and to every
10 foreign corporation as herein defined which is authorized to conduct or
11 which conducts any activities in this state. This chapter also applies
12 to any other domestic corporation or foreign corporation of any [type
13 or] kind to the extent, if any, provided under this chapter or any law
14 governing such corporation and, if no such provision for application is
15 made, to the extent, if any, that the membership corporations law
16 applied to such corporation as of the effective date of this chapter. A
17 corporation formed by a special act of this state which has as its prin-
18 cipal purpose an education purpose and which is a member of the univer-
19 sity of the state of New York, is an "education corporation" under
20 section two hundred sixteen-a of the education law.

21 To the extent that the membership corporations law or the general
22 corporation law applied to it as of the effective date of this chapter,
23 the corresponding provisions of this chapter apply to a corporation
24 heretofore formed by or pursuant to a special act of this state other
25 than a religious corporation or an "education corporation" under clause
26 (b) of subdivision one of section two hundred sixteen-a of the education
27 law, if (1) its principal purpose is a religious, charitable or educa-
28 tion purpose, and (2) it is operated, supervised or controlled by or in
29 connection with a religious organization. [Any such corporation may
30 elect hereunder at any time after the effective date of this chapter to
31 file a certificate of type under section one hundred thirteen (Certif-
32 icate of type of not-for-profit corporation). Upon the filing of such
33 certificate by the department of state, this chapter shall apply in all
34 respects to such corporation.]

35 This chapter also applies to any other corporation of any [type or]
36 kind, formed not for profit under any other chapter of the laws of this
37 state except a chapter of the consolidated laws, to the extent that
38 provisions of this chapter do not conflict with the provisions of such
39 unconsolidated law. If an applicable provision of such unconsolidated
40 law relates to a matter embraced in this chapter but is not in conflict
41 therewith, both provisions shall apply. Any corporation to which this
42 chapter is made applicable by this paragraph shall be treated as a
43 "corporation" or "domestic corporation" as such terms are used in this
44 chapter, except that the purposes of any such corporation formed or
45 formable under such unconsolidated law shall not thereby be extended.
46 For the purpose of this paragraph, the effective date of this chapter as
47 to corporations to which this chapter is made applicable by this para-
48 graph shall be September one, nineteen hundred seventy-three.

49 (b) The general corporation law does not apply to a corporation of
50 any [type or] kind to which this chapter applies. A reference in any
51 statute of this state which makes a provision of the general corporation
52 law applicable to a corporation of any [type or] kind to which this
53 chapter is applicable or a reference in any statute of this state, other
54 than the membership corporations law, which makes a provision of the
55 membership corporations law applicable to a corporation of any [type or]

1 kind shall be deemed and construed to refer to and make applicable the
2 corresponding provision, if any, of this chapter.

3 (c) If any provision in articles one to thirteen inclusive of this
4 chapter conflicts with a provision of any subsequent articles or of any
5 special act under which a corporation to which this chapter applies is
6 formed, the provision in such subsequent article or special act
7 prevails. A provision of any such subsequent article or special act
8 relating to a matter referred to in articles one to thirteen inclusive
9 and not in conflict therewith is supplemental and both shall apply.
10 Whenever the board of a [Type B] CHARITABLE corporation, formed under a
11 special act, reasonably makes an interpretation as to whether a
12 provision of the special act or this chapter prevails, or both apply,
13 such interpretation shall govern unless and until a court determines
14 otherwise, if such board has acted in good faith for a purpose which it
15 reasonably believes to be in the best interests of the corporation,
16 provided however, that such interpretation shall not bind any govern-
17 mental body or officer.

18 S 3. Paragraph (a) of section 104-a of the not-for-profit corporation
19 law is REPEALED.

20 S 4. Section 105 of the not-for-profit corporation law, as amended by
21 chapter 172 of the laws of 1999, is amended to read as follows:

22 S 105. Certificates; corrections.

23 (A) ANY CERTIFICATE OR OTHER INSTRUMENT RELATING TO A DOMESTIC OR
24 FOREIGN CORPORATION SUBMITTED TO THE DEPARTMENT OF STATE UNDER THIS
25 CHAPTER MAY BE CORRECTED WITH RESPECT TO ANY TYPOGRAPHICAL, OR SIMILAR
26 NON-MATERIAL ERROR APPARENT ON THE FACE OF THE CERTIFICATE OR INSTRU-
27 MENT, PRIOR TO THE FILING OF SUCH CERTIFICATE OR INSTRUMENT BY THE
28 DEPARTMENT OF STATE. SUCH CORRECTION SHALL BE EFFECTED BY THE DEPARTMENT
29 OF STATE UPON AUTHORIZATION IN WRITING OR BY ELECTRONIC MAIL BY THE
30 INCORPORATOR, OR FOLLOWING INCORPORATION, BY ANY PERSON AUTHORIZED BY
31 THE CORPORATION.

32 (B) Any certificate or other instrument relating to a domestic or
33 foreign corporation filed by the department of state under this chapter
34 may be corrected with respect to any [informality] TYPOGRAPHICAL OR
35 SIMILAR NON-MATERIAL or error apparent on the face or defect in the
36 execution thereof including the deletion of any matter not permitted to
37 be stated therein. A certificate, entitled "Certificate of correction
38 of..... (correct title of certificate and name of corporation)"
39 shall be signed and delivered to the department of state. It shall set
40 forth the name of the corporation, the date the certificate to be
41 corrected was filed by the department of state, the provision in the
42 certificate as corrected or eliminated and if the execution was defec-
43 tive, the proper execution. The filing of the certificate by the depart-
44 ment of state shall not alter the effective time of the instrument being
45 corrected, which shall remain as its original effective time, and shall
46 not affect any right or liability accrued or incurred before such
47 filing. A corporate name may not be changed or corrected under this
48 section OTHER THAN TO CORRECT ANY TYPOGRAPHICAL OR SIMILAR NON-MATERIAL
49 ERROR.

50 S 5. Paragraph (a) of section 112 of the not-for-profit corporation
51 law, subparagraphs 7 and 9 as amended by chapter 1058 of the laws of
52 1971, is amended to read as follows:

53 (a) The attorney-general may maintain an action or special proceed-
54 ing:

- 1 (1) To annul the corporate existence or dissolve a corporation that
2 has acted beyond its capacity or power or to restrain it from carrying
3 on unauthorized activities;
- 4 (2) To annul the corporate existence or dissolve any corporation that
5 has not been duly formed;
- 6 (3) To restrain any person or persons from acting as a domestic or
7 foreign corporation within this state without being duly incorporated or
8 from exercising in this state any corporate rights, privileges or fran-
9 chises not granted to them by the law of the state;
- 10 (4) To procure a judgment removing a director of a corporation for
11 cause under section 706 (Removal of directors);
- 12 (5) To dissolve a corporation under article 11 (Judicial dissol-
13 ution);
- 14 (6) To restrain a foreign corporation or to annul its authority to
15 carry on activities in this state under section 1303 (Violations).
- 16 (7) To enforce any right given under this chapter to members, a
17 director or an officer of a [Type B or Type C] CHARITABLE corporation.
18 The attorney-general shall have the same status as such members, direc-
19 tor or officer.
- 20 (8) [To compel the directors and officers, or any of them, of a Type B
21 or Type C corporation which has been dissolved under section 1011
22 (Dissolution for failure to file certificate of type of Not-for-Profit
23 Corporation Law under section 113) to account for the assets of the
24 dissolved corporation.
- 25 (9)] Upon application, ex parte, for an order to the supreme court at
26 a special term held within the judicial district where the office of the
27 corporation is located, and if the court so orders, to enforce any right
28 given under this chapter to members, a director or an officer of a [Type
29 A corporation] NON-CHARITABLE CORPORATION. For such purpose, the attor-
30 ney-general shall have the same status as such members, director or
31 officer.
- 32 (9) TO ENJOIN, VOID OR RESCIND ANY RELATED PARTY TRANSACTION, OR SEEK
33 ADDITIONAL DAMAGES OR REMEDIES PURSUANT TO SECTION 715 (RELATED PARTY
34 TRANSACTIONS) OF THIS CHAPTER.
- 35 S 6. Subparagraph 1 of paragraph (c) of section 112 of the not-for-
36 profit corporation law is amended to read as follows:
- 37 (1) As used in this paragraph the term "resident" shall include indi-
38 viduals, domestic corporations of any [type or] kind and foreign corpo-
39 rations of any [type or] kind authorized to do business or carry on
40 activities in the state.
- 41 S 7. Section 113 of the not-for-profit corporation law is REPEALED.
- 42 S 8. Section 114 of the not-for-profit corporation law, as added by
43 chapter 847 of the laws of 1970, is amended to read as follows:
- 44 S 114. Visitation of supreme court.
- 45 [Type B and Type C] CHARITABLE corporations, whether formed under
46 general or special laws, with their books and vouchers, shall be subject
47 to the visitation and inspection of a justice of the supreme court, or
48 of any person appointed by the court for that purpose. If it appears by
49 the verified petition of a member or creditor of any such corporation,
50 that it, or its directors, officers or agents, have misappropriated any
51 of the funds or property of the corporation, or diverted them from the
52 purpose of its incorporation, or that the corporation has acquired prop-
53 erty in excess of the amount which it is authorized by law to hold, or
54 has engaged in any business other than that stated in its certificate of
55 incorporation, the court may order that notice of at least eight days,
56 with a copy of the petition, be served on the corporation and the

1 persons charged with misconduct, requiring them to show cause at a time
2 and place specified, why they should not be required to make and file an
3 inventory and account of the property, effects and liabilities of such
4 corporation with a detailed statement of its transactions during the
5 twelve months next preceding the granting of such order. On the hearing
6 of such application, the court may make an order requiring such invento-
7 ry, account and statement to be filed, and proceed to take and state an
8 account of the property and liabilities of the corporation, or may
9 appoint a referee for that purpose. When such account is taken and
10 stated, after hearing all the parties to the application, the court may
11 enter a final order determining the amount of property so held by the
12 corporation, its annual income, whether any of the property or funds of
13 the corporation have been misappropriated or diverted to any other
14 purpose than that for which such corporation was incorporated, and
15 whether such corporation has been engaged in any activity not covered by
16 its certificate of incorporation. An appeal may be taken from the order
17 by any party aggrieved to the appellate division of the supreme court,
18 and to the court of appeals, as in a civil action. No corporation shall
19 be required to make and file more than one inventory and account in any
20 one year, nor to make a second account and inventory, while proceedings
21 are pending for the statement of an account under this section.

22 S 9. Section 115 of the not-for-profit corporation law, as added by
23 chapter 669 of the laws of 1977, is amended to read as follows:

24 S 115. Power to solicit contributions for charitable purposes.

25 [No corporation having the power to solicit contributions for charita-
26 ble purposes may solicit contributions for any purpose for which
27 approval of such solicitation is required under the provisions of
28 section four hundred four of this chapter unless the certificate specif-
29 ically makes provision for such solicitation and the required written
30 approval is endorsed on or annexed to such certificate or unless the
31 corporation is among those referred to in section one hundred seventy-
32 two-a of the executive law. If such approval is not obtained and the
33 corporation continues to solicit or to receive contributions for such
34 purpose or advertises that it has obtained such approval, the] (A) NO
35 CORPORATION REQUIRED TO OBTAIN APPROVAL OR PROVIDE NOTICE OF FORMATION
36 PURSUANT TO SECTION 404 (APPROVALS, NOTICES AND CONSENTS) OF THIS CHAP-
37 TER MAY SOLICIT CONTRIBUTIONS FOR ANY PURPOSE UNLESS AND UNTIL SUCH
38 CORPORATION (1) OBTAINS ANY REQUIRED APPROVAL THEREUNDER AND ANNEXES
39 SUCH APPROVAL TO ITS CERTIFICATE FILED WITH THE DEPARTMENT OF STATE, AND
40 PROVIDES ANY REQUIRED NOTICE AS SET FORTH IN THE REQUIREMENTS OF THAT
41 SECTION, AND (2) IS IN COMPLIANCE WITH THE REGISTRATION AND REPORTING
42 REQUIREMENTS OF ARTICLE SEVEN-A OF THE EXECUTIVE LAW AND SECTION 8-1.4
43 OF THE ESTATES, POWERS AND TRUSTS LAW.

44 (B) THE attorney general[, at the request of the officer or body
45 authorized to grant such approval, shall] MAY maintain an action or
46 proceeding pursuant to the provisions of subparagraph one of paragraph
47 (a) of section one hundred twelve of this [chapter] ARTICLE AGAINST ANY
48 CORPORATION THAT SOLICITS CONTRIBUTIONS IN VIOLATION OF PARAGRAPH (A) OF
49 THIS SECTION. Such an action may also be maintained in relation to a
50 corporation hereinafter incorporated if the name, purposes, objects or
51 the activities of such corporation may, in any manner, lead to the
52 belief that the corporation possesses or may exercise any of such
53 purposes.

54 S 10. Section 201 of the not-for-profit corporation law, paragraph (b)
55 as amended by chapter 847 of the laws of 1970 and paragraph (c) as

1 amended by chapter 1058 of the laws of 1971, is amended to read as
2 follows:

3 S 201. Purposes.

4 (a) A corporation, as defined in subparagraph [(5)] (10), paragraph
5 (a) of S 102 (Definitions), may be formed under this chapter [as
6 provided in paragraph (b)] unless it may be formed under any other
7 corporate law of this state, in which event it may not be formed under
8 this chapter unless such other corporate law expressly so provides.

9 (b) [A corporation, of a type and for a purpose or purposes as
10 follows, may be formed under this chapter, provided consents required
11 under any other statute of this state have been obtained:

12 Type A -] A CORPORATION FORMED ON OR AFTER JANUARY FIRST, TWO THOUSAND
13 THIRTEEN SHALL EITHER BE A CHARITABLE CORPORATION OR A NON-CHARITABLE
14 CORPORATION. ANY CORPORATION FORMED FOR BOTH CHARITABLE PURPOSES AND
15 NON-CHARITABLE PURPOSES SHALL BE DEEMED A CHARITABLE CORPORATION FOR
16 PURPOSES OF THIS CHAPTER. A TYPE A not-for-profit corporation [of this
17 type may be formed for any lawful non-business purpose or purposes
18 including, but not limited to, any one or more of the following non-pe-
19 cuniary purposes: civic, patriotic, political, social, fraternal,
20 athletic, agricultural, horticultural, animal husbandry, and for a
21 professional, commercial, industrial, trade or service association.

22 Type B - A not-for-profit corporation of this type may be formed for
23 any one or more of the following non-business purposes: charitable,
24 educational, religious, scientific, literary, cultural or for the
25 prevention of cruelty to children or animals.

26 Type C - A not-for-profit corporation of this type may be formed for
27 any lawful business purpose to achieve a lawful public or quasi-public
28 objective.

29 Type D - A not-for-profit corporation of this type may be formed under
30 this chapter when such formation is authorized by any other corporate
31 law of this state for any business or non-business, or pecuniary or
32 non-pecuniary, purpose or purposes specified by such other law, whether
33 such purpose or purposes are also within types A, B, C above or other-
34 wise.

35 (c) If a corporation is formed for purposes which are within both type
36 A and type B above, it is a type B corporation. If a corporation has
37 among its purposes any purpose which is within type C, such corporation
38 is a type C corporation. A type D corporation is subject to all
39 provisions of this chapter which are applicable to a type B corporation
40 under this chapter unless provided to the contrary in, and subject to
41 the contrary provisions of, the other corporate law authorizing forma-
42 tion under this chapter of the type D corporation.] FORMED PRIOR TO
43 JANUARY FIRST, TWO THOUSAND THIRTEEN SHALL BE DEEMED A NON-CHARITABLE
44 CORPORATION UNDER THIS CHAPTER. ANY SUBMISSION OR FILING BY SUCH CORPO-
45 RATION TO ANY PERSON OR ENTITY SHALL BE DEEMED TO HAVE BEEN SUBMITTED OR
46 FILED BY A NON-CHARITABLE CORPORATION, AND ANY REFERENCE IN ANY SUCH
47 FILING OR SUBMISSION REFERRING TO THE STATUS OF SUCH CORPORATION AS A
48 TYPE A CORPORATION SHALL BE DEEMED TO REFER TO A NON-CHARITABLE CORPO-
49 RATION.

50 (C) A TYPE B OR C NOT-FOR-PROFIT CORPORATION FORMED PRIOR TO JANUARY
51 FIRST, TWO THOUSAND THIRTEEN SHALL BE DEEMED A CHARITABLE CORPORATION
52 FOR ALL PURPOSES UNDER THIS CHAPTER. ANY SUBMISSION OR FILING BY SUCH
53 CORPORATION TO ANY PERSON OR ENTITY SHALL BE DEEMED TO HAVE BEEN SUBMIT-
54 TED OR FILED BY A CHARITABLE CORPORATION, AND ANY REFERENCE IN ANY SUCH
55 FILING OR SUBMISSION REFERRING TO THE STATUS OF SUCH CORPORATION AS A

1 TYPE B OR TYPE C CORPORATION SHALL BE DEEMED TO REFER TO A CHARITABLE
2 CORPORATION.

3 (D) A TYPE D NOT-FOR-PROFIT CORPORATION FORMED PRIOR TO JANUARY FIRST,
4 TWO THOUSAND THIRTEEN FOR CHARITABLE PURPOSES AS THAT TERM IS DEFINED IN
5 THIS CHAPTER SHALL BE DEEMED A CHARITABLE CORPORATION. ANY SUBMISSION OR
6 FILING BY SUCH CORPORATION TO ANY PERSON OR ENTITY SHALL BE DEEMED TO
7 HAVE BEEN SUBMITTED OR FILED BY A CHARITABLE CORPORATION, AND ANY REFER-
8 ENCE IN ANY SUCH FILING OR SUBMISSION REFERRING TO THE STATUS OF SUCH
9 CORPORATION AS A TYPE D CORPORATION SHALL BE DEEMED TO REFER TO A CHARI-
10 TABLE CORPORATION. ANY OTHER TYPE D NOT-FOR-PROFIT CORPORATIONS FORMED
11 PRIOR TO JANUARY FIRST, TWO THOUSAND THIRTEEN SHALL BE DEEMED A
12 NON-CHARITABLE CORPORATION. ANY SUBMISSION OR FILING BY SUCH CORPORATION
13 TO ANY PERSON OR ENTITY SHALL BE DEEMED TO HAVE BEEN SUBMITTED OR FILED
14 BY A NON-CHARITABLE CORPORATION, AND ANY REFERENCE IN ANY SUCH FILING OR
15 SUBMISSION REFERRING TO THE STATUS OF SUCH CORPORATION AS A TYPE D
16 CORPORATION SHALL BE DEEMED TO REFER TO A NON-CHARITABLE CORPORATION.

17 S 11. Intentionally omitted.

18 S 12. Section 204 of the not-for-profit corporation law is amended to
19 read as follows:

20 S 204. Limitation on activities.

21 Notwithstanding any other provision of this chapter or any other
22 general law, a corporation of any [type or] kind to which this chapter
23 applies shall conduct no activities for pecuniary profit or financial
24 gain, whether or not in furtherance of its corporate purposes, except to
25 the extent that such activity supports its other lawful activities then
26 being conducted.

27 S 13. Subparagraphs 2 and 3 of paragraph (a) of section 301 of the
28 not-for-profit corporation law, subparagraph 2 as amended by chapter 344
29 of the laws of 2004, are amended to read as follows:

30 (2) (A) Shall be such as to distinguish it from the names of corpo-
31 rations of any [type or] kind, or a fictitious name of an authorized
32 foreign corporation filed pursuant to article thirteen of this chapter,
33 as such names appear on the index of names of existing domestic and
34 authorized foreign corporations of any [type or] kind, including ficti-
35 tious names of authorized foreign corporations filed pursuant to article
36 thirteen of this chapter, in the department of state, division of corpo-
37 rations, or a name the right to which is reserved.

38 (B) Shall be such as to distinguish it from (i) the names of domestic
39 limited liability companies, (ii) the names of authorized foreign limit-
40 ed liability companies, (iii) the fictitious names of authorized foreign
41 limited liability companies, (iv) the names of domestic limited partner-
42 ships, (v) the names of authorized foreign limited partnerships, or (vi)
43 the fictitious names of authorized foreign limited partnerships, in each
44 case, as such names appear on the index of names of existing domestic
45 and authorized foreign limited liability companies, including fictitious
46 names of authorized foreign limited liability companies, in the depart-
47 ment of state, or on the index of names of existing domestic or author-
48 ized foreign limited partnerships, including fictitious names of author-
49 ized foreign limited partnerships, in the department of state, or names
50 the rights to which are reserved; provided, however, that no corporation
51 that was formed prior to the effective date of this clause and no
52 foreign corporation that was qualified to conduct activities in this
53 state prior to such effective date shall be required to change the name
54 or fictitious name it had on such effective date solely by reason of
55 such name or fictitious name being indistinguishable from the name or
56 fictitious name of any domestic or authorized foreign limited liability

1 company or limited partnership or from any name the right to which is
2 reserved by or on behalf of any domestic or foreign limited liability
3 company or limited partnership.

4 (3) Shall not contain any word or phrase, or any abbreviation or
5 derivative thereof, the use of which is prohibited or restricted by
6 section 404 (Approvals, NOTICES and consents) or any other statute of
7 this state, unless in the latter case the restrictions have been
8 complied with.

9 S 14. Subparagraph 3 of paragraph (b) of section 302 of the not-for-
10 profit corporation law, as amended by chapter 847 of the laws of 1970,
11 is amended to read as follows:

12 (3) Shall not prevent a foreign corporation from being authorized
13 under a name which is similar to the name of a corporation of any [type
14 or] kind existing or authorized under any statute, if the department of
15 state finds, upon proof by affidavit or otherwise as it may determine,
16 that a difference between such names exists in the terms or abbrevi-
17 ations indicating corporate character or otherwise, that the applicant
18 has conducted activities as a corporation under its said name for not
19 less than ten consecutive years immediately prior to the date of its
20 application, that the activities to be conducted in this state are not
21 the same or similar to the business or activities conducted by the
22 corporation with whose name it may conflict and that the public is not
23 likely to be confused or deceived, and if the applicant shall agree in
24 its application for authority to use with its corporate name, in this
25 state, to be placed immediately under or following such name, the words
26 "a (name of jurisdiction of incorporation) corporation".

27 S 15. Paragraph (c) of section 303 of the not-for-profit corporation
28 law, as amended by chapter 590 of the laws of 1982, is amended to read
29 as follows:

30 (c) Application to reserve a corporate name shall be delivered to the
31 department of state. It shall set forth the name and address of the
32 applicant, the name to be reserved and a statement of the basis under
33 paragraph (a) or (b) for the application. The secretary of state may
34 require the applicant to set forth in his application the nature of the
35 activities to be conducted by the corporation. If the name is available
36 for corporate use, the department of state shall reserve the name for
37 the use of the applicant for a period of sixty days and issue a certif-
38 icate of reservation. The prohibitions, restrictions and qualifications
39 set forth in section 301 (Corporate name; general), section 302 (Corpo-
40 rate name; exceptions) and section 404 (Approvals, NOTICES and consents)
41 are not waived by the issuance of a certificate of reservation. The
42 certificate of reservation shall include the name of the applicant, the
43 name reserved and the date of the reservation. The certificate of reser-
44 vation (or in lieu thereof an affidavit by the applicant or by his agent
45 or attorney that the certificate of reservation has been lost or
46 destroyed) shall accompany the certificate of incorporation or the
47 application for authority when either is delivered to the department of
48 state.

49 S 16. Paragraph (a) of section 305 of the not-for-profit corporation
50 law, as amended by chapter 131 of the laws of 1985, is amended to read
51 as follows:

52 (a) Every domestic corporation or authorized foreign corporation may
53 designate a registered agent in this state upon whom process against
54 such corporation may be served. The agent shall be a natural person who
55 is a resident of or has a business address in this state or a domestic
56 corporation or foreign corporation of any [type or] kind formed, or

1 authorized to do business in this state, under this chapter or under any
2 other statute of this state.

3 S 17. Subparagraphs 2 and 4 of paragraph (a) of section 402 of the
4 not-for-profit corporation law, subparagraph 2 as amended by chapter 847
5 of the laws of 1970 and subparagraph 4 as amended by chapter 679 of the
6 laws of 1985, are amended to read as follows:

7 (2) That the corporation is a corporation as defined in subparagraph
8 (a) (5) of section 102 (Definitions)[;], the purpose or purposes for
9 which it is formed, and [the type of] WHETHER IT IS A CHARITABLE corpo-
10 ration [it shall be] OR A NON-CHARITABLE CORPORATION under section 201
11 (Purposes)[; and in the case of a Type C corporation, the lawful public
12 or quasi-public objective which each business purpose will achieve].
13 ANY CORPORATION MAY ALSO SET FORTH ANY ACTIVITIES THAT IT INTENDS TO
14 CARRY OUT IN FURTHERANCE OF SUCH PURPOSE OR PURPOSES; PROVIDED THAT THIS
15 SUBPARAGRAPH SHALL NOT BE INTERPRETED TO REQUIRE THAT SUCH ACTIVITIES BE
16 SET FORTH IN THE CERTIFICATE OF INCORPORATION.

17 (4) [In the case of a Type A, Type B, or Type C corporation, the] THE
18 names and addresses of the initial directors. [In the case of a Type D
19 corporation, the names and addresses of the initial directors, if any,
20 may but need not be set forth.]

21 S 18. The section heading and paragraphs (b) and (d) of section 404 of
22 the not-for-profit corporation law, the section heading and paragraph
23 (d) as amended by chapter 139 of the laws of 1993, paragraph (b) as
24 amended by section 4 of part D of chapter 58 of the laws of 2006, and
25 paragraph (d) as relettered by chapter 431 of the laws of 1993, are
26 amended to read as follows:

27 Approvals, NOTICES and consents.

28 (b) (1) Every certificate of incorporation which includes among its
29 purposes the care of destitute, delinquent, abandoned, neglected or
30 dependent children; the establishment or operation of any adult care
31 facility, or the establishment or operation of a residential program for
32 victims of domestic violence as defined in subdivision four of section
33 four hundred fifty-nine-a of the social services law, or the placing-out
34 or boarding-out of children or a home or shelter for unmarried mothers,
35 excepting the establishment or maintenance of a hospital or facility
36 providing health-related services as those terms are defined in article
37 twenty-eight of the public health law and a facility for which an oper-
38 ating certificate is required by articles sixteen, nineteen, twenty-two
39 and thirty-one of the mental hygiene law; or the solicitation of
40 contributions for any such purpose or purposes, shall have endorsed
41 thereon or annexed thereto the approval of the commissioner of the
42 office of children and family services or with respect to any adult care
43 facility, the commissioner of health.

44 (2) A corporation whose statement of purposes specifically includes
45 the establishment or operation of a child day care center, as that term
46 is defined in section three hundred ninety of the social services law,
47 shall provide a certified copy of the certificate of incorporation, each
48 amendment thereto, and any certificate of merger, consolidation or
49 dissolution involving such corporation to the office of children and
50 family services within [thirty] TEN days after the filing of such
51 certificate, amendment, merger, consolidation or dissolution with the
52 department of state. This requirement shall also apply to any foreign
53 corporation filing an application for authority under section thirteen
54 hundred four of this chapter, any amendments thereto, and any surrender
55 of authority or termination of authority in this state of such corpo-
56 ration.

1 (d) Every CORPORATION THE certificate of incorporation OF WHICH
2 INCLUDES AMONG ITS PURPOSES THE OPERATION OF A SCHOOL, LIBRARY, MUSEUM
3 OR HISTORICAL SOCIETY SHALL HAVE ENDORSED THEREON OR ANNEXED THERETO THE
4 APPROVAL OF THE COMMISSIONER OF EDUCATION. ANY OTHER CORPORATION THE
5 CERTIFICATE OF INCORPORATION OF which includes a purpose for which a
6 corporation might be chartered by the regents of the university of the
7 State of New York shall [have endorsed thereon or annexed thereto the
8 consent of the commissioner of education.] PROVIDE A CERTIFIED COPY OF
9 THE CERTIFICATE OF INCORPORATION TO THE COMMISSIONER OF EDUCATION WITHIN
10 TEN BUSINESS DAYS AFTER THE CORPORATION RECEIVES CONFIRMATION FROM THE
11 DEPARTMENT OF STATE THAT THE CERTIFICATE HAS BEEN ACCEPTED FOR FILING.

12 S 19. Paragraph (w) of section 404 of the not-for-profit corporation
13 law is REPEALED.

14 S 20. Paragraph (b-1) of section 406 of the not-for-profit corporation
15 law is REPEALED.

16 S 21. Paragraph (d) of section 502 of the not-for-profit corporation
17 law is amended to read as follows:

18 (d) A member's capital contribution shall be evidenced by a capital
19 certificate which shall be non-transferable, except that the certificate
20 of incorporation of a [Type A] NON-CHARITABLE corporation may provide
21 that its capital certificates, or some of them, may be transferable to
22 other members with the consent of the corporation upon specified terms
23 and conditions.

24 S 22. Paragraphs (b) and (c) of section 503 of the not-for-profit
25 corporation law, subparagraph 1 of paragraph (b) and paragraph (c) as
26 amended by chapter 847 of the laws of 1970, are amended to read as
27 follows:

28 (b) Each capital certificate shall when issued state upon the face
29 thereof:

30 (1) [That the corporation is a Type corporation under section
31 113 or section 402 of the New York Not-for-Profit Corporation Law.

32 (2)] The name of the member to whom issued.

33 [(3)] (2) The amount of the member's capital contribution evidenced by
34 such certificate.

35 [(4)] (3) If appropriate, that the corporation is a [Type A] NON-CHAR-
36 ITABLE corporation, and that its certificate of incorporation provides
37 that the capital certificate is transferable to other members with the
38 consent of the corporation.

39 [(c)] (4) The fact that the corporation is a not-for-profit corpo-
40 ration, and that the capital certificate is non-transferable or is
41 transferable to other members, with the consent of the corporation,
42 shall be noted conspicuously on the face or back of each such certif-
43 icate.

44 S 23. Paragraph (b) of section 505 of the not-for-profit corporation
45 law, subparagraph 1 as amended by chapter 847 of the laws of 1970, is
46 amended to read as follows:

47 (b) Each subvention certificate shall when issued state upon the face
48 thereof:

49 (1) [That the corporation is a Type corporation under section
50 113 or section 402 of the New York Not-for-Profit Corporation Law.

51 (2)] The name of the person or persons to whom issued.

52 [(3)] (2) The amount of the subvention evidenced by such certificate.

53 [(4)] (3) The amount of the periodic payment thereon, if any, author-
54 ized by the resolution of the board.

1 [(5)] (4) If appropriate, that the certificate is redeemable and a
2 summary of the conditions for redemption at the option of the corpo-
3 ration or of the holder.

4 [(6)] (5) If appropriate, that the certificate is transferable, either
5 at will or subject to specified restrictions.

6 S 24. Section 509 of the not-for-profit corporation law, as amended
7 by chapter 145 of the laws of 1991, is amended to read as follows:

8 S 509. Purchase, sale, mortgage and lease of real property.

9 (A) No CORPORATION SHALL purchase [of] real property [shall be made by
10 a corporation and no corporation shall sell, mortgage or lease real
11 property, unless authorized by the vote of] UNLESS AUTHORIZED BY THE
12 VOTE OF A MAJORITY OF DIRECTORS OF THE BOARD OR A COMMITTEE AUTHORIZED
13 BY THE BOARD; PROVIDED THAT IF SUCH PROPERTY WOULD, UPON PURCHASE THERE-
14 OF, CONSTITUTE ALL, OR SUBSTANTIALLY ALL, OF THE ASSETS OF THE CORPO-
15 RATION, THEN THE VOTE OF two-thirds of the entire board[, provided that
16 if] SHALL BE REQUIRED, OR, IF there are twenty-one or more directors,
17 the vote of a majority of the entire board shall be sufficient.

18 (B) NO CORPORATION SHALL SELL, MORTGAGE OR LEASE ITS REAL PROPERTY
19 UNLESS AUTHORIZED BY THE VOTE OF A MAJORITY OF DIRECTORS OF THE BOARD OR
20 A COMMITTEE AUTHORIZED BY THE BOARD; PROVIDED THAT IF SUCH PROPERTY
21 CONSTITUTES ALL, OR SUBSTANTIALLY ALL, OF THE ASSETS OF THE CORPORATION,
22 THEN THE VOTE OF TWO-THIRDS OF THE ENTIRE BOARD SHALL BE REQUIRED, OR,
23 IF THERE ARE TWENTY-ONE OR MORE DIRECTORS, THE VOTE OF A MAJORITY OF THE
24 ENTIRE BOARD SHALL BE SUFFICIENT.

25 S 25. Paragraph (a) of section 510 of the not-for-profit corporation
26 law, the opening paragraph as amended by chapter 961 of the laws of
27 1972, subparagraph 3 as amended by chapter 847 of the laws of 1970, is
28 amended to read as follows:

29 (a) A sale, lease, exchange or other disposition of all, or substan-
30 tially all, the assets of a corporation may be made upon such terms and
31 conditions and for such consideration, which may consist in whole or in
32 part of cash or other property, real or personal, including shares,
33 bonds or other securities of any other domestic or foreign corporation
34 or corporations of any [type or] kind, as may be authorized in accord-
35 ance with the following procedure:

36 (1) If there are members entitled to vote thereon, the board shall
37 adopt a resolution recommending such sale, lease, exchange or other
38 disposition. The resolution shall specify the terms and conditions of
39 the proposed transaction, including the consideration to be received by
40 the corporation and the eventual disposition to be made of such consid-
41 eration, together with a statement that the dissolution of the corpo-
42 ration is or is not contemplated thereafter. The resolution shall be
43 submitted to a vote at a meeting of members entitled to vote thereon,
44 which may be either an annual or a special meeting. Notice of the meet-
45 ing shall be given to each member and each holder of subvention certif-
46 icates or bonds of the corporation, whether or not entitled to vote. At
47 such meeting by two-thirds vote as provided in paragraph (c) of section
48 613 (Vote of members) the members may approve the proposed transaction
49 according to the terms of the resolution of the board, or may approve
50 such sale, lease, exchange or other disposition and may authorize the
51 board to modify the terms and conditions thereof.

52 (2) If there are no members entitled to vote thereon, such sale,
53 lease, exchange or other disposition shall be authorized by the vote of
54 at least two-thirds of the entire board, provided that if there are
55 twenty-one or more directors, the vote of a majority of the entire board
56 shall be sufficient.

1 (3) If the corporation is, or would be if formed under this chapter,
2 classified as a [Type B or Type C] CHARITABLE corporation under section
3 201, (Purposes) such sale, lease, exchange or other disposition shall in
4 addition require [leave] EITHER (A) APPROVAL of the supreme court in the
5 judicial district or of the county court of the county in which the
6 corporation has its office or principal place of carrying out the
7 [puropses] PURPOSES for which it was formed IN ACCORDANCE WITH SECTION
8 FIVE HUNDRED ELEVEN (PETITION FOR COURT APPROVAL) OF THIS ARTICLE, OR
9 (B) APPROVAL OF THE ATTORNEY GENERAL IF AUTHORIZED UNDER SECTION FIVE
10 HUNDRED ELEVEN-A (PETITION FOR ATTORNEY GENERAL APPROVAL) OF THIS ARTI-
11 CLE.

12 S 26. The section heading and paragraph (a) of section 511 of the
13 not-for-profit corporation law, subparagraph 6 of paragraph (a) as
14 amended by chapter 961 of the laws of 1972, are amended to read as
15 follows:

16 Petition for [leave of] court APPROVAL.

17 (a) [A corporation required by law to] TO obtain [leave of] court
18 APPROVAL to sell, lease, exchange or otherwise dispose of all or
19 substantially all its assets, A CORPORATION shall present a verified
20 petition to the supreme court of the judicial district, or the county
21 court of the county, wherein the corporation has its office or principal
22 place of carrying out the purposes for which it was formed. The petition
23 shall set forth:

24 1. The name of the corporation, the law under or by which it was
25 incorporated.

26 2. The names of its directors and principal officers, and their places
27 of residence.

28 3. The activities of the corporation.

29 4. A description, with reasonable certainty, of the assets to be sold,
30 leased, exchanged, or otherwise disposed of, or a statement that it is
31 proposed to sell, lease, exchange or otherwise dispose of all or
32 substantially all the corporate assets more fully described in a sched-
33 ule attached to the petition; and a statement of the fair value of such
34 assets, and the amount of the corporation's debts and liabilities and
35 how secured.

36 5. The consideration to be received by the corporation and the dispo-
37 sition proposed to be made thereof, together with a statement that the
38 dissolution of the corporation is or is not contemplated thereafter.

39 6. That the consideration and the terms of the sale, lease, exchange
40 or other disposition of the assets of the corporation are fair and
41 reasonable to the corporation, and that the purposes of the corporation,
42 or the interests of its members will be promoted thereby, and a concise
43 statement of the reasons therefor.

44 7. That such sale, lease, exchange or disposition of corporate assets,
45 has been recommended or authorized by vote of the directors in accord-
46 ance with law, at a meeting duly called and held, as shown in a schedule
47 annexed to the petition setting forth a copy of the resolution granting
48 such authority with a statement of the vote thereon.

49 8. Where the consent of members of the corporation is required by law,
50 that such consent has been given, as shown in a schedule annexed to the
51 petition setting forth a copy of such consent, if in writing, or of a
52 resolution giving such consent, adopted at a meeting of members duly
53 called and held, with a statement of the vote thereon.

54 9. A [prayer] REQUEST for [leave] COURT APPROVAL to sell, lease,
55 exchange or otherwise dispose of all or substantially all the assets of
56 the corporation as set forth in the petition.

1 S 27. The not-for-profit corporation law is amended by adding a new
2 section 511-a to read as follows:

3 S 511-A. PETITION FOR ATTORNEY GENERAL APPROVAL.

4 (A) IN LIEU OF OBTAINING COURT APPROVAL UNDER SECTION FIVE HUNDRED
5 ELEVEN (PETITION FOR COURT APPROVAL) OF THIS ARTICLE TO SELL, LEASE,
6 EXCHANGE OR OTHERWISE DISPOSE OF ALL OR SUBSTANTIALLY ALL OF ITS ASSETS,
7 THE CORPORATION MAY ALTERNATIVELY SEEK APPROVAL OF THE ATTORNEY GENERAL
8 BY VERIFIED PETITION, EXCEPT IN THE FOLLOWING CIRCUMSTANCES: 1. THE
9 CORPORATION IS INSOLVENT, OR WOULD BECOME INSOLVENT AS A RESULT OF THE
10 TRANSACTION, AND MUST PROCEED ON NOTICE TO CREDITORS PURSUANT TO PARA-
11 GRAPH (C) OF SECTION 511 OF THIS ARTICLE; OR 2. THE ATTORNEY GENERAL, IN
12 HIS OR HER DISCRETION, CONCLUDES THAT A COURT SHOULD REVIEW THE PETITION
13 AND MAKE A DETERMINATION THEREON.

14 (B) THE VERIFIED PETITION TO THE ATTORNEY GENERAL SHALL SET FORTH (I)
15 ALL OF THE INFORMATION REQUIRED TO BE INCLUDED IN A VERIFIED PETITION TO
16 OBTAIN COURT APPROVAL PURSUANT TO SUBPARAGRAPHS ONE THROUGH NINE OF
17 PARAGRAPH (A) OF SECTION 511 OF THIS ARTICLE; (II) A STATEMENT THAT THE
18 CORPORATION IS NOT INSOLVENT AND WILL NOT BECOME INSOLVENT AS A RESULT
19 OF THE TRANSACTION; AND (III) A STATEMENT AS TO WHETHER ANY PERSONS HAVE
20 RAISED, OR HAVE A REASONABLE BASIS TO RAISE, OBJECTIONS TO THE SALE,
21 LEASE, EXCHANGE OR OTHER DISPOSITION THAT IS THE SUBJECT OF THE PETI-
22 TION, INCLUDING A STATEMENT SETTING FORTH THE NAMES AND ADDRESSES OF
23 SUCH PERSONS, THE NATURE OF THEIR INTEREST, AND A DESCRIPTION OF THEIR
24 OBJECTIONS. THE ATTORNEY GENERAL, IN HIS OR HER DISCRETION, MAY DIRECT
25 THE CORPORATION TO PROVIDE NOTICE OF SUCH PETITION TO ANY INTERESTED
26 PERSON, AND THE CORPORATION SHALL PROVIDE THE ATTORNEY GENERAL WITH A
27 CERTIFICATION THAT SUCH NOTICE HAS BEEN PROVIDED.

28 (C) IF IT SHALL APPEAR, TO THE SATISFACTION OF THE ATTORNEY GENERAL
29 THAT THE CONSIDERATION AND THE TERMS OF THE TRANSACTION ARE FAIR AND
30 REASONABLE TO THE CORPORATION AND THAT THE PURPOSES OF THE CORPORATION
31 OR THE INTERESTS OF THE MEMBERS WILL BE PROMOTED, THE ATTORNEY GENERAL
32 MAY AUTHORIZE THE SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF ALL OR
33 SUBSTANTIALLY ALL THE ASSETS OF THE CORPORATION, AS DESCRIBED IN THE
34 PETITION, FOR SUCH CONSIDERATION AND UPON SUCH TERMS AS THE ATTORNEY
35 GENERAL MAY PRESCRIBE. THE AUTHORIZATION OF THE ATTORNEY GENERAL SHALL
36 DIRECT THE DISPOSITION OF THE CONSIDERATION TO BE RECEIVED THEREUNDER BY
37 THE CORPORATION.

38 (D) IF THE ATTORNEY GENERAL DOES NOT APPROVE THE PETITION, OR IF THE
39 ATTORNEY GENERAL CONCLUDES THAT COURT REVIEW IS APPROPRIATE, THE PETI-
40 TIONER MAY SEEK COURT APPROVAL ON NOTICE TO THE ATTORNEY GENERAL PURSU-
41 ANT TO SECTION 511 (PETITION FOR COURT APPROVAL) OF THIS ARTICLE.

42 S 28. Paragraph (a) of section 513 of the not-for-profit corporation
43 law, as amended by chapter 690 of the laws of 1978, is amended to read
44 as follows:

45 (a) A corporation which is, or would be if formed under this chapter,
46 [classified as] a [Type B] CHARITABLE corporation shall hold full owner-
47 ship rights in any assets consisting of funds or other real or personal
48 property of any kind, that may be given, granted, bequeathed or devised
49 to or otherwise vested in such corporation in trust for, or with a
50 direction to apply the same to, any purpose specified in its certificate
51 of incorporation, and shall not be deemed a trustee of an express trust
52 of such assets. Any other corporation subject to this chapter may simi-
53 larly hold assets so received, unless otherwise provided by law or in
54 the certificate of incorporation.

1 S 29. Paragraphs (b) and (c) of section 515 of the not-for-profit
2 corporation law, paragraph (c) as amended by chapter 847 of the laws of
3 1970, are amended to read as follows:

4 (b) A corporation may pay compensation in a reasonable amount to
5 members, directors, or officers for services rendered AS PERMITTED BY
6 THIS CHAPTER, INCLUDING WITHOUT LIMITATION, IN ACCORDANCE WITH SECTIONS
7 SEVEN HUNDRED TWELVE-A AND SEVEN HUNDRED FIFTEEN OF THIS CHAPTER, and
8 may make distributions of cash or property to members upon dissolution
9 or final liquidation as permitted by this chapter.

10 (c) A corporation may confer benefits upon members or non-members in
11 conformity with its purposes AS PERMITTED BY THIS CHAPTER, INCLUDING
12 WITHOUT LIMITATION, SECTIONS SEVEN HUNDRED TWELVE-A AND SEVEN HUNDRED
13 FIFTEEN OF THIS CHAPTER, may redeem its capital certificates or
14 subvention certificates, and may make other distributions of cash or
15 property to its members or former members, directors, or officers prior
16 to dissolution or final liquidation, as authorized by this article,
17 except when the corporation is currently insolvent or would thereby be
18 made insolvent or rendered unable to carry on its corporate purposes, or
19 when the fair value of the corporation's assets remaining after such
20 conferring of benefits, or redemption, or other distribution would be
21 insufficient to meet its liabilities.

22 S 30. Section 520 of the not-for-profit corporation law, as amended by
23 chapter 58 of the laws of 1981, is amended to read as follows:

24 S 520. Reports of corporation.

25 Each domestic corporation, and each foreign corporation authorized to
26 conduct activities in this state, shall from time to time file such
27 reports on its activities as may be required by the laws of this state.
28 All registration and reporting requirements pursuant to [EPTL] ARTICLE
29 SEVEN-A OF THE EXECUTIVE LAW, AND SECTION 8-1.4 OF THE ESTATES, POWERS
30 AND TRUSTS LAW, or related successor provisions, are, without limitation
31 on the foregoing, expressly included as reports required by the laws of
32 this state to be filed within the meaning of this section. Willful fail-
33 ure of a corporation to file a report as required by law shall consti-
34 tute a breach of the directors' duty to the corporation and shall
35 subject the corporation, at the suit of the attorney-general, to an
36 action or special proceeding for dissolution under article 11 (Judicial
37 dissolution) in the case of a domestic corporation, or under S 1303
38 (Violations) in the case of a foreign corporation.

39 S 31. Paragraph (a) of section 601 of the not-for-profit corporation
40 law, as amended by chapter 1058 of the laws of 1971, is amended to read
41 as follows:

42 (a) A corporation shall have one or more classes of members, or, in
43 the case of a [Type B] CHARITABLE corporation, may have no members, in
44 which case any such provision for classes of members or for no members
45 shall be set forth in the certificate of incorporation or the by-laws.
46 Corporations, joint-stock associations, unincorporated associations and
47 partnerships, as well as any other person without limitation, may be
48 members.

49 S 32. Paragraph (a) of section 605 of the not-for-profit corporation
50 law, as amended by chapter 1058 of the laws of 1971, is amended to read
51 as follows:

52 (a) Whenever under the provisions of this chapter members are required
53 or permitted to take any action at a meeting, written notice shall state
54 the place, date and hour of the meeting and, unless it is an annual
55 meeting, indicate that it is being issued by or at the direction of the
56 person or persons calling the meeting. Notice of a special meeting shall

1 also state the purpose or purposes for which the meeting is called. A
2 copy of the notice of any meeting shall be given, personally [or], by
3 mail, OR BY ELECTRONIC MAIL, to each member entitled to vote at such
4 meeting. If the notice is given personally [or], by first class mail OR
5 BY ELECTRONIC MAIL, it shall be given not less than ten nor more than
6 fifty days before the date of the meeting; if mailed by any other class
7 of mail, it shall be given not less than thirty nor more than sixty days
8 before such date. If mailed, such notice is given when deposited in the
9 United States mail, with postage thereon prepaid, directed to the member
10 at his address as it appears on the record of members, or, if he shall
11 have filed with the secretary of the corporation a written request that
12 notices to him be mailed to some other address, then directed to him at
13 such other address. IF MAILED ELECTRONICALLY, SUCH NOTICE IS GIVEN WHEN
14 DIRECTED TO THE MEMBER'S ELECTRONIC MAIL ADDRESS AS IT APPEARS ON THE
15 RECORD OF MEMBERS, OR, TO SUCH OTHER ELECTRONIC MAIL ADDRESS AS FILED
16 WITH THE SECRETARY OF THE CORPORATION. NOTWITHSTANDING THE FOREGOING,
17 SUCH NOTICE SHALL NOT BE GIVEN ELECTRONICALLY (1) IF THE CORPORATION IS
18 UNABLE TO DELIVER TWO CONSECUTIVE NOTICES TO THE MEMBER BY ELECTRONIC
19 MAIL; OR (2) THE CORPORATION OTHERWISE BECOMES AWARE THAT NOTICE CANNOT
20 BE DELIVERED TO THE MEMBER BY ELECTRONIC MAIL. An affidavit of the
21 secretary or other person giving the notice or of a transfer agent of
22 the corporation that the notice required by this section has been given
23 shall, in the absence of fraud, be prima facie evidence of the facts
24 therein stated. Whenever a corporation has more than five hundred
25 members, the notice may be served by publication[, in lieu of mailing,]
26 in a newspaper published in the county in the state in which the princi-
27 pal office of the corporation is located, once a week for three succes-
28 sive weeks next preceding the date of the meeting, PROVIDED THAT THE
29 CORPORATION SHALL ALSO PROMINENTLY POST NOTICE OF SUCH MEETING ON THE
30 HOMEPAGE OF ANY WEBSITE MAINTAINED BY THE CORPORATION CONTINUOUSLY FROM
31 THE DATE OF PUBLICATION THROUGH THE DATE OF THE MEETING.

32 S 33. Section 606 of the not-for-profit corporation law is amended to
33 read as follows:

34 S 606. Waivers of notice.

35 Notice of meeting need not be given to any member who submits a
36 [signed] waiver of notice, in person or by proxy, whether before or
37 after the meeting. WAIVER OF NOTICE MAY BE WRITTEN OR ELECTRONIC. IF
38 WRITTEN, THE WAIVER MUST BE EXECUTED BY THE MEMBER OR THE MEMBER'S
39 AUTHORIZED OFFICER, DIRECTOR, EMPLOYEE, OR AGENT BY SIGNING SUCH WAIVER
40 OR CAUSING HIS SIGNATURE TO BE AFFIXED TO SUCH WAIVER BY ANY REASONABLE
41 MEANS, INCLUDING, BUT NOT LIMITED TO FACSIMILE SIGNATURE. IF ELECTRONIC,
42 THE TRANSMISSION OF THE WAIVER MUST BE SENT BY ELECTRONIC MAIL AND SET
43 FORTH, OR BE SUBMITTED WITH, INFORMATION FROM WHICH IT CAN REASONABLY BE
44 DETERMINED THAT THE TRANSMISSION WAS AUTHORIZED BY THE MEMBER. The
45 attendance of any member at a meeting, in person or by proxy, without
46 protesting prior to the conclusion of the meeting the lack of notice of
47 such meeting, shall constitute a waiver of notice by him.

48 S 34. Paragraphs (b) and (c) of section 609 of the not-for-profit
49 corporation law, as added by chapter 186 of the laws of 1999, are
50 amended to read as follows:

51 (b) Without limiting the manner in which a member may authorize anoth-
52 er person or persons to act for him as proxy pursuant to paragraph (a)
53 of this section, the following shall constitute a valid means by which a
54 member may grant such authority:

55 (1) A member may execute a writing authorizing another person or
56 persons to act for him as proxy. Execution may be accomplished by the

1 member or the member's authorized officer, director, employee or agent
2 signing such writing or causing his or her signature to be affixed to
3 such writing by any reasonable means including, but not limited to, by
4 facsimile signature.

5 (2) A member may authorize another person or persons to act for the
6 member as proxy by [transmitting or authorizing the transmission of a
7 telegram, cablegram or other means of] PROVIDING SUCH AUTHORIZATION BY
8 electronic [transmission] MAIL to the person who will be the holder of
9 the proxy or to a proxy solicitation firm, proxy support service organ-
10 ization or like agent duly authorized by the person [who will be the
11 holder of the proxy to receive such transmission], provided that any
12 such [telegram, cablegram or other means of] AUTHORIZATION BY electronic
13 [transmission] MAIL shall either set forth [or be submitted with] infor-
14 mation from which it can be reasonably determined that the [telegram,
15 cablegram or other] AUTHORIZATION BY electronic [transmission] MAIL was
16 authorized by the member. If it is determined that such [telegrams,
17 cablegrams or other] AUTHORIZATION BY electronic [transmissions are]
18 MAIL IS valid, the inspectors or, if there are no inspectors, such other
19 persons making that determination shall specify the nature of the infor-
20 mation upon which they relied.

21 (c) Any copy, facsimile telecommunication or other reliable reprod-
22 uction of the writing or [transmission] ELECTRONIC MAIL created pursuant
23 to paragraph (b) of this section may be substituted or used in lieu of
24 the original writing or transmission for any and all purposes for which
25 the original writing or transmission could be used, provided that such
26 copy, facsimile telecommunication or other reproduction shall be a
27 complete reproduction of the entire original writing or transmission.

28 S 35. Paragraphs (a) and (b) of section 614 of the not-for-profit
29 corporation law are amended to read as follows:

30 (a) Whenever, under this chapter, members are required or permitted to
31 take any action by vote, such action may be taken without a meeting [on
32 written] UPON THE consent[, setting forth the action so taken, signed
33 by] OF all of the members entitled to vote thereon, WHICH CONSENT SHALL
34 SET FORTH THE ACTION SO TAKEN. SUCH CONSENT MAY BE WRITTEN OR ELECTRON-
35 IC. IF WRITTEN, THE CONSENT MUST BE EXECUTED BY THE MEMBER OR THE
36 MEMBER'S AUTHORIZED OFFICER, DIRECTOR, EMPLOYEE OR AGENT BY SIGNING SUCH
37 CONSENT OR CAUSING HIS SIGNATURE TO BE AFFIXED TO SUCH WAIVER BY ANY
38 REASONABLE MEANS INCLUDING BUT NOT LIMITED TO FACSIMILE SIGNATURE. IF
39 ELECTRONIC, THE TRANSMISSION OF THE CONSENT MUST BE SENT BY ELECTRONIC
40 MAIL AND SET FORTH, OR BE SUBMITTED WITH, INFORMATION FROM WHICH IT CAN
41 REASONABLY BE DETERMINED THAT THE TRANSMISSION WAS AUTHORIZED BY THE
42 MEMBER. This paragraph shall not be construed to alter or modify any
43 provision in a certificate of incorporation not inconsistent with this
44 chapter under which the written consent of less than all of the members
45 is sufficient for corporate action.

46 (b) Written OR ELECTRONIC consent thus given by all members entitled
47 to vote shall have the same effect as a unanimous vote of members and
48 any certificate with respect to the authorization or taking of any such
49 action which is delivered to the department of state shall recite that
50 the authorization was by [unanimous] UNANIMOUS written consent.

51 S 36. Paragraph (e) of section 621 of the not-for-profit corporation
52 law, as amended by chapter 847 of the laws of 1970, is amended to read
53 as follows:

54 (e) Upon the written request of any person who shall have been a
55 member of record for at least six months immediately preceding his
56 request, or of any person holding, or thereunto authorized in writing by

1 the holders of, at least five percent of any class of the outstanding
2 capital certificates, the corporation shall [give or mail] PROVIDE to
3 such member an annual balance sheet and profit and loss statement or a
4 financial statement performing a similar function for the preceding
5 fiscal year, and, if any interim balance sheet or profit and loss or
6 similar financial statement has been distributed to its members or
7 otherwise made available to the public, the most recent such interim
8 balance sheet or profit and loss or similar financial statement. The
9 corporation shall be allowed a reasonable time to prepare such annual
10 balance sheet and profit and loss or similar financial statement.

11 S 37. Intentionally omitted.

12 S 38. Paragraph (a) of section 702 of the not-for-profit corporation
13 law is amended to read as follows:

14 (a) The number of directors constituting the entire board shall be not
15 less than three. Subject to such limitation, such number may be fixed by
16 the by-laws or, in the case of a corporation having members, by action
17 of the members or of the board under the specific provisions of a by-law
18 adopted by the members. If not otherwise fixed under this paragraph, the
19 number shall be three. [As used in this article, "entire board" means
20 the total number of directors entitled to vote which the corporation
21 would have if there were no vacancies.]

22 S 39. Paragraphs (b) and (c) of section 708 of the not-for-profit
23 corporation law, paragraph (b) as amended by chapter 92 of the laws of
24 1983 and paragraph (c) as amended by chapter 211 of the laws of 2007,
25 are amended to read as follows:

26 (b) Unless otherwise restricted by the certificate of incorporation or
27 the by-laws, any action required or permitted to be taken by the board
28 or any committee thereof may be taken without a meeting if all members
29 of the board or the committee consent [in writing] to the adoption of a
30 resolution authorizing the action. SUCH CONSENT MAY BE WRITTEN OR ELEC-
31 TRONIC. IF WRITTEN, THE CONSENT MUST BE EXECUTED BY THE DIRECTOR BY
32 SIGNING SUCH CONSENT OR CAUSING HIS OR HER SIGNATURE TO BE AFFIXED TO
33 SUCH CONSENT BY ANY REASONABLE MEANS INCLUDING, BUT NOT LIMITED TO,
34 FACSIMILE SIGNATURE. IF ELECTRONIC, THE TRANSMISSION OF THE CONSENT MUST
35 BE SENT BY ELECTRONIC MAIL AND SET FORTH, OR BE SUBMITTED WITH, INFORMA-
36 TION FROM WHICH IT CAN REASONABLY BE DETERMINED THAT THE TRANSMISSION
37 WAS AUTHORIZED BY THE DIRECTOR. The resolution and the written consents
38 thereto by the members of the board or committee shall be filed with the
39 minutes of the proceedings of the board or committee.

40 (c) Unless otherwise restricted by the certificate of incorporation or
41 the by-laws, any one or more members of the board or OF any committee
42 thereof [may participate in] WHO IS NOT PHYSICALLY PRESENT AT a meeting
43 of [such] THE board or A committee MAY PARTICIPATE by means of a confer-
44 ence telephone or similar communications equipment [allowing all persons
45 participating in the meeting to hear each other at the same time] OR BY
46 ELECTRONIC VIDEO SCREEN COMMUNICATION. Participation by such means
47 shall constitute presence in person at a meeting AS LONG AS ALL PERSONS
48 PARTICIPATING IN THE MEETING CAN HEAR EACH OTHER AT THE SAME TIME AND
49 EACH DIRECTOR CAN PARTICIPATE IN ALL MATTERS BEFORE THE BOARD, INCLUD-
50 ING, WITHOUT LIMITATION, THE ABILITY TO PROPOSE, OBJECT TO, AND VOTE
51 UPON A SPECIFIC ACTION TO BE TAKEN BY THE BOARD OR COMMITTEE.

52 S 40. Paragraph (c) of section 711 of the not-for-profit corporation
53 law, as amended by chapter 847 of the laws of 1970, is amended to read
54 as follows:

55 (c) Notice of a meeting need not be given to any alternate director,
56 nor to any director who submits a [signed] waiver of notice whether

1 before or after the meeting, or who attends the meeting without protest-
2 ing, prior thereto or at its commencement, the lack of notice to him.
3 SUCH WAIVER OF NOTICE MAY BE WRITTEN OR ELECTRONIC. IF WRITTEN, THE
4 WAIVER MUST BE EXECUTED BY THE DIRECTOR SIGNING SUCH WAIVER OR CAUSING
5 HIS OR HER SIGNATURE TO BE AFFIXED TO SUCH WAIVER BY ANY REASONABLE
6 MEANS INCLUDING BUT NOT LIMITED TO FACSIMILE SIGNATURE. IF ELECTRONIC,
7 THE TRANSMISSION OF THE CONSENT MUST BE SENT BY ELECTRONIC MAIL AND SET
8 FORTH, OR BE SUBMITTED WITH, INFORMATION FROM WHICH IT CAN REASONABLY BE
9 DETERMINED THAT THE TRANSMISSION WAS AUTHORIZED BY THE DIRECTOR.

10 S 41. Paragraphs (a), (b) and (e) of section 712 of the not-for-profit
11 corporation law, paragraph (e) as amended by chapter 961 of the laws of
12 1972, are amended to read as follows:

13 (a) If the certificate of incorporation or the by-laws so provide, the
14 board, by resolution adopted by a majority of the entire board, may
15 designate from among its members an executive committee and other
16 [standing] committees, each consisting of three or more directors, and
17 each of which, to the extent provided in the resolution or in the
18 certificate of incorporation or by-laws, shall have all the authority of
19 the board, except that no such committee shall have authority as to the
20 following matters:

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

23 (2) The filling of vacancies in the board of directors or in any
24 committee.

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

27 (4) The amendment or repeal of the by-laws or the adoption of new
28 by-laws.

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

31 (b) The board may designate one or more directors as alternate members
32 of any [standing] committee, who may replace any absent member or
33 members at any meeting of such committee.

34 (e) Committees, other than [standing or special] committees of the
35 board, whether created by the board or by the members, shall be commit-
36 tees of the corporation. Such committees OF THE CORPORATION may be
37 elected or appointed in the same manner as officers of the corporation,
38 BUT NO SUCH COMMITTEE SHALL HAVE THE AUTHORITY TO BIND THE BOARD.
39 Provisions of this chapter applicable to officers generally shall apply
40 to members of such committees.

41 S 42. Paragraph (c) of section 712 of the not-for-profit corporation
42 law is REPEALED.

43 S 43. The not-for-profit corporation law is amended by adding two new
44 sections 712-a and 712-b to read as follows:

45 S 712-A. AUDIT OVERSIGHT.

46 (A) EVERY CORPORATION REQUIRED TO FILE AN INDEPENDENT CERTIFIED PUBLIC
47 ACCOUNTANT'S AUDIT REPORT WITH THE ATTORNEY GENERAL PURSUANT TO SUBDIVI-
48 SION ONE OF SECTION ONE HUNDRED SEVENTY-TWO-B OF THE EXECUTIVE LAW SHALL
49 DESIGNATE AN AUDIT COMMITTEE OF THE BOARD, CONSISTING OF AT LEAST THREE
50 INDEPENDENT DIRECTORS, FOR THE PURPOSE OF OVERSEEING THE ACCOUNTING AND
51 FINANCIAL REPORTING PROCESSES OF THE CORPORATION AND THE INDEPENDENT
52 CERTIFIED PUBLIC ACCOUNTANT'S AUDIT OF THE CORPORATION'S FINANCIAL
53 STATEMENTS. THE CORPORATION'S ENTIRE BOARD MAY CONSTITUTE THE AUDIT
54 COMMITTEE, PROVIDED THAT ONLY INDEPENDENT DIRECTORS MAY BE PRESENT AT
55 AND PARTICIPATE IN DELIBERATIONS AND VOTING RELATING TO AUDIT COMMITTEE
56 MATTERS. IF A CORPORATION CONTROLS A GROUP OF CORPORATIONS, THE AUDIT

1 COMMITTEE OF THE CONTROLLING CORPORATION MAY BE DEEMED TO BE THE AUDIT
2 COMMITTEE FOR ONE OR MORE OF ITS CONTROLLED CORPORATIONS.

3 (B) THE AUDIT COMMITTEE SHALL, AT A MINIMUM:

4 (1) RETAIN AND EVALUATE THE INDEPENDENT AUDITOR WHO SHALL REPORT
5 DIRECTLY TO THE AUDIT COMMITTEE;

6 (2) REVIEW WITH THE INDEPENDENT AUDITOR THE SCOPE AND PLANNING OF THE
7 AUDIT;

8 (3) REVIEW AND DISCUSS WITH THE INDEPENDENT AUDITOR, AT A MINIMUM: (A)
9 THE RESULTS OF ANY AUDIT, INCLUDING BUT NOT LIMITED TO: THE MANAGEMENT
10 LETTER TO THE BOARD AND ANY MATERIAL RISKS AND WEAKNESSES IN INTERNAL
11 CONTROLS IDENTIFIED BY THE AUDITOR; (B) ANY RESTRICTIONS ON THE SCOPE OF
12 THE AUDITOR'S ACTIVITIES OR ACCESS TO REQUESTED INFORMATION; (C) ANY
13 SIGNIFICANT DISAGREEMENTS BETWEEN THE AUDITOR AND MANAGEMENT; AND (D)
14 THE ADEQUACY AND PERFORMANCE OF THE CORPORATION'S ACCOUNTING FUNCTION;

15 (4) CONSIDER AT LEAST ANNUALLY THE PERFORMANCE AND INDEPENDENCE OF THE
16 INDEPENDENT AUDITOR;

17 (5) OVERSEE ADOPTION, IMPLEMENTATION OF, AND COMPLIANCE WITH ANY
18 CONFLICT OF INTEREST POLICY OR WHISTLEBLOWER POLICY ADOPTED BY THE
19 CORPORATION PURSUANT TO SECTIONS SEVEN HUNDRED FIFTEEN-A OR SEVEN
20 HUNDRED FIFTEEN-B OF THIS CHAPTER, IF THIS FUNCTION IS NOT OTHERWISE
21 PERFORMED BY ANOTHER COMMITTEE OF THE BOARD COMPRISED SOLELY OF INDE-
22 PENDENT DIRECTORS; AND

23 (6) REPORT ITS ACTIVITIES TO THE BOARD AT LEAST ANNUALLY.

24 (C) THE AUDIT COMMITTEE SHALL ADOPT A CHARTER THAT SHALL STATE ITS
25 AUTHORITY AND RESPONSIBILITIES, INCLUDING THOSE PRESCRIBED BY THIS
26 SECTION, AND THAT SHALL STATE THE SIZE, COMPOSITION AND RULES OR PROCE-
27 DURES OF THE AUDIT COMMITTEE.

28 S 712-B. EXECUTIVE COMPENSATION OVERSIGHT.

29 (A) FOR PURPOSES OF THIS SECTION, "TOTAL COMPENSATION" MEANS: (1) ANY
30 COMPENSATION, WHETHER PAID OR ACCRUED, BY OR ON BEHALF OF THE CORPO-
31 RATION OF ANY AFFILIATE OF THE CORPORATION, INCLUDING BUT NOT LIMITED TO
32 SALARY, BONUS, AND DEFERRED COMPENSATION; AND (2) ANY BENEFIT HAVING
33 MONETARY VALUE PROVIDED BY THE CORPORATION OR ON BEHALF OF THE CORPO-
34 RATION OR ANY AFFILIATE OF THE CORPORATION, INCLUDING BUT NOT LIMITED TO
35 HOUSING ALLOWANCES, LIVING EXPENSES, PERQUISITES, FRINGE BENEFITS,
36 EMPLOYER CONTRIBUTIONS TO DEFINED CONTRIBUTION RETIREMENT PLANS AND
37 OTHER RETIREMENT BENEFITS.

38 (B) THE TOTAL COMPENSATION PAID BY A CORPORATION TO ANY EMPLOYEE OF
39 THE CORPORATION SHALL BE FAIR, REASONABLE AND COMMENSURATE WITH SERVICES
40 THE EMPLOYEE PROVIDES TO THE CORPORATION.

41 (C) NO EMPLOYEE OR OTHER INDIVIDUAL WHO MAY BENEFIT FROM COMPENSATION
42 OR BENEFITS PROVIDED BY THE CORPORATION MAY BE PRESENT AT OR OTHERWISE
43 PARTICIPATE IN ANY BOARD OR COMMITTEE DELIBERATION OR VOTE CONCERNING
44 SUCH COMPENSATION OR BENEFITS.

45 (D) EVERY CHARITABLE CORPORATION THAT IS REQUIRED TO BE REGISTERED
46 WITH THE ATTORNEY GENERAL UNDER ARTICLE SEVEN-A OF THE EXECUTIVE LAW AND
47 THAT IN THE PRIOR FISCAL YEAR HAD ANNUAL REVENUES IN EXCESS OF ONE
48 MILLION DOLLARS SHALL DESIGNATE A COMPENSATION COMMITTEE OF THE BOARD TO
49 OVERSEE EXECUTIVE COMPENSATION PROGRAMS AND RELATED PRACTICES OF THE
50 CORPORATION.

51 (1) THE COMPENSATION COMMITTEE SHALL BE COMPRISED OF AT LEAST THREE
52 INDEPENDENT DIRECTORS.

53 (2) THE CORPORATION'S BOARD MAY PERFORM THE FUNCTION OF THE COMPEN-
54 SATION COMMITTEE UNLESS THE BYLAWS PROVIDE OTHERWISE, PROVIDED THAT ONLY
55 INDEPENDENT DIRECTORS MAY BE PRESENT AT AND PARTICIPATE IN ANY DELIBER-
56 ATIONS OR VOTING RELATING TO COMPENSATION COMMITTEE MATTERS.

1 (3) IF A CORPORATION CONTROLS ONE OR MORE CORPORATIONS, THE COMPEN-
2 SATION COMMITTEE OF THE CONTROLLING CORPORATION MAY BE DEEMED TO BE THE
3 COMPENSATION COMMITTEE FOR ITS CONTROLLED CORPORATIONS.

4 (4) THE COMPENSATION COMMITTEE SHALL:

5 (A) REVIEW THE TOTAL COMPENSATION PAID TO THE CORPORATION'S OFFICERS
6 AND ITS FIVE HIGHEST-COMPENSATED KEY EMPLOYEES.

7 (B) AFFIRMATIVELY DETERMINE THAT THE TOTAL COMPENSATION PAID TO ANY
8 SUCH INDIVIDUAL IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES
9 PROVIDED TO THE CORPORATION. IN MAKING THIS DETERMINATION, THE COMPEN-
10 SATION COMMITTEE SHALL AT A MINIMUM CONSIDER THE FOLLOWING FACTORS: (I)
11 THE TOTAL COMPENSATION PROVIDED TO THE INDIVIDUAL; (II) RELEVANT BENCH-
12 MARK DATA ON THE TOTAL COMPENSATION PAID TO INDIVIDUALS SERVING IN SIMI-
13 LAR POSITIONS AT CORPORATIONS OF SIMILAR SIZE, TYPE, PURPOSE, AND SCOPE;
14 (III) THE INDIVIDUAL'S QUALIFICATIONS AND PERFORMANCE; (IV) COMPEN-
15 SATION, PAYMENTS OR ANY OTHER BENEFITS PROVIDED TO THE INDIVIDUAL FROM
16 ANY AFFILIATE OF THE CORPORATION; AND (V) THE OVERALL FINANCIAL CONDI-
17 TION OF THE CORPORATION.

18 (C) MAKE AND KEEP A CONTEMPORANEOUS WRITTEN RECORD DESCRIBING THE
19 BASIS FOR ITS DETERMINATION, INCLUDING ITS ANALYSIS OF THE FACTORS SET
20 FORTH IN THIS PARAGRAPH AND HOW ANY RELEVANT DATA WAS OBTAINED AND USED.

21 (D) APPROVE BY NOT LESS THAN A MAJORITY VOTE THE TOTAL COMPENSATION
22 PAID TO EACH SUCH INDIVIDUAL.

23 (5) IF, PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH, THE BOARD DOES
24 NOT PERFORM THE FUNCTION OF THE COMPENSATION COMMITTEE, THEN: (I) THE
25 COMPENSATION COMMITTEE SHALL RECOMMEND TO THE BOARD FOR ITS APPROVAL THE
26 TOTAL COMPENSATION OF EACH INDIVIDUAL THAT THE COMMITTEE HAS AFFIRMA-
27 TIVELY DETERMINED IS FAIR, REASONABLE, AND COMMENSURATE WITH SERVICES
28 PROVIDED TO THE CORPORATION, AND IN CONNECTION THEREWITH, PROVIDE TO THE
29 BOARD THE WRITTEN RECORD OF ITS DETERMINATION CREATED PURSUANT TO CLAUSE
30 (C) OF THIS SUBPARAGRAPH; (II) UPON REVIEW OF THE RECOMMENDATIONS OF THE
31 COMPENSATION COMMITTEE, THE BOARD SHALL APPROVE BY NOT LESS THAN A
32 MAJORITY VOTE OF THE INDEPENDENT DIRECTORS THE TOTAL COMPENSATION OF
33 EACH SUCH INDIVIDUAL, WITH ONLY INDEPENDENT DIRECTORS PARTICIPATING IN
34 ANY SUCH VOTE AND ANY DISCUSSION RELATING THERETO; AND (III) THE BOARD
35 SHALL KEEP A CONTEMPORANEOUS WRITTEN RECORD OF THE BASIS OF ITS DETERMI-
36 NATION, INCLUDING AREAS OF AGREEMENT OR DISAGREEMENT WITH THE RECOMMEN-
37 DATIONS OF THE COMPENSATION COMMITTEE.

38 (6) THE COMPENSATION COMMITTEE MAY RETAIN A COMPENSATION CONSULTANT TO
39 ASSIST IN THE PERFORMANCE OF ITS RESPONSIBILITIES. THE COMPENSATION
40 COMMITTEE SHALL BE DIRECTLY RESPONSIBLE FOR THE APPOINTMENT, COMPEN-
41 SATION AND OVERSIGHT OF THE WORK OF SUCH CONSULTANT, AND ANY SUCH
42 CONSULTANT SHALL REPORT DIRECTLY TO THE COMPENSATION COMMITTEE. THE
43 COMPENSATION COMMITTEE SHALL, AMONG ITS RESPONSIBILITIES, APPROVE THE
44 COMPENSATION PEER GROUP THAT THE COMPENSATION CONSULTANT RECOMMENDS BE
45 USED TO DEVELOP BENCHMARK DATA.

46 (I) PRIOR TO RETAINING ANY SUCH CONSULTANT, THE COMPENSATION COMMITTEE
47 SHALL DETERMINE THAT THE CONSULTANT IS INDEPENDENT AND QUALIFIED TO
48 RENDER ADVICE CONCERNING COMPENSATION; PROVIDED THAT NO CONSULTANT MAY
49 BE DETERMINED INDEPENDENT IF SUCH CONSULTANT OR ANY FIRM THAT EMPLOYS
50 SUCH CONSULTANT HAS (A) RECEIVED DIRECTLY OR INDIRECTLY ANY PAYMENT, FEE
51 OR OTHER COMPENSATION FROM THE CORPORATION OR ANY AFFILIATE OF THE
52 CORPORATION WITHIN THE PRECEDING TWO YEARS, OTHER THAN REASONABLE
53 AMOUNTS PAID FOR COMPENSATION CONSULTING SERVICES, OR (B) ANY BUSINESS
54 OR PERSONAL RELATIONSHIP WITH THE CORPORATION OR ANY AFFILIATE, OR ANY
55 OF THEIR OFFICERS, DIRECTORS OR EMPLOYEES, THAT MAY INTERFERE WITH THE
56 ABILITY OF THE CONSULTANT TO PROVIDE OBJECTIVE ADVICE TO THE COMMITTEE.

1 (II) NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO (A) REQUIRE THE
2 COMPENSATION COMMITTEE TO IMPLEMENT OR ACT CONSISTENTLY WITH ANY RECOM-
3 MENDATIONS PROVIDED BY THE COMPENSATION CONSULTANT; OR (B) AFFECT THE
4 ABILITY OR OBLIGATION OF MEMBERS OF THE COMPENSATION COMMITTEE TO EXER-
5 CISE THEIR OWN JUDGMENT IN FULFILLMENT OF THEIR DUTIES TO THE CORPO-
6 RATION, INCLUDING THOSE DUTIES PRESCRIBED BY SECTION SEVEN HUNDRED
7 SEVENTEEN OF THIS CHAPTER.

8 (7) THE COMPENSATION COMMITTEE SHALL ADOPT A CHARTER SETTING FORTH ITS
9 RESPONSIBILITIES, INCLUDING AS PRESCRIBED BY THIS SECTION, AS WELL AS
10 REQUIREMENTS CONCERNING THE SIZE, COMPOSITION AND FUNCTIONING OF THE
11 COMPENSATION COMMITTEE.

12 S 44. Paragraph (a) of section 713 of the not-for-profit corporation
13 law is amended, and a new paragraph (f) is added to read as follows:

14 (a) The board may elect or appoint a CHAIR, WHO MAY BE GIVEN THE TITLE
15 CHAIR OF THE BOARD, CHAIRPERSON OF THE BOARD, CHAIRMAN OF THE BOARD, OR
16 CHAIRWOMAN OF THE BOARD, OR president, OR BOTH, one or more vice-presi-
17 dents, a secretary and a treasurer, and such other officers as it may
18 determine, or as may be provided in the by-laws. These officers may be
19 designated by such alternate titles as may be provided in the certif-
20 icate of incorporation or the by-laws. Any two or more offices may be
21 held by the same person, except the offices of president and secretary,
22 or the offices corresponding thereto.

23 (F) NO EMPLOYEE OF THE CORPORATION SHALL SERVE AS CHAIR OF THE BOARD.

24 S 45. Section 715 of the not-for-profit corporation law, as amended
25 by chapter 847 of the laws of 1970 and paragraph (f) as amended by chap-
26 ter 1057 of the laws of 1971, is amended to read as follows:

27 S 715. [Interested directors and officers] RELATED PARTY TRANSACTIONS.

28 (a) [No contract or other transaction between a corporation and one or
29 more of its directors or officers, or between a corporation and any
30 other corporation, firm, association or other entity in which one or
31 more of its directors or officers are directors or officers, or have a
32 substantial financial interest, shall be either void or voidable for
33 this reason alone or by reason alone that such director or directors or
34 officer or officers are present at the meeting of the board, or of a
35 committee thereof, which authorizes such contract or transaction, or
36 that his or their votes are counted for such purpose] (1) NO CORPORATION
37 SHALL ENTER INTO A RELATED PARTY TRANSACTION, UNLESS:

38 [(1) If the] (A) THE material facts as to [such director's or offi-
39 cer's interest in such contract or transaction and as] THE RELATED
40 PARTY'S INTEREST IN, AND RELATIONSHIP to [any such common directorship,
41 officership or financial interest], THE TRANSACTION are disclosed in
42 good faith [or known] to the board [or committee], and [the board or
43 committee authorizes such contract or transaction by a vote sufficient
44 for such purpose without counting the vote or votes of such interested
45 director or officer; or

46 (2) If the material facts as to such director's or officer's interest
47 in such contract or transaction and as to any such common directorship,
48 officership or financial interest are disclosed in good faith or known
49 to the] ANY members OF THE CORPORATION entitled to vote [thereon, if
50 any, and] TO APPROVE such [contract or] transaction [is authorized by
51 vote of such members];

52 (B) THE BOARD: (I) HAS CONSIDERED ALTERNATIVE TRANSACTIONS TO THE
53 EXTENT AVAILABLE AND UPON REASONABLE DILIGENCE DETERMINED THAT SUCH
54 ALTERNATIVE TRANSACTIONS WOULD NOT BE MORE ADVANTAGEOUS TO THE CORPO-
55 RATION; (II) DETERMINES BY A TWO-THIRDS VOTE OF THE BOARD THAT THE
56 RELATED PARTY TRANSACTION IS FAIR, REASONABLE AND IN THE BEST INTERESTS

1 OF THE CORPORATION AND APPROVES SUCH TRANSACTION, AND THE RELATED PARTY
2 WITH AN INTEREST IN THE TRANSACTION IS NOT PRESENT AT AND DOES NOT
3 OTHERWISE PARTICIPATE IN ANY DELIBERATION OR VOTING RELATING THERETO;
4 AND (III) CONTEMPORANEOUSLY DOCUMENTS IN WRITING THE BASIS FOR ITS
5 DETERMINATION AND APPROVAL OF THE TRANSACTION. THIS SUBPARAGRAPH SHALL
6 NOT APPLY TO ANY COMPENSATION REVIEWED AND APPROVED IN ACCORDANCE WITH
7 PARAGRAPH (D) OF SECTION SEVEN HUNDRED TWELVE-A OF THIS ARTICLE.

8 [(b) If such good faith disclosure of the material facts as to the
9 director's or officer's interest in the contract or transaction and as
10 to any such common directorship, officership or financial interest, is
11 made to the directors or members, or known to the board or committee or
12 members authorizing such contract or transaction, as provided in para-
13 graph (a), the contract or transaction may not be avoided by the corpo-
14 ration for the reasons set forth in paragraph (a). If there was no such
15 disclosure or knowledge, or if the vote of such interested director or
16 officer was necessary for the authorization of such contract or trans-
17 action at a meeting of the board or committee at which it was author-
18 ized, the corporation may avoid the contract or transaction unless the
19 party or parties thereto shall establish affirmatively that the contract
20 or transaction was fair and reasonable as to the corporation at the time
21 it was authorized by the board, a committee or the members.

22 (c) Common or interested directors may be counted in determining the
23 presence of a quorum at a meeting of the board or of a committee which
24 authorizes such contract or transaction.]

25 [(d)] (2) The certificate of incorporation, BYLAWS OR CONFLICT OF
26 INTEREST POLICY OF THE CORPORATION may contain additional restrictions
27 on [contracts or] RELATED PARTY transactions [between a corporation] and
28 [its directors or officers or other persons and may] ADDITIONAL PROCE-
29 DURES NECESSARY FOR THE REVIEW OR APPROVAL OF SUCH TRANSACTIONS, OR
30 provide that [contracts or] ANY transactions in violation of such
31 restrictions shall be void or voidable.

32 (B) AN OFFICER, DIRECTOR OR KEY EMPLOYEE WHO HAS AN INTEREST IN A
33 RELATED PARTY TRANSACTION SHALL, PRIOR TO THE BOARD'S CONSIDERATION OF
34 THE PROPOSED TRANSACTION, DISCLOSE IN GOOD FAITH TO THE CORPORATION THE
35 MATERIAL FACTS AS TO SUCH PERSON'S INTEREST IN, AND RELATIONSHIP TO,
36 THE TRANSACTION. THE BOARD SHALL ADOPT AND IMPLEMENT PROCEDURES FOR THE
37 TIMELY DISCLOSURE OF SUCH FACTS TO THE BOARD.

38 (C) THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENJOIN, VOID OR
39 RESCIND ANY RELATED PARTY TRANSACTION OR A PROPOSED RELATED PARTY TRANS-
40 ACTION THAT VIOLATES ANY LAW OR IS OTHERWISE NOT FAIR, REASONABLE, OR IN
41 THE BEST INTERESTS OF THE CORPORATION, OR TO SEEK OTHER RELIEF, INCLUD-
42 ING BUT NOT LIMITED TO DAMAGES, RESTITUTION, THE REMOVAL OF DIRECTORS OR
43 OFFICERS, OR SEEK TO REQUIRE ANY PERSON OR ENTITY TO:

44 (1) ACCOUNT FOR ANY PROFITS MADE FROM SUCH TRANSACTION, AND PAY THEM
45 TO THE CORPORATION;

46 (2) PAY THE CORPORATION THE VALUE OF THE USE OF ANY OF ITS PROPERTY OR
47 OTHER ASSETS USED IN SUCH TRANSACTION;

48 (3) RETURN OR REPLACE ANY PROPERTY OR OTHER ASSETS LOST TO THE CORPO-
49 RATION AS A RESULT OF SUCH TRANSACTION, TOGETHER WITH ANY INCOME OR
50 APPRECIATION LOST TO THE CORPORATION BY REASON OF SUCH TRANSACTION, OR
51 ACCOUNT FOR ANY PROCEEDS OF SALE OF SUCH PROPERTY, AND PAY THE PROCEEDS
52 TO THE CORPORATION TOGETHER WITH INTEREST AT THE LEGAL RATE; AND

53 (4) PAY, IN THE CASE OF WILLFUL CONDUCT, AN AMOUNT UP TO DOUBLE THE
54 AMOUNT OF ANY BENEFIT IMPROPERLY OBTAINED.

1 (D) THE POWERS OF THE ATTORNEY GENERAL PROVIDED IN THIS SECTION ARE IN
2 ADDITION TO ALL OTHER POWERS THE ATTORNEY GENERAL MAY HAVE UNDER THIS
3 CHAPTER OR ANY OTHER LAW.

4 [(e) Unless otherwise provided in the certificate of incorporation or
5 the by-laws, the board shall have authority to fix the compensation of
6 directors for services in any capacity.

7 (f) The fixing of salaries of officers, if not done in or pursuant to
8 the by-laws, shall require the affirmative vote of a majority of the
9 entire board unless a higher proportion is set by the certificate of
10 incorporation or by-laws.]

11 S 46. The not-for-profit corporation law is amended by adding two new
12 sections 715-a and 715-b to read as follows:

13 S 715-A. CONFLICT OF INTEREST POLICY.

14 (A) EVERY CORPORATION SHALL ADOPT A CONFLICT OF INTEREST POLICY TO
15 ENSURE THAT ITS DIRECTORS, OFFICERS AND KEY EMPLOYEES ACT IN THE CORPO-
16 RATION'S BEST INTEREST AND COMPLY WITH APPLICABLE LEGAL REQUIREMENTS,
17 INCLUDING BUT NOT LIMITED TO THE REQUIREMENTS SET FORTH IN SECTION SEVEN
18 HUNDRED FIFTEEN OF THIS ARTICLE.

19 (B) THE CONFLICT OF INTEREST POLICY SHALL INCLUDE, AT A MINIMUM, THE
20 FOLLOWING PROVISIONS:

21 (1) A DEFINITION OF THE CIRCUMSTANCES THAT CONSTITUTE A CONFLICT OF
22 INTEREST;

23 (2) PROCEDURES FOR DISCLOSING A CONFLICT OF INTEREST TO THE AUDIT
24 COMMITTEE OR, IF THERE IS NO AUDIT COMMITTEE, TO THE BOARD;

25 (3) A REQUIREMENT THAT THE PERSON WITH THE CONFLICT OF INTEREST NOT BE
26 PRESENT AT OR PARTICIPATE IN BOARD OR COMMITTEE DELIBERATION OR VOTE ON
27 THE MATTER GIVING RISE TO SUCH CONFLICT;

28 (4) A PROHIBITION AGAINST ANY ATTEMPT BY THE PERSON WITH THE CONFLICT
29 TO INFLUENCE THE DELIBERATION OR VOTING ON THE MATTER GIVING RISE TO
30 SUCH CONFLICT;

31 (5) A REQUIREMENT THAT THE EXISTENCE AND RESOLUTION OF THE CONFLICT BE
32 DOCUMENTED IN THE CORPORATION'S RECORDS, INCLUDING IN THE MINUTES OF ANY
33 MEETING AT WHICH THE CONFLICT WAS DISCUSSED OR VOTED UPON; AND

34 (6) PROCEDURES FOR DISCLOSING, ADDRESSING, AND DOCUMENTING RELATED
35 PARTY TRANSACTIONS IN ACCORDANCE WITH SECTION SEVEN HUNDRED FIFTEEN OF
36 THIS ARTICLE.

37 (C) THE CONFLICT OF INTEREST POLICY SHALL REQUIRE THAT PRIOR TO THE
38 INITIAL ELECTION OF ANY DIRECTOR, AND ANNUALLY THEREAFTER, THAT SUCH
39 DIRECTOR SHALL COMPLETE, SIGN AND SUBMIT TO THE SECRETARY OF THE CORPO-
40 RATION A WRITTEN STATEMENT IDENTIFYING ANY ENTITY OF WHICH SUCH DIRECTOR
41 IS AN OFFICER, DIRECTOR, TRUSTEE, MEMBER, OWNER (EITHER AS A SOLE
42 PROPRIETOR OR A PARTNER), OR EMPLOYEE WITH WHICH THE CORPORATION HAS, OR
43 MIGHT BE EXPECTED TO HAVE, A RELATIONSHIP OR A TRANSACTION IN WHICH THE
44 DIRECTOR MIGHT HAVE A CONFLICTING INTEREST. THE POLICY SHALL REQUIRE
45 THAT EACH DIRECTOR ANNUALLY RESUBMIT SUCH WRITTEN STATEMENT. THE
46 SECRETARY OF THE CORPORATION SHALL PROVIDE A COPY OF ALL COMPLETED
47 STATEMENTS TO THE CHAIR OF THE AUDIT COMMITTEE OR, IF THERE IS NO AUDIT
48 COMMITTEE, TO THE CHAIR OF THE BOARD.

49 (D) EVERY CORPORATION REGISTERED OR REQUIRED TO BE REGISTERED PURSUANT
50 TO SECTION ONE HUNDRED SEVENTY-TWO OF THE EXECUTIVE LAW OR SECTION 8-
51 1.4 OF THE ESTATES, POWERS AND TRUSTS LAW SHALL TRANSMIT A COPY OF ITS
52 CONFLICT OF INTEREST POLICY TO THE ATTORNEY GENERAL IN THE FORM AND
53 MANNER SPECIFIED BY THE ATTORNEY GENERAL, AND SHALL WITHIN THIRTY DAYS
54 OF ANY MATERIAL CHANGE OF THESE POLICIES PROVIDE THE ATTORNEY GENERAL
55 WITH THE CHANGED POLICIES.

1 (E) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO REQUIRE A CORPO-
2 RATION TO ADOPT ANY SPECIFIC CONFLICT OF INTEREST POLICY NOT OTHERWISE
3 REQUIRED BY LAW, OR TO SUPERSEDE OR LIMIT ANY REQUIREMENT OR DUTY
4 GOVERNING CONFLICTS OF INTEREST REQUIRED BY ANY OTHER LAW OR RULE.

5 S 715-B. WHISTLEBLOWER POLICY.

6 (A) EVERY CORPORATION THAT HAS FIVE OR MORE EMPLOYEES AND IN THE PRIOR
7 FISCAL YEAR HAD ANNUAL REVENUE IN EXCESS OF ONE MILLION DOLLARS SHALL
8 ADOPT A WHISTLEBLOWER POLICY TO PROTECT FROM RETALIATION PERSONS WHO
9 REPORT SUSPECTED IMPROPER CONDUCT. SUCH POLICY SHALL PROVIDE THAT NO
10 DIRECTOR, OFFICER, EMPLOYEE OR VOLUNTEER OF A CORPORATION WHO IN GOOD
11 FAITH REPORTS ANY ACTION OR SUSPECTED ACTION TAKEN BY OR WITHIN THE
12 CORPORATION THAT IS ILLEGAL, FRAUDULENT OR IN VIOLATION OF ANY ADOPTED
13 POLICY OF THE CORPORATION SHALL SUFFER INTIMIDATION, HARASSMENT,
14 DISCRIMINATION OR OTHER RETALIATION OR, IN THE CASE OF EMPLOYEES,
15 ADVERSE EMPLOYMENT CONSEQUENCE.

16 (B) THE WHISTLEBLOWER POLICY SHALL INCLUDE THE FOLLOWING PROVISIONS:

17 (1) PROCEDURES FOR THE REPORTING OF VIOLATIONS OR SUSPECTED VIOLATIONS
18 OF LAWS OR CORPORATE POLICIES, INCLUDING PROCEDURES FOR PRESERVING THE
19 CONFIDENTIALITY OF REPORTED INFORMATION;

20 (2) PROCEDURES FOR HANDLING AND INVESTIGATING VIOLATIONS OR SUSPECTED
21 VIOLATIONS OF LAWS OR CORPORATE POLICIES;

22 (3) A REQUIREMENT THAT AN EMPLOYEE OF THE CORPORATION BE DESIGNATED TO
23 ADMINISTER, IMPLEMENT AND OVERSEE COMPLIANCE OF THE WHISTLEBLOWER POLI-
24 CY, AND TO REPORT TO THE AUDIT COMMITTEE OR OTHER COMMITTEE OF INDEPEND-
25 ENT DIRECTORS OR, IF THERE ARE NO SUCH COMMITTEES, TO THE BOARD;

26 (4) A REQUIREMENT THAT ALL DOCUMENTS CONCERNING INFORMATION REPORTED
27 UNDER THE WHISTLEBLOWER POLICY AND ANY INVESTIGATION RELATING THERETO BE
28 RETAINED BY THE CORPORATION FOR A MINIMUM PERIOD OF SIX YEARS; AND

29 (5) A REQUIREMENT THAT A COPY OF THE POLICY BE DISTRIBUTED TO ALL
30 DIRECTORS, OFFICERS, EMPLOYEES AND VOLUNTEERS, WITH INSTRUCTIONS ON HOW
31 TO COMPLY WITH THE PROCEDURES SET FORTH IN THE POLICY.

32 (C) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO RELIEVE ANY CORPO-
33 RATION FROM ANY ADDITIONAL REQUIREMENTS IN RELATION TO INTERNAL COMPLI-
34 ANCE, RETALIATION, OR DOCUMENT RETENTION REQUIRED BY ANY OTHER LAW OR
35 RULE.

36 S 47. Section 716 of the not-for-profit corporation law, as amended by
37 chapter 644 of the laws of 1971, is amended to read as follows:

38 S 716. Loans to directors and officers.

39 No loans, other than through the purchase of bonds, debentures, or
40 similar obligations of the type customarily sold in public offerings, or
41 through ordinary deposit of funds in a bank, shall be made by a corpo-
42 ration to its directors or officers, or to any other corporation, firm,
43 association or other entity in which one or more of its directors or
44 officers are directors or officers or hold a substantial financial
45 interest, except a loan by one [type B] CHARITABLE corporation to another
46 [type B] CHARITABLE corporation. A loan made in violation of this
47 section shall be a violation of the duty to the corporation of the
48 directors or officers authorizing it or participating in it, but the
49 obligation of the borrower with respect to the loan shall not be
50 affected thereby.

51 S 48. Section 718 of the not-for-profit corporation law, as amended by
52 chapter 992 of the laws of 1970, is amended to read as follows:

53 S 718. List of directors and officers.

54 (a) If a member or creditor of a corporation, in person or by his
55 attorney or agent, or a representative of the district attorney or of
56 the secretary of state, the attorney general, or other state official,

1 makes a written demand on a corporation to inspect a current list of its
2 directors and officers [and their residence addresses], the corporation
3 shall, within two business days after receipt of the demand and for a
4 period of one week thereafter, make the list available for such
5 inspection at its office during usual business hours.

6 (b) Upon refusal by the corporation to make a current list of its
7 directors and officers [and their residence addresses] available, as
8 provided in paragraph (a) OF THIS SECTION, the person making a demand
9 for such list may apply, ex parte, to the supreme court at a special
10 term held within the judicial district where the office of the corpo-
11 ration is located for an order directing the corporation to make such
12 list available. The court may grant such order or take such other
13 action as it may deem just and proper.

14 S 49. Intentionally omitted.

15 S 50. Intentionally omitted.

16 S 51. The section heading and paragraph (a) of section 720 of the
17 not-for-profit corporation law, the section heading as amended by chap-
18 ter 1058 of the laws of 1971, are amended to read as follows:

19 Actions [on behalf of the corporation] AGAINST DIRECTORS, OFFICERS AND
20 KEY EMPLOYEES.

21 (a) An action may be brought against one or more directors [or], offi-
22 cers, OR KEY EMPLOYEES of a corporation to procure a judgment for the
23 following relief:

24 (1) To compel the defendant to account for his official conduct in the
25 following cases:

26 (A) The neglect of, or failure to perform, or other violation of his
27 duties in the management and disposition of corporate assets committed
28 to his charge.

29 (B) The acquisition by himself, transfer to others, loss or waste of
30 corporate assets due to any neglect of, or failure to perform, or other
31 violation of his duties.

32 (2) To set aside an unlawful conveyance, assignment or transfer of
33 corporate assets, where the transferee knew of its unlawfulness.

34 (3) To enjoin a proposed unlawful conveyance, assignment or transfer
35 of corporate assets, where there are reasonable grounds for belief that
36 it will be made.

37 S 52. Paragraphs (a) and (c) of section 722 of the not-for-profit
38 corporation law, as amended by chapter 368 of the laws of 1987, are
39 amended to read as follows:

40 (a) A corporation may indemnify any person, made, or threatened to be
41 made, a party to an action or proceeding other than one by or in the
42 right of the corporation to procure a judgment in its favor, whether
43 civil or criminal, including an action by or in the right of any other
44 corporation of any [type or] kind, domestic or foreign, or any partner-
45 ship, joint venture, trust, employee benefit plan or other enterprise,
46 which any director or officer of the corporation served in any capacity
47 at the request of the corporation, by reason of the fact that he, his
48 testator or intestate, was a director or officer of the corporation, or
49 served such other corporation, partnership, joint venture, trust,
50 employee benefit plan or other enterprise in any capacity, against judg-
51 ments, fines, amounts paid in settlement and reasonable expenses,
52 including attorneys' fees actually and necessarily incurred as a result
53 of such action or proceeding, or any appeal therein, if such director or
54 officer acted, in good faith, for a purpose which he reasonably believed
55 to be in, or, in the case of service for any other corporation or any
56 partnership, joint venture, trust, employee benefit plan or other enter-

1 prise, not opposed to, the best interests of the corporation and, in
2 criminal actions or proceedings, in addition, had no reasonable cause to
3 believe that his conduct was unlawful.

4 (c) A corporation may indemnify any person made, or threatened to be
5 made, a party to an action by or in the right of the corporation to
6 procure a judgment in its favor by reason of the fact that he, his
7 testator or intestate, is or was a director or officer of the corpo-
8 ration, or is or was serving at the request of the corporation as a
9 director or officer of any other corporation of any [type or] kind,
10 domestic or foreign, of any partnership, joint venture, trust, employee
11 benefit plan or other enterprise, against amounts paid in settlement and
12 reasonable expenses, including attorneys' fees, actually and necessarily
13 incurred by him in connection with the defense or settlement of such
14 action, or in connection with an appeal therein, if such director or
15 officer acted, in good faith, for a purpose which he reasonably believed
16 to be in, or, in the case of service for any other corporation or any
17 partnership, joint venture, trust, employee benefit plan or other enter-
18 prise, not opposed to, the best interests of the corporation, except
19 that no indemnification under this paragraph shall be made in respect of
20 (1) a threatened action, or a pending action which is settled or other-
21 wise disposed of, or (2) any claim, issue or matter as to which such
22 person shall have been adjudged to be liable to the corporation, unless
23 and only to the extent that the court in which the action was brought,
24 or, if no action was brought, any court of competent jurisdiction,
25 determines upon application that, in view of all the circumstances of
26 the case, the person is fairly and reasonably entitled to indemnity for
27 such portion of the settlement amount and expenses as the court deems
28 proper.

29 S 53. Subparagraph 3 of paragraph (a) of section 803 of the not-for-
30 profit corporation law, as amended by chapter 168 of the laws of 1982,
31 is amended to read as follows:

32 (3) That the corporation is a corporation as defined in subparagraph
33 (a) (5) of section 102 (Definitions)[; the type of corporation it is
34 under section 201 (Purposes); and if the corporate purposes are
35 enlarged, limited or otherwise changed, the type of corporation it shall
36 thereafter be under section 201].

37 S 53-a. The section heading and paragraph (a) of section 804 of the
38 not-for-profit corporation law, as amended by chapter 139 of the laws of
39 1993, and subparagraph (i) of paragraph (a) as amended by chapter 198 of
40 the laws of 2010, are amended to read as follows:

41 Approvals, NOTICES and effect.

42 (a) (i) A certificate of amendment shall not be filed if the amendment
43 adds, changes or eliminates a purpose, power or provision the inclusion
44 of which in a certificate of incorporation requires consent or approval
45 of a governmental body or officer or any other person or body, or if the
46 amendment changes the name of a corporation whose certificate of incor-
47 poration had such consent or approval endorsed thereon or annexed there-
48 to, unless such consent or approval is no longer required or is endorsed
49 on or annexed to the certificate of amendment. A CERTIFICATE OF AMEND-
50 MENT ADDING, CHANGING OR ELIMINATING A PURPOSE, POWER OR PROVISION THE
51 INCLUSION OF WHICH IN A CERTIFICATE OF INCORPORATION REQUIRES THE INCOR-
52 PORATOR TO SEND SUCH CERTIFICATE TO A GOVERNMENTAL BODY OR OFFICER OR
53 ANY OTHER PERSON OR BODY, OR IF THE AMENDMENT CHANGES THE NAME OF A
54 CORPORATION WHOSE CERTIFICATE OF INCORPORATION WAS REQUIRED TO BE DELIV-
55 ERED BY THE INCORPORATOR TO A GOVERNMENTAL BODY OR OFFICER OR ANY OTHER
56 PERSON OR BODY, SHALL BE DELIVERED BY THE PERSON OR ENTITY FILING THE

1 CERTIFICATE OF AMENDMENT WITHIN TEN BUSINESS DAYS AFTER THE CORPORATION
2 RECEIVES CONFIRMATION FROM THE DEPARTMENT OF STATE THAT THE CERTIFICATE
3 HAS BEEN ACCEPTED FOR FILING.

4 (ii) Every certificate of amendment of a CHARITABLE corporation [clas-
5 sified as type B or type C under section 201 (Purposes)] which seeks to
6 change or eliminate a purpose or power enumerated in the corporation's
7 certificate of incorporation, or to add a power or purpose not enumer-
8 ated therein, shall have endorsed thereon or annexed thereto the
9 approval of EITHER (A) THE ATTORNEY GENERAL, OR (B) a justice of the
10 supreme court of the judicial district in which the office of the corpo-
11 ration is located. [Ten days' written notice of the application for such
12 approval shall be given to the attorney-general] IF THE ATTORNEY GENERAL
13 DOES NOT APPROVE A CERTIFICATE OF AMENDMENT SUBMITTED PURSUANT TO CLAUSE
14 (A) OF THIS SUBPARAGRAPH THE CORPORATION MAY APPLY FOR APPROVAL OF THE
15 AMENDMENT TO A JUSTICE OF THE SUPREME COURT OF THE JUDICIAL DISTRICT IN
16 WHICH THE OFFICE OF THE CORPORATION IS LOCATED. ANY APPLICATION FOR
17 APPROVAL OF A CERTIFICATE OF AMENDMENT BY THE SUPREME COURT PURSUANT TO
18 THIS PARAGRAPH SHALL BE ON TEN DAYS' WRITTEN NOTICE TO THE ATTORNEY
19 GENERAL.

20 S 54. Section 907 of the not-for-profit corporation law is amended to
21 read as follows:

22 S 907. Approval by the supreme court OR ATTORNEY GENERAL.

23 [(a)] Where any constituent corporation or the consolidated corpo-
24 ration is, or would be if formed under this chapter, a [Type B or a Type
25 C] CHARITABLE corporation under section 201 (Purposes) of this chapter,
26 no certificate shall be filed pursuant to section 904 (Certificate of
27 merger or consolidation; contents) or section 906 (Merger or consol-
28 idation of domestic and foreign corporations) until (A) THE SUPREME
29 COURT HAS GRANTED an order approving the plan of merger or consolidation
30 and authorizing the filing of the certificate [has been made by the
31 supreme court], as provided in [this] section[. A certified copy of such
32 order shall be annexed to the certificate of merger or consolidation.
33 Application for the order may be made in the judicial district in which
34 the principal office of the surviving or consolidated corporation is to
35 be located, or in which the office of one of the domestic constituent
36 corporations is located. The application shall be made by all the
37 constituent corporations jointly and shall set forth by affidavit (1)
38 the plan of merger or consolidation, (2) the approval required by
39 section 903 (Approval of plan) or paragraph (b) of section 906 (Merger
40 or consolidation of domestic and foreign corporations) for each constit-
41 uent corporation, (3) the objects and purposes of each such corporation
42 to be promoted by the consolidation, (4) a statement of all property,
43 and the manner in which it is held, and of all liabilities and of the
44 amount and sources of the annual income of each such corporation, (5)
45 whether any votes against adoption of the resolution approving the plan
46 of merger or consolidation were cast at the meeting at which the resol-
47 ution as adopted by each constituent corporation, and (6) facts showing
48 that the consolidation is authorized by the laws of the jurisdictions
49 under which each of the constituent corporations is incorporated] 907-A
50 (APPLICATION FOR APPROVAL OF THE SUPREME COURT) OF THIS ARTICLE OR (B)
51 THE ATTORNEY GENERAL HAS APPROVED THE PLAN OF MERGER OR CONSOLIDATION
52 AND AUTHORIZED THE FILING OF THE CERTIFICATE, AS PROVIDED IN SECTION
53 907-B (APPLICATION FOR APPROVAL OF THE ATTORNEY GENERAL) OF THIS
54 ARTICLE.

55 [(b)] Upon the filing of the application the court shall fix a time for
56 hearing thereof and shall direct that notice thereof be given to such

1 persons as may be interested, including the attorney general, any
2 governmental body or officer and any other person or body whose consent
3 or approval is required by section 909 (Consent to filing), in such form
4 and manner as the court may prescribe. If no votes against adoption of
5 the resolution approving the plan of merger or consolidation were cast
6 at the meeting at which the resolution was adopted by any constituent
7 corporation the court may dispense with notice to anyone except the
8 attorney-general, any governmental body or officer and any other person
9 or body whose consent or approval is required by section 909 (Consent to
10 filing). Any person interested may appear and show cause why the appli-
11 cation should not be granted.

12 (c) If the court shall find that any of the assets of any of the
13 constituent corporations are held for a purpose specified as Type B in
14 paragraph (b) of section 201 or are legally required to be used for a
15 particular purpose, but not upon a condition requiring return, transfer
16 or conveyance by reason of the merger or consolidation, the court may,
17 in its discretion, direct that such assets be transferred or conveyed to
18 the surviving or consolidated corporation subject to such purpose or
19 use, or that such assets be transferred or conveyed to the surviving or
20 consolidated corporation or to one or more other domestic or foreign
21 corporations or organizations engaged in substantially similar activ-
22 ities, upon an express trust the terms of which shall be approved by the
23 court.

24 (d) If the court shall find that the interests of non-consenting
25 members are or may be substantially prejudiced by the proposed merger or
26 consolidation, the court may disapprove the plan or may direct a modifi-
27 cation thereof. In the event of a modification, if the court shall find
28 that the interests of any members may be substantially prejudiced by the
29 proposed merger or consolidation as modified, the court shall direct
30 that the modified plan be submitted to vote of the members of the
31 constituent corporations, or if the court shall find that there is not
32 such substantial prejudice, it shall approve the agreement as so modi-
33 fied without further approval by the members. If the court, upon direct-
34 ing a modification of the plan of merger or consolidation, shall direct
35 that a further approval be obtained from members of the constituent
36 corporations or any of them, such further approval shall be obtained in
37 the manner specified in section 903 (Approval of plan) or section 906(b)
38 (Merger or consolidation of domestic and foreign corporations) of this
39 chapter.

40 (e) If it shall appear, to the satisfaction of the court, that the
41 provisions of this section have been complied with, and that the inter-
42 ests of the constituent corporations and the public interest will not be
43 adversely affected by the merger or consolidation, it shall approve the
44 merger or consolidation upon such terms and conditions as it may
45 prescribe.]

46 S 55. The not-for-profit corporation law is amended by adding a new
47 section 907-a to read as follows:

48 S 907-A. APPLICATION FOR APPROVAL OF THE SUPREME COURT.

49 (A) APPLICATION FOR AN ORDER APPROVING THE PLAN OF MERGER AND AUTHOR-
50 IZING THE FILING OF THE CERTIFICATE MAY BE MADE IN THE JUDICIAL DISTRICT
51 IN WHICH THE PRINCIPAL OFFICE OF THE SURVIVING OR CONSOLIDATED CORPO-
52 RATION IS TO BE LOCATED, OR IN WHICH THE OFFICE OF ONE OF THE DOMESTIC
53 CONSTITUENT CORPORATIONS IS LOCATED. THE APPLICATION SHALL BE MADE BY
54 ALL THE CONSTITUENT CORPORATIONS JOINTLY AND SHALL SET FORTH BY AFFIDA-
55 VIT: (1) THE PLAN OF MERGER OR CONSOLIDATION, (2) THE APPROVAL REQUIRED
56 BY SECTION 903 (APPROVAL OF PLAN) OR PARAGRAPH (B) OF SECTION 906 (MERG-

1 ER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS) OF THIS ARTI-
2 CLE FOR EACH CONSTITUENT CORPORATION, (3) THE OBJECTS AND PURPOSES OF
3 EACH SUCH CORPORATION TO BE PROMOTED BY THE MERGER OR CONSOLIDATION, (4)
4 A STATEMENT OF ALL PROPERTY, AND THE MANNER IN WHICH IT IS HELD, AND OF
5 ALL LIABILITIES AND OF THE AMOUNT AND SOURCES OF THE ANNUAL INCOME OF
6 EACH SUCH CORPORATION, (5) WHETHER ANY VOTES AGAINST ADOPTION OF THE
7 RESOLUTION APPROVING THE PLAN OF MERGER OR CONSOLIDATION WERE CAST AT
8 THE MEETING AT WHICH THE RESOLUTION WAS ADOPTED BY EACH CONSTITUENT
9 CORPORATION, AND (6) FACTS SHOWING THAT THE CONSOLIDATION IS AUTHORIZED
10 BY THE LAWS OF THE JURISDICTIONS UNDER WHICH EACH OF THE CONSTITUENT
11 CORPORATIONS IS INCORPORATED.

12 (B) UPON THE FILING OF THE APPLICATION THE COURT SHALL FIX A TIME FOR
13 HEARING THEREOF AND SHALL DIRECT THAT NOTICE THEREOF BE GIVEN TO SUCH
14 PERSONS AS MAY BE INTERESTED, INCLUDING THE ATTORNEY GENERAL, ANY
15 GOVERNMENTAL BODY OR OFFICER AND ANY OTHER PERSON OR BODY WHOSE CONSENT
16 OR APPROVAL IS REQUIRED BY SECTION 909 (CONSENT TO FILING) OF THIS ARTI-
17 CLE, IN SUCH FORM AND MANNER AS THE COURT MAY PRESCRIBE. IF NO VOTES
18 AGAINST ADOPTION OF THE RESOLUTION APPROVING THE PLAN OF MERGER OR
19 CONSOLIDATION WERE CAST AT THE MEETING AT WHICH THE RESOLUTION WAS
20 ADOPTED BY ANY CONSTITUENT CORPORATION THE COURT MAY DISPENSE WITH
21 NOTICE TO ANYONE EXCEPT THE ATTORNEY-GENERAL, ANY GOVERNMENTAL BODY OR
22 OFFICER AND ANY OTHER PERSON OR BODY WHOSE CONSENT OR APPROVAL IS
23 REQUIRED BY SECTION 909 (CONSENT TO FILING) OF THIS ARTICLE. ANY PERSON
24 INTERESTED MAY APPEAR AND SHOW CAUSE WHY THE APPLICATION SHOULD NOT BE
25 GRANTED.

26 (C) IF THE COURT SHALL FIND THAT ANY OF THE ASSETS OF ANY OF THE
27 CONSTITUENT CORPORATIONS ARE HELD FOR A CHARITABLE PURPOSE OR ARE LEGAL-
28 LY REQUIRED TO BE USED FOR A PARTICULAR PURPOSE, BUT NOT UPON A CONDI-
29 TION REQUIRING RETURN, TRANSFER OR CONVEYANCE BY REASON OF THE MERGER OR
30 CONSOLIDATION, THE COURT MAY, IN ITS DISCRETION, DIRECT THAT SUCH ASSETS
31 BE TRANSFERRED OR CONVEYED TO THE SURVIVING OR CONSOLIDATED CORPORATION
32 SUBJECT TO SUCH PURPOSE OR USE, OR THAT SUCH ASSETS BE TRANSFERRED OR
33 CONVEYED TO THE SURVIVING OR CONSOLIDATED CORPORATION OR TO ONE OR MORE
34 OTHER DOMESTIC OR FOREIGN CORPORATIONS OR ORGANIZATIONS ENGAGED IN
35 SUBSTANTIALLY SIMILAR ACTIVITIES, UPON AN EXPRESS TRUST THE TERMS OF
36 WHICH SHALL BE APPROVED BY THE COURT.

37 (D) IF THE COURT SHALL FIND THAT THE INTERESTS OF NON-CONSENTING
38 MEMBERS ARE OR MAY BE SUBSTANTIALLY PREJUDICED BY THE PROPOSED MERGER OR
39 CONSOLIDATION, THE COURT MAY DISAPPROVE THE PLAN OR MAY DIRECT A MODIFI-
40 CATION THEREOF. IN THE EVENT OF A MODIFICATION, IF THE COURT SHALL FIND
41 THAT THE INTERESTS OF ANY MEMBERS MAY BE SUBSTANTIALLY PREJUDICED BY THE
42 PROPOSED MERGER OR CONSOLIDATION AS MODIFIED, THE COURT SHALL DIRECT
43 THAT THE MODIFIED PLAN BE SUBMITTED TO VOTE OF THE MEMBERS OF THE
44 CONSTITUENT CORPORATIONS, OR IF THE COURT SHALL FIND THAT THERE IS NOT
45 SUCH SUBSTANTIAL PREJUDICE, IT SHALL APPROVE THE AGREEMENT AS SO MODI-
46 FIED WITHOUT FURTHER APPROVAL BY THE MEMBERS. IF THE COURT, UPON DIRECT-
47 ING A MODIFICATION OF THE PLAN OF MERGER OR CONSOLIDATION, SHALL DIRECT
48 THAT A FURTHER APPROVAL BE OBTAINED FROM MEMBERS OF THE CONSTITUENT
49 CORPORATIONS OR ANY OF THEM, SUCH FURTHER APPROVAL SHALL BE OBTAINED IN
50 THE MANNER SPECIFIED IN SECTION 903 (APPROVAL OF PLAN) OR PARAGRAPH (B)
51 OF SECTION 906 (MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPO-
52 RATIONS) OF THIS ARTICLE.

53 (E) IF IT SHALL APPEAR, TO THE SATISFACTION OF THE COURT, THAT THE
54 PROVISIONS OF THIS SECTION HAVE BEEN COMPLIED WITH, AND THAT THE INTER-
55 ESTS OF THE CONSTITUENT CORPORATIONS AND THE PUBLIC INTEREST WILL NOT BE
56 ADVERSELY AFFECTED BY THE MERGER OR CONSOLIDATION, IT SHALL APPROVE THE

1 MERGER OR CONSOLIDATION UPON SUCH TERMS AND CONDITIONS AS IT MAY
2 PRESCRIBE.

3 (F) A CERTIFIED COPY OF SUCH ORDER SHALL BE ANNEXED TO THE CERTIFICATE
4 OF MERGER OR CONSOLIDATION.

5 S 56. The not-for-profit corporation law is amended by adding a new
6 section 907-b to read as follows:

7 S 907-B. APPLICATION FOR APPROVAL OF THE ATTORNEY GENERAL.

8 (A) IN LIEU OF OBTAINING AN ORDER APPROVING THE PLAN OF MERGER OR
9 CONSOLIDATION AND AUTHORIZING THE FILING OF THE CERTIFICATE, THE CORPO-
10 RATION MAY ALTERNATIVELY MAKE AN APPLICATION TO THE ATTORNEY GENERAL FOR
11 APPROVAL, EXCEPT WHERE THE ATTORNEY GENERAL, IN HIS OR HER DISCRETION,
12 CONCLUDES THAT A COURT SHOULD REVIEW THE APPLICATION AND MAKE A DETERMI-
13 NATION THEREON.

14 (B) THE APPLICATION TO THE ATTORNEY GENERAL SHALL BE MADE BY ALL THE
15 CONSTITUENT CORPORATIONS JOINTLY AND SHALL SET FORTH BY AFFIDAVIT: (I)
16 ALL OF THE INFORMATION REQUIRED TO BE INCLUDED IN AN APPLICATION TO
17 OBTAIN COURT APPROVAL PURSUANT TO SECTION 907-A (APPLICATION FOR
18 APPROVAL OF THE SUPREME COURT) OF THIS ARTICLE, (II) ALL CONSENTS AND
19 APPROVALS REQUIRED BY SECTION 909 (CONSENT TO FILING), AND (III) A
20 STATEMENT AS TO WHETHER ANY PERSONS HAVE RAISED, OR HAVE A REASONABLE
21 BASIS TO RAISE, OBJECTIONS TO THE MERGER OR CONSOLIDATION THAT IS THE
22 SUBJECT OF THE APPLICATION, INCLUDING A STATEMENT SETTING FORTH THE
23 NAMES AND ADDRESSES OF SUCH PERSONS, THE NATURE OF THEIR INTEREST, AND A
24 DESCRIPTION OF THEIR OBJECTIONS.

25 (C) UPON THE FILING OF THE APPLICATION, THE ATTORNEY GENERAL, IN HIS
26 OR HER DISCRETION, MAY DIRECT THAT THE CONSTITUENT CORPORATIONS PROVIDE
27 NOTICE TO SUCH PERSONS AS MAY BE INTERESTED, INCLUDING ANY GOVERNMENTAL
28 BODY OR OFFICER AND ANY OTHER PERSON OR BODY THAT IS REQUIRED EITHER TO
29 GIVE CONSENT OR BE NOTIFIED UNDER SECTION 404 (APPROVALS, NOTICES AND
30 CONSENTS) OF THIS ARTICLE OR 909 (CONSENT TO FILING) OF THIS ARTICLE.
31 THE CONSTITUENT CORPORATIONS SHALL PROVIDE THE ATTORNEY GENERAL WITH A
32 CERTIFICATION THAT SUCH NOTICE HAS BEEN PROVIDED.

33 (D) IF ANY ASSETS OF ANY OF THE CONSTITUENT CORPORATIONS ARE HELD FOR
34 A CHARITABLE PURPOSE OR ARE ASSETS RECEIVED FOR A SPECIFIC PURPOSE AND
35 LEGALLY REQUIRED TO BE USED FOR A PARTICULAR PURPOSE, BUT NOT UPON A
36 CONDITION REQUIRING RETURN, TRANSFER OR CONVEYANCE BY REASON OF THE
37 MERGER OR CONSOLIDATION, THE ATTORNEY GENERAL MAY, IN HIS OR HER
38 DISCRETION, DIRECT THAT SUCH ASSETS BE TRANSFERRED OR CONVEYED TO THE
39 SURVIVING OR CONSOLIDATED CORPORATION SUBJECT TO SUCH PURPOSE OR USE.

40 (E) IF THE ATTORNEY GENERAL SHALL FIND THAT THE INTERESTS OF NON-CON-
41 SENTING MEMBERS ARE OR MAY BE SUBSTANTIALLY PREJUDICED BY THE PROPOSED
42 MERGER OR CONSOLIDATION, THE ATTORNEY GENERAL MAY DISAPPROVE OF THE
43 APPLICATION OR MAY CONDITION APPROVAL OF THE APPLICATION UPON MODIFICA-
44 TION OF THE PLAN OF MERGER OR CONSOLIDATION IN ACCORDANCE WITH THIS
45 CHAPTER AND ANY OTHER LAW OR RULE.

46 (F) IF IT SHALL APPEAR, TO THE SATISFACTION OF THE ATTORNEY GENERAL,
47 THAT THE PROVISIONS OF THIS SECTION HAVE BEEN COMPLIED WITH, AND THAT
48 THE INTERESTS OF THE CONSTITUENT CORPORATIONS AND THE PUBLIC INTEREST
49 WILL NOT BE ADVERSELY AFFECTED BY THE MERGER OR CONSOLIDATION, THE
50 ATTORNEY GENERAL SHALL APPROVE THE MERGER OR CONSOLIDATION UPON SUCH
51 TERMS AND CONDITIONS AS IT MAY PRESCRIBE.

52 (G) THE APPROVAL OF THE ATTORNEY GENERAL SHALL BE ANNEXED TO THE
53 CERTIFICATE OF MERGER OR CONSOLIDATION.

54 (H) IF THE ATTORNEY GENERAL DOES NOT APPROVE THE APPLICATION, OR IF
55 THE ATTORNEY GENERAL CONCLUDES THAT COURT REVIEW IS APPROPRIATE, THE
56 CONSTITUENT CORPORATIONS MAY SEEK COURT APPROVAL ON NOTICE TO THE ATTOR-

1 NEY GENERAL PURSUANT TO SECTION 907-A (APPLICATION FOR APPROVAL OF THE
2 SUPREME COURT) OF THIS ARTICLE.

3 S 57. Paragraphs (a) and (f) of section 908 of the not-for-profit
4 corporation law are amended to read as follows:

5 (a) One or more domestic or foreign corporations which is, or would be
6 if formed under this chapter, a NON-CHARITABLE CORPORATION, OR ANY
7 CORPORATION FORMED AS A type A or [type] C corporation [under section
8 201 (Purposes)] PRIOR TO JANUARY FIRST, TWO THOUSAND THIRTEEN, may be
9 merged or consolidated into a domestic or foreign corporation which is,
10 or would be if formed under the laws of this state, a corporation formed
11 under the business corporation law of this state if such merger or
12 consolidation is not contrary to the law of the state of incorporation
13 of any constituent corporation. With respect to such merger or consol-
14 idation, any reference in paragraph (b) of section 901 (POWER OF MERGER
15 OR CONSOLIDATION) of this article or paragraph (b) of section 901 (POWER
16 OF MERGER OR CONSOLIDATION) of the business corporation law to a corpo-
17 ration shall, unless the context otherwise requires, include both domes-
18 tic and foreign corporations.

19 (f) Where any constituent corporation is, or would be if formed under
20 this chapter, a [Type C] CHARITABLE corporation [under section 201
21 (Purposes)], no certificate shall be filed pursuant to this section
22 until an order approving the plan of merger or consolidation and author-
23 izing the filing of the certificate has been made by the supreme court,
24 as provided in section 907 (Approval by the supreme court) OF THIS ARTI-
25 CLE.

26 S 58. Section 909 of the not-for-profit corporation law, as amended by
27 section 6 of part D of chapter 58 of the laws of 2006, is amended to
28 read as follows:

29 S 909. Consent to filing; NOTICES.

30 (A) If the purposes of any constituent or consolidated corporation
31 would require the approval or consent of any governmental body or offi-
32 cer or any other person or body under section 404 (Approvals, NOTICES
33 and consents) OF THIS CHAPTER no certificate of merger or consolidation
34 shall be filed pursuant to this article unless such approval or consent
35 is endorsed thereon or annexed thereto. A corporation whose statement of
36 purposes specifically includes the establishment or operation of a child
37 day care center, as that term is defined in section three hundred ninety
38 of the social services law, shall provide a certified copy of any
39 certificate of merger or consolidation involving such corporation to the
40 office of children and family services within thirty days after the
41 filing of such merger or consolidation with the department of state.

42 (B) IF THE PURPOSES OF ANY CONSTITUENT OR CONSOLIDATED CORPORATION
43 WOULD REQUIRE THE CERTIFICATE OF INCORPORATION OR ANY OTHER NOTICE TO BE
44 DELIVERED TO ANY PERSON OR ENTITY UNDER SECTION 404 (APPROVALS, NOTICES
45 AND CONSENTS) OF THIS CHAPTER, THE CORPORATION SHALL PROVIDE TO SUCH
46 PERSON OR ENTITY A CERTIFIED COPY OF THE CERTIFICATE OF INCORPORATION
47 WITHIN TEN BUSINESS DAYS AFTER THE CORPORATION RECEIVES CONFIRMATION
48 FROM THE DEPARTMENT OF STATE THAT THE CERTIFICATE HAS BEEN ACCEPTED FOR
49 FILING.

50 S 59. Paragraphs (b) and (d) of section 1001 of the not-for-profit
51 corporation law, as amended by chapter 434 of the laws of 2006, are
52 amended to read as follows:

53 (b) If the corporation is a [Type B, C or D] CHARITABLE corporation
54 and has no assets to distribute and no liabilities at the time of
55 dissolution, the plan of dissolution shall include a statement to that
56 effect.

1 (d) If the corporation has assets to distribute or liabilities, the
2 plan of dissolution shall contain:

3 (1) a description with reasonable certainty of the assets of the
4 corporation and their fair value, and the total amount of debts and
5 other liabilities incurred or estimated by the corporation, including
6 the total amount of any accounting and legal fees incurred or estimated,
7 in connection with the dissolution procedure.

8 (2) a statement as to whether any gifts or other assets are legally
9 required to be used for a particular purpose.

10 (3) if there are assets received and held by the corporation either
11 for a CHARITABLE purpose [specified as Type B in paragraph (b) of
12 section 201 (Purposes)] or which are legally required to be used for a
13 particular purpose, a statement that the assets owned by the corpo-
14 ration, subject to any unpaid liabilities of the corporation, shall be
15 distributed as required by any gift instrument or to a charitable organ-
16 ization or organizations exempt from taxation pursuant to federal and
17 state laws and engaged in activities substantially similar to those of
18 the dissolved corporation. Each such recipient organization shall be
19 identified and the governing instrument and amendments thereto of each
20 of the proposed recipient organizations shall be annexed to such state-
21 ment, along with the MOST RECENT financial [reports] REPORT of each
22 recipient organization for the last three years and a sworn affidavit
23 from a director and officer of each recipient organization stating the
24 purposes of the organization, and that it is currently exempt from
25 federal income taxation.

26 (4) if any of the assets of the corporation are to be distributed to a
27 recipient for a particular legally required purpose, an agreement by the
28 recipient to apply the assets received only for such purpose shall be
29 included.

30 S 60. Paragraph (c) of section 1001 of the not-for-profit corporation
31 law is REPEALED.

32 S 61. Paragraphs (a) and (d) of section 1002 of the not-for-profit
33 corporation law, as amended by chapter 434 of the laws of 2006, are
34 amended to read as follows:

35 (a) Upon adopting a plan of dissolution and distribution of assets,
36 the board shall submit it to a vote of the members, if any, and such
37 plan shall be approved at a meeting of members by two-thirds vote as
38 provided in paragraph (c) of section 613 (Vote of members) OF THIS CHAP-
39 TER; provided, however, that if the corporation is a [Type B, C or D]
40 CHARITABLE corporation, other than a corporation incorporated pursuant
41 to article 15 (Public cemetery corporations) OF THIS CHAPTER, [and has
42 no assets to distribute, other than a reserve not to exceed twenty-five
43 thousand dollars for the purpose of paying ordinary and necessary
44 expenses of winding up its affairs including attorney and accountant
45 fees, and liabilities not in excess of ten thousand dollars at the time
46 of adoption of the plan of dissolution,] the vote required by the corpo-
47 ration's board of directors for adoption of the plan of dissolution of
48 such a corporation or by the corporation's members for the authorization
49 thereof shall be:

50 (1) In the case of a vote by the board of directors: (i) the number of
51 directors required under the certificate of incorporation, by-laws, this
52 chapter and any other applicable law; or

53 (ii) if the number of directors actually holding office as such at the
54 time of the vote to adopt the plan is less than the number required to
55 constitute a quorum of directors under the certificate of incorporation,

1 the by-laws, this chapter or any other applicable law, the remaining
2 directors unanimously;

3 (2) In the case of a vote by the members, (i) the number of members
4 required under the certificate of incorporation, by-laws, this chapter
5 and any other applicable law; or (ii) by the vote of members authorized
6 by an order of the supreme court pursuant to section 608 (QUORUM AT
7 MEETING OF MEMBERS) of this chapter permitting the corporation to
8 dispense with the applicable quorum requirement.

9 Notice of a special or regular meeting of the board of directors or of
10 the members entitled to vote on adoption and authorization or approval
11 of the plan of dissolution shall be sent to all the directors and
12 members of record entitled to vote. Unless otherwise directed by order
13 of the supreme court pursuant to section 608 (QUORUM AT MEETING OF
14 MEMBERS) of this chapter, the notice shall be sent by certified mail,
15 return receipt requested, to the last known address of record of each
16 director and member not fewer than thirty, and not more than sixty days
17 before the date of each meeting provided, however, that if the last
18 known address of record of any director or member is not within the
19 United States, the notice to such director shall be sent by any other
20 reasonable means.

21 (d) (1) The plan of dissolution and distribution of assets shall have
22 annexed thereto the approval of [a justice of the supreme court in the
23 judicial district in which the office of the corporation is located] THE
24 ATTORNEY GENERAL in the case of a [Type B, C or D] CHARITABLE corpo-
25 ration, and in the case of any [other] NON-CHARITABLE corporation which
26 [holds assets] at the time of dissolution HOLDS ASSETS legally required
27 to be used for a particular purpose[, except that no such approval shall
28 be required with respect to the plan of dissolution of a corporation,
29 other than a corporation incorporated pursuant to article 15 (Public
30 cemetery corporations), which has no assets to distribute at the time of
31 dissolution, other than a reserve not to exceed twenty-five thousand
32 dollars for the purpose of paying ordinary and necessary expenses of
33 winding up its affairs including attorney and accountant fees, and
34 liabilities not in excess of ten thousand dollars, and which has
35 complied with the requirements of section 1001 (Plan of dissolution and
36 distribution of assets) and this section applicable to such a corpo-
37 ration].

38 (2) Application to the [supreme court for an order] ATTORNEY GENERAL
39 for such approval shall be by verified petition, with the plan of
40 dissolution and distribution of assets and certified copies of the
41 consents prescribed by this section annexed thereto[, and upon ten days
42 written notice to the attorney general accompanied by copies of such
43 petition, plan and consents. In such case where approval of a justice of
44 the supreme court is not required for a Type B, C or D corporation, a
45 copy of such plan certified under penalties of perjury shall be filed
46 with the attorney general within ten days after its authorization].

47 (3) THE ATTORNEY GENERAL MAY APPROVE THE PETITION IF THE CORPORATION
48 HAS ADOPTED A PLAN IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 1001
49 (PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS) OF THIS ARTICLE, AND
50 ANY OTHER REQUIREMENTS IMPOSED BY LAW OR RULE. IF THE ATTORNEY GENERAL
51 DOES NOT APPROVE THE PETITION, OR THE ATTORNEY GENERAL CONCLUDES, IN HIS
52 OR HER DISCRETION, THAT COURT REVIEW OF THE PETITION IS APPROPRIATE, THE
53 CORPORATION MAY APPLY FOR APPROVAL TO THE SUPREME COURT IN THE JUDICIAL
54 DISTRICT IN WHICH THE PRINCIPAL OFFICE OF THE SURVIVING OR CONSOLIDATED
55 CORPORATION IS TO BE LOCATED, OR IN WHICH THE OFFICE OF ONE OF THE
56 DOMESTIC CONSTITUENT CORPORATIONS IS LOCATED, FOR AN ORDER DISSOLVING

1 THE CORPORATION. APPLICATION TO THE SUPREME COURT FOR AN ORDER FOR SUCH
2 APPROVAL SHALL BE BY VERIFIED PETITION UPON TEN DAYS WRITTEN NOTICE TO
3 THE ATTORNEY GENERAL, AND SHALL INCLUDE ALL INFORMATION REQUIRED TO BE
4 INCLUDED IN THE APPLICATION TO THE ATTORNEY GENERAL PURSUANT TO THIS
5 SECTION.

6 S 62. Paragraphs (a) and (c) of section 1002-a of the not-for-profit
7 corporation law, as amended by chapter 434 of the laws of 2006, are
8 amended to read as follows:

9 (a) Carry out the plan of dissolution and distribution of assets, pay
10 its liabilities and distribute its assets in accordance therewith within
11 two hundred seventy days from the date the plan of dissolution and
12 distribution of assets shall have been (1) authorized as provided in
13 section 1002 (AUTHORIZATION OF PLAN) of this article, (2) approved by
14 any governmental body or officer whose approval is required pursuant to
15 paragraph (c) of section 1002 (AUTHORIZATION OF PLAN) of this article,
16 and (3) approved by EITHER THE ATTORNEY GENERAL OR a justice of the
17 supreme court[, if such approval is required] pursuant to paragraph (d)
18 of section 1002 (AUTHORIZATION OF PLAN) of this article[, or filed with
19 the attorney general, if such filing is required pursuant to paragraph
20 (d) of section 1002 of this article]. Evidence of the disposition of its
21 assets and payment of its liabilities pursuant to the plan of dissol-
22 ution and distribution of assets shall be submitted by the corporation
23 to the attorney general and any other governmental body or officer, as
24 required under applicable laws. If the plan of dissolution and distrib-
25 ution of assets cannot be carried out within the prescribed time, the
26 attorney general may upon good cause shown extend such time, or any
27 extended period of time, by not fewer than thirty days nor more than one
28 year;

29 (c) Distribute the assets of the corporation that remain after paying
30 or adequately providing for the payment of its liabilities, in the
31 following manner:

32 (1) assets received and held by the corporation either for a CHARITA-
33 BLE purpose [specified as Type B in paragraph (b) of section 201
34 (Purposes)] or which are legally required to be used for a particular
35 purpose, shall be distributed to one or more domestic or foreign corpo-
36 rations or other organizations engaged in activities substantially simi-
37 lar to those of the dissolved corporation pursuant to the plan of
38 dissolution and distribution or, if applicable, as APPROVED BY THE
39 ATTORNEY GENERAL OR ordered by the SUPREME court PURSUANT to [which such
40 plan is submitted for approval under] section 1002 (Authorization of
41 plan) OF THIS ARTICLE. Any disposition of assets contained in a will or
42 other instrument, in trust or otherwise, made before or after the
43 dissolution, to or for the benefit of any corporation so dissolved shall
44 inure to or for the benefit of the corporation or organization acquiring
45 such assets of the dissolved corporation as provided in this section,
46 and so far as is necessary for that purpose the corporation or organiza-
47 tion acquiring such disposition shall be deemed a successor to the
48 dissolved corporation with respect to such assets; provided, however,
49 that such disposition shall be devoted by the acquiring corporation or
50 organization to the purposes intended by the testator, donor or grantor.

51 (2) assets other than those described by subparagraph one of this
52 paragraph, if any, shall be distributed in accordance with the specifi-
53 cations of the plan of dissolution and distribution of assets or, to the
54 extent that the certificate of incorporation prescribes the distributive
55 rights of members, or of any class or classes of members, as provided in
56 such certificate;

1 S 63. Paragraphs (a) and (b) of section 1003 of the not-for-profit
2 corporation law, as amended by chapter 434 of the laws of 2006, are
3 amended to read as follows:

4 (a) After the plan of dissolution and distribution of assets has been
5 adopted, authorized, approved and carried out pursuant to the terms of
6 the plan within the time period set forth pursuant to section 1002-a
7 (Carrying out the plan of dissolution and distribution of assets), a
8 certificate of dissolution, entitled "Certificate of dissolution
9 of (name of corporation) under section 1003 of the Not-for-Pro-
10 fit Corporation Law" shall be signed and, if required pursuant to
11 subparagraph two of paragraph (b) of this section, after the attorney
12 general has affixed thereon his or her consent to the dissolution, such
13 certificate of dissolution shall be delivered to the department of
14 state. It shall set forth:

15 (1) The name of the corporation and, if its name has been changed, the
16 name under which it was formed.

17 (2) The date its certificate of incorporation was filed by the depart-
18 ment of state.

19 (3) The name and address of each of its officers and directors.

20 (4) [The type of corporation it is at the time of dissolution] A
21 STATEMENT AS TO WHETHER THE CORPORATION IS A CHARITABLE CORPORATION OR A
22 NON-CHARITABLE CORPORATION.

23 (5) A statement as to whether or not the corporation holds assets at
24 the time of authorization of its plan of dissolution and distribution of
25 assets as provided in section 1002 of this article (Authorization of
26 plan) which are legally required to be used for a particular purpose.

27 (6) That the corporation elects to dissolve.

28 (7) The manner in which the dissolution was authorized. If the dissol-
29 ution of the corporation is authorized by a vote of the directors and/or
30 members of the corporation that is less than that ordinarily required by
31 the certificate of incorporation, the by-laws, this chapter or any other
32 applicable law, as permitted by paragraph (a) of section 1002 (Authori-
33 zation of plan) OF THIS ARTICLE, then the certificate of dissolution
34 shall so state.

35 (8) A statement that prior to delivery of such certificate of dissol-
36 ution to the department of state for filing, the plan of dissolution and
37 distribution of assets has been approved by THE ATTORNEY GENERAL OR BY a
38 justice of the supreme court, if such approval is required PURSUANT TO
39 SECTION 1002 (AUTHORIZATION OF PLAN) OF THIS ARTICLE. A copy of the
40 order shall be attached to the certificate of dissolution. In the case
41 of a corporation, other than a corporation incorporated pursuant to
42 article 15 (Public cemetery corporations), having no assets to distrib-
43 ute, other than a reserve not to exceed twenty-five thousand dollars for
44 the purpose of paying ordinary and necessary expenses of winding up its
45 affairs including attorney and accountant fees, and liabilities not in
46 excess of ten thousand dollars at the time of dissolution, a statement
47 that a copy of the plan of dissolution which contains the statement
48 prescribed by paragraph (b) of section 1001 (Plan of dissolution and
49 distribution of assets) has been duly filed with the attorney general,
50 if required.

51 (b) Such certificate of dissolution shall have [indorsed] ENDORSED
52 thereon or annexed thereto the approval of the dissolution:

53 (1) By a governmental body or officer, if such approval is required. A
54 corporation whose statement of purposes specifically includes the estab-
55 lishment or operation of a child day care center, as that term is
56 defined in section three hundred ninety of the social services law,

1 shall provide a certified copy of any certificate of dissolution involv-
2 ing such corporation to the office of children and family services with-
3 in thirty days after the filing of such dissolution with the department
4 of state.

5 (2) By the attorney general in the case of a [Type B, C or D] CHARITA-
6 BLE corporation, or any other corporation that holds assets at the time
7 of dissolution legally required to be used for a particular purpose.

8 S 64. Paragraph (a) of section 1007 of the not-for-profit corporation
9 law, as amended by chapter 434 of the laws of 2006, is amended to read
10 as follows:

11 (a) At any time after the plan of dissolution and distribution of
12 assets shall have been (1) authorized as provided in section 1002 of
13 this article (Authorization of plan), (2) approved by any governmental
14 body or officer whose approval is required pursuant to paragraph (c) of
15 section 1002 of this article, and (3) approved by EITHER BY THE ATTORNEY
16 GENERAL OR a justice of the supreme court[, if such approval is required
17 pursuant to paragraph (d) of section 1002 of this article, or filed with
18 the attorney general, if such filing is required] pursuant to paragraph
19 (d) of section 1002 of this article, and prior to filing the certificate
20 of dissolution, the corporation may give a notice requiring all credi-
21 tors and claimants, including any with unliquidated or contingent claims
22 and any with whom the corporation has unfulfilled contracts, to present
23 their claims in writing and in detail at a specified place and by a
24 specified day, which shall not be less than six months after the first
25 publication of such notice. Such notice shall be published at least once
26 a week for two successive weeks in a newspaper of general circulation in
27 the county in which the office of the corporation was located at the
28 date of authorization of its plan of dissolution and distribution of
29 assets as provided in section 1002 of this article (Authorization of
30 plan), OR, UPON CONSENT OF THE ATTORNEY GENERAL, POSTED PROMINENTLY AND
31 CONTINUOUSLY FOR TWO SUCCESSIVE WEEKS ON THE HOMEPAGE OF ANY WEBSITE
32 MAINTAINED BY THE CORPORATION. On or before the date of the first
33 publication OR POSTING ON A WEBSITE of such notice, the corporation
34 shall mail a copy thereof, postage prepaid, to each person believed to
35 be a creditor of or claimant against the corporation whose current name
36 and address are known to or can with due diligence be ascertained by the
37 corporation. The giving of such notice shall not constitute a recogni-
38 tion that any person is a proper creditor or claimant, and shall not
39 revive or make valid, or operate as a recognition of the validity of, or
40 a waiver of any defense or counterclaim in respect of any claim against
41 the corporation, its assets, directors, officers or members, which has
42 been barred by any statute of limitations or become invalid by any
43 cause, or in respect of which the corporation, its directors, officers
44 or members, has any defense or counterclaim.

45 S 65. Subparagraph 15 of paragraph (a) of section 1008 of the not-for-
46 profit corporation law, as amended by chapter 434 of the laws of 2006,
47 is amended to read as follows:

48 (15) Where assets were received and held by the corporation either for
49 a CHARITABLE purpose [specified as Type B in paragraph (b) of section
50 201 (Purposes),] or [were] legally required to be used for a particular
51 purpose, the distribution of such assets to one or more domestic or
52 foreign corporations or other organizations engaged in activities
53 substantially similar to those of the dissolved corporation, on notice
54 to the attorney general and to such other persons, and in such manner,
55 as the court may deem proper.

1 S 66. Subparagraph 6 of paragraph (a) of section 1012 of the not-for-
2 profit corporation law, as amended by chapter 726 of the laws of 2005,
3 is amended to read as follows:

4 (6) That[, under section 201 (Purposes),] it is a [Type
5 (Insert A, B, C or D) not-for-profit] CHARITABLE corporation OR A
6 NON-CHARITABLE CORPORATION, AS APPLICABLE.

7 S 67. Subparagraph 1 of paragraph (a) of section 1207 of the not-for-
8 profit corporation law, clause (C) as amended by chapter 847 of the laws
9 of 1970, is amended to read as follows:

10 (1) To give immediate notice of his appointment by publication once a
11 week for two successive weeks in two newspapers of general circulation
12 in the county where the office of the corporation is located or, in the
13 case of a foreign corporation against which an action has been brought
14 under subparagraph [(a)] (4) OF PARAGRAPH (A) of section 1202 (Appoint-
15 ment of receiver of property of a domestic or foreign corporation) OF
16 THIS ARTICLE EITHER, AS DIRECTED BY THE COURT, in a newspaper of general
17 circulation [as directed by the court,] OR POSTED PROMINENTLY AND
18 CONTINUOUSLY FOR TWO SUCCESSIVE WEEKS ON THE HOMEPAGE OF ANY WEBSITE
19 MAINTAINED BY THE CORPORATION OR requiring:

20 (A) All persons indebted to the corporation to render an account of
21 all debts owing by them to the corporation and to pay the same to the
22 receiver at a specified place and by a specified day.

23 (B) All persons having in their possession any property of the corpo-
24 ration to deliver the same to the receiver at the specified place and by
25 the specified day.

26 (C) All creditors and claimants, including any with unliquidated or
27 contingent claims and any with whom the corporation has unfulfilled
28 contracts, to present their claims to the receiver in writing and in
29 detail at a specified place and by a specified day, which shall not be
30 less than six months after the first publication of such notice. When-
31 ever a receiver is appointed in dissolution proceedings under article 10
32 (Non-judicial dissolution) or article 11 (Judicial dissolution), section
33 1007 (Notice to creditors BY CORPORATIONS INTENDING TO DISSOLVE; filing
34 or barring claims) OF THIS CHAPTER shall apply and shall control the
35 giving of notice to creditors and claimants and the filing and barring
36 of claims.

37 S 68. Paragraph (a) of section 1211 of the not-for-profit corporation
38 law is amended to read as follows:

39 (a) If there remains property of the corporation after the first
40 distribution, the receiver shall, within one year thereafter, make a
41 final distribution among the creditors entitled thereto. Notice that
42 such distribution will be the final distribution to creditors shall be
43 published once a week for two consecutive weeks in a newspaper of gener-
44 al circulation in the county where the office of the corporation is
45 located OR POSTED PROMINENTLY AND CONTINUOUSLY FOR TWO CONSECUTIVE WEEKS
46 ON THE HOMEPAGE OF ANY WEBSITE MAINTAINED BY THE CORPORATION.

47 S 69. Paragraph (b) of section 1215 of the not-for-profit corporation
48 law is amended to read as follows:

49 (b) The petition shall be accompanied by a verified account of all
50 the assets of the corporation received by him, of all payments or other
51 disposition thereof made by him, of the remaining assets of the corpo-
52 ration in respect to which he was appointed receiver and the situation
53 of the same, and of all his transactions as receiver. Thereupon, the
54 court shall grant an order directing notice to be given to the sureties
55 on his official bond and to all persons interested in the property of
56 the corporation to show cause, at a time and place specified, why the

1 receiver should not be permitted to resign. Such notice shall EITHER,
2 AS DIRECTED BY THE COURT, be published once in each week for six succes-
3 sive weeks in one or more newspapers [as the court shall direct] OR
4 POSTED PROMINENTLY AND CONTINUOUSLY FOR SIX SUCCESSIVE WEEKS ON THE
5 HOMEPAGE OF ANY WEBSITE MAINTAINED BY THE CORPORATION. If it shall
6 appear that the proceedings of the receiver in the discharge of his
7 trust have been fair and honest and that there is no good cause to the
8 contrary, the court shall make an order permitting such receiver to
9 resign. Thereupon he shall be discharged and his powers as receiver
10 shall cease, but he shall remain subject to any liability incurred prior
11 to the making of such order. The court, in its discretion, may require
12 the expense of such proceeding to be paid by the receiver presenting the
13 petition.

14 S 70. Subparagraph 3 of paragraph (a) of section 1218 of the not-for-
15 profit corporation law is amended to read as follows:

16 (3) The order directing service of the summons shall require the
17 publication thereof EITHER in a newspaper published in the state of New
18 York in the English language at least once a week for four successive
19 weeks, OR POSTED PROMINENTLY AND CONTINUOUSLY FOR FOUR SUCCESSIVE WEEKS
20 ON ANY APPROPRIATE WEBSITE, and shall also require the mailing on or
21 before the date of the first publication of a copy of the summons,
22 complaint and order to the corporation at its last known principal or
23 head office in the state or country of its incorporation.

24 S 71. Section 1302 of the not-for-profit corporation law, as amended
25 by chapter 847 of the laws of 1970, is amended to read as follows:

26 S 1302. Application to existing authorized foreign corporations.

27 Every foreign corporation which on the effective date of this chapter
28 is authorized to conduct activities in this state under a certificate of
29 authority heretofore issued to it by the secretary of state shall
30 continue to have such authority. Such foreign corporation, its members,
31 directors, and officers shall have the same rights, franchises, and
32 privileges and shall be subject to the same limitations, restrictions,
33 liabilities, and penalties as a foreign corporation authorized under
34 this chapter, its members, directors, and officers respectively. A
35 foreign corporation may by amendment to its certificate of authority set
36 forth [the type of] WHETHER IT IS A CHARITABLE corporation [it is under
37 section 201 (Purposes);] OR A NON-CHARITABLE CORPORATION and in the
38 absence of such amendment an authorized foreign corporation shall be a
39 [Type B] CHARITABLE corporation. Reference in this chapter to an appli-
40 cation for authority shall, unless the context otherwise requires,
41 include the statement and designation and any amendment thereof required
42 to be filed by the secretary of state under prior statutes to obtain a
43 certificate of authority.

44 S 72. Subparagraph 4 of paragraph (a) of section 1304 of the not-for-
45 profit corporation law, as amended by chapter 847 of the laws of 1970
46 and as renumbered by chapter 590 of the laws of 1982, is amended to read
47 as follows:

48 (4) That the corporation is a foreign corporation as defined in
49 subparagraph [(a)] (7) OF PARAGRAPH (A) of section 102 (Definitions)[;
50 the type of] OF THIS CHAPTER, WHETHER IT WOULD BE A CHARITABLE corpo-
51 ration [it shall be under section 201 (Purposes); a statement] OR
52 NON-CHARITABLE CORPORATION IF FORMED IN THIS STATE; A STATEMENT of its
53 purposes to be pursued in this state and of the activities which it
54 proposes to conduct in this state; AND a statement that it is authorized
55 to conduct those activities in the jurisdiction of its incorporation[;

1 and in the case of a Type C corporation, the lawful public or quasi-
2 public objective which each business purpose will achieve].

3 S 73. Paragraph (c) of section 1304 of the not-for-profit corporation
4 law is amended, and a new paragraph (d) is added to read as follows:

5 (c) If the application for authority sets forth any purpose or activ-
6 ity for which a domestic corporation could be formed only with the
7 consent or approval of any governmental body or officer, or other person
8 or body under section 404 (Approvals, NOTICES and consents) OF THIS
9 CHAPTER, such consent or approval shall be endorsed thereon or annexed
10 thereto.

11 (D) IF THE APPLICATION FOR AUTHORITY SETS FORTH ANY PURPOSE OR ACTIV-
12 ITY REQUIRING A DOMESTIC CORPORATION TO PROVIDE NOTICE OF THE FILING OF
13 A CERTIFICATE OF INCORPORATION TO ANY PERSON OR ENTITY UNDER SECTION 404
14 (APPROVALS, NOTICES AND CONSENTS), THEN THE CORPORATION SHALL PROVIDE A
15 CERTIFIED COPY OF THE CERTIFICATE OF AUTHORITY TO SUCH PERSON OR ENTITY
16 WITHIN TEN BUSINESS DAYS AFTER THE CORPORATION RECEIVES CONFIRMATION
17 FROM THE DEPARTMENT OF STATE THAT THE CERTIFICATE HAS BEEN ACCEPTED FOR
18 FILING.

19 S 74. Subparagraph 1 of paragraph (a) of section 1309 of the not-for-
20 profit corporation law, as amended by chapter 186 of the laws of 1983,
21 is amended to read as follows:

22 (1) The name of the foreign corporation as it appears on the index of
23 names of existing domestic and authorized foreign corporations of any
24 [type or] kind in the department of state and the fictitious name the
25 corporation has agreed to use in this state pursuant to paragraph (d) of
26 section 1301 of this [chapter] ARTICLE.

27 S 75. Subparagraph 1 of paragraph (b) of section 1310 of the not-for-
28 profit corporation law, as amended by chapter 186 of the laws of 1983,
29 is amended to read as follows:

30 (1) The name of the foreign corporation as it appears on the index of
31 names of existing domestic and authorized foreign corporations of any
32 [type or] kind in the department of state and the fictitious name the
33 corporation has agreed to use in this state pursuant to paragraph (d) of
34 section 1301 of this [chapter] ARTICLE.

35 S 76. Subparagraph 1 of paragraph (a) of section 1311 of the not-for-
36 profit corporation law, as amended by chapter 186 of the laws of 1983,
37 is amended to read as follows:

38 (1) The name of the foreign corporation as it appears on the index of
39 names of existing domestic and authorized foreign corporations of any
40 [type or] kind in the department of state and the fictitious name the
41 corporation has agreed to use in this state pursuant to paragraph (d) of
42 section 1301 of this [chapter] ARTICLE.

43 S 77. Paragraphs (a) and (b) of section 1315 of the not-for-profit
44 corporation law, subparagraph 5 of paragraph (b) as amended by chapter
45 847 of the laws of 1970, are amended to read as follows:

46 (a) An action or special proceeding against a foreign corporation may
47 be maintained by a resident of this state or by a domestic corporation
48 of any [type or] kind for any cause of action.

49 (b) Except as otherwise provided in this article, an action or
50 special proceeding against a foreign corporation may be maintained by
51 another foreign corporation of any [type or] kind or by a nonresident in
52 the following cases only:

53 (1) Where the action is brought to recover damages for the breach of
54 a contract made or to be performed within this state, or relating to
55 property situated within this state at the time of the making of the
56 contract.

1 (2) Where the subject matter of the litigation is situated within
2 this state.

3 (3) Where the cause of action arose within this state, except where
4 the object of the action or special proceeding is to affect the title of
5 real property situated outside this state.

6 (4) Where, in any case not included in the preceding subparagraphs, a
7 non-domiciliary would be subject to the personal jurisdiction of the
8 courts of this state under section [302] THREE HUNDRED TWO of the civil
9 practice law and rules.

10 (5) Where the defendant is a foreign corporation conducting activ-
11 ities or authorized to conduct activities in this state.

12 S 78. Paragraph (b) of section 1316 of the not-for-profit corporation
13 law is amended to read as follows:

14 (b) An examination authorized by paragraph (a) may be denied to such
15 member or other person upon his refusal to furnish to the foreign corpo-
16 ration or its transfer agent or registrar an affidavit that such
17 inspection is not desired for a purpose which is in the interests of a
18 business or object other than the activities of the foreign corporation
19 and that such member or other person has not within five years sold or
20 offered for sale any list or record of members of any corporation of any
21 [type or] kind, whether or not formed under the laws of this state, or
22 aided or abetted any person in procuring any such list or record of
23 members for any such purpose.

24 S 79. Paragraph (a) of section 1321 of the not-for-profit corporation
25 law, subparagraphs 1, 2 and 3 as amended by chapter 847 of the laws of
26 1970, is amended to read as follows:

27 (a) Notwithstanding any other provision of this chapter, a foreign
28 corporation conducting activities in this state which is authorized
29 under this article, its directors, officers and members, shall be exempt
30 from the provisions of paragraph (e) of section 1317 (Voting trust
31 records), subparagraph [(a)] (1) OF PARAGRAPH (A) of section 1318
32 (Liabilities of directors and officers of foreign corporations), and
33 subparagraph [(a)] (2) OF PARAGRAPH (A) of section 1320 (Applicability
34 of other provisions) OF THIS ARTICLE if when such provision would other-
35 wise apply:

36 (1) The corporation is a [Type A] NON-CHARITABLE corporation under
37 this chapter; its principal activities are conducted outside this state;
38 the greater part of its property is located outside this state; and less
39 than one third of its members are residents of this state; or

40 (2) The corporation is a [Type B] CHARITABLE corporation under this
41 chapter; its principal activities are conducted outside this state; the
42 greater part of its property is located outside this state; and less
43 than ten per cent of its annual revenues is derived from solicitation of
44 funds within this state[; or

45 (3) The corporation is a Type C corporation under this chapter; its
46 principal activities are conducted outside this state; the greater part
47 of its property is located outside this state; and less than one half of
48 its revenues for the preceding three fiscal years, or such portion ther-
49 eof as the foreign corporation was in existence, was derived from sourc-
50 es within this state].

51 S 80. Paragraph (d) of section 1401 of the not-for-profit corporation
52 law, as added by chapter 871 of the laws of 1977, is amended to read as
53 follows:

54 (d) Type of corporation. A family or private cemetery corporation is a
55 [type B] CHARITABLE corporation under this chapter.

1 S 81. Paragraph (b) of section 1402 of the not-for-profit corporation
2 law is amended to read as follows:

3 (b) Type of corporation.

4 A fire corporation is a [Type B] CHARITABLE corporation under this
5 chapter.

6 S 82. Paragraph (c) of section 1403 of the not-for-profit corporation
7 law is amended to read as follows:

8 (c) Type of corporation.

9 A corporation for the prevention of cruelty is a [Type B] CHARITABLE
10 corporation under this chapter.

11 S 83. Paragraph (b) of section 1404 of the not-for-profit corporation
12 law, as amended by chapter 1058 of the laws of 1971, is amended to read
13 as follows:

14 (b) Type of corporation.

15 A christian association is a [Type B] CHARITABLE corporation under
16 this chapter.

17 S 84. Paragraph (b) of section 1405 of the not-for-profit corporation
18 law is amended to read as follows:

19 (b) Type of corporation.

20 A soldiers' monument corporation is a [Type B] CHARITABLE corporation.

21 S 85. Paragraph (b) of section 1406 of the not-for-profit corporation
22 law is amended to read as follows:

23 (b) Type of corporation.

24 A medical society is a [Type A] NON-CHARITABLE corporation under this
25 chapter.

26 S 86. Paragraph (b) of section 1407 of the not-for-profit corporation
27 law is amended to read as follows:

28 (b) Type of corporation.

29 An alumni corporation is a [Type A] NON-CHARITABLE corporation.

30 S 87. Paragraph (b) of section 1408 of the not-for-profit corporation
31 law is amended to read as follows:

32 (b) Type of corporation.

33 An historical society is a [Type B] CHARITABLE corporation under this
34 chapter.

35 S 88. Paragraph (b) of section 1409 of the not-for-profit corporation
36 law, as amended by chapter 1058 of the laws of 1971, is amended to read
37 as follows:

38 (b) Type of corporation. An agricultural or horticultural corporation
39 is a [Type A] NON-CHARITABLE corporation under this chapter, except that
40 any such corporation which has received moneys from the state or has
41 acted as agent for the state under paragraph (c) OF THIS SECTION, or has
42 acquired or does acquire real property by condemnation is or becomes a
43 [Type B] CHARITABLE corporation under this chapter. [If such corporation
44 has not already filed as a Type B corporation it shall, upon such
45 receipt of moneys or acting as such agent or such acquisition of real
46 property by condemnation, amend its certificate to that effect.]

47 S 89. Paragraph (b) of section 1410 of the not-for-profit corporation
48 law is amended to read as follows:

49 (b) Type of corporation.

50 A board of trade or a chamber of commerce is a [Type A] NON-CHARITABLE
51 corporation under this chapter.

52 S 90. Paragraph (b) of section 1411 of the not-for-profit corporation
53 law is amended to read as follows:

54 (b) Type of corporation.

55 A local development corporation is a [Type C] CHARITABLE corporation
56 under this chapter.

1 S 91. Paragraph (d) of section 1412 of the not-for-profit corporation
2 law, as added by chapter 555 of the laws of 1993, is amended to read as
3 follows:

4 (d) Type. A university faculty practice corporation is a [Type B]
5 CHARITABLE corporation under this chapter.

6 S 92. Paragraph (c) of section 1505 of the not-for-profit corporation
7 law, as added by chapter 871 of the laws of 1977, is amended to read as
8 follows:

9 (c) Type of corporation. A cemetery corporation is a [Type B] CHARI-
10 TABLE corporation under this chapter.

11 S 93. Paragraph (b) of section 1602 of the not-for-profit corporation
12 law, as added by chapter 257 of the laws of 2011, is amended to read as
13 follows:

14 (b) "land bank" shall mean a land bank established as a [type C] CHAR-
15 ITABLE not-for-profit corporation under this chapter and in accordance
16 with the provisions of this article and pursuant to this article;

17 S 94. Paragraph (f) of section 1603 of the not-for-profit corporation
18 law, as added by chapter 257 of the laws of 2011, is amended to read as
19 follows:

20 (f) Each land bank created pursuant to this act shall be a [type C
21 not-for-profit] CHARITABLE corporation, and shall have permanent and
22 perpetual duration until terminated and dissolved in accordance with the
23 provisions of section sixteen hundred thirteen of this article.

24 S 95. The opening paragraph of paragraph (a) of section 1607 of the
25 not-for-profit corporation law, as added by chapter 257 of the laws of
26 2011, is amended to read as follows:

27 A land bank shall constitute a [type C] CHARITABLE not-for-profit
28 corporation under New York law, which powers shall include all powers
29 necessary to carry out and effectuate the purposes and provisions of
30 this article, including the following powers in addition to those herein
31 otherwise granted:

32 S 96. Paragraph (e) of section 1611 of the not-for-profit corporation
33 law, as added by chapter 257 of the laws of 2011, is amended to read as
34 follows:

35 (e) Bonds issued by the land bank shall be issued, sold, and delivered
36 in accordance with the terms and provisions of a resolution adopted by
37 the board. The board may sell such bonds in such manner, either at
38 public or at private sale, and for such price as it may determine to be
39 in the best interests of the land bank. The resolution issuing bonds
40 shall be published in a newspaper of general circulation within the
41 jurisdiction of the land bank AND POSTED PROMINENTLY AND CONTINUOUSLY ON
42 THE HOMEPAGE OF ANY WEBSITE MAINTAINED BY THE LAND BANK.

43 S 97. Section 1613 of the not-for-profit corporation law, as added by
44 chapter 257 of the laws of 2011, is amended to read as follows:
45 S 1613. Dissolution of land bank.

46 A land bank may be dissolved as a [type C] CHARITABLE not-for-profit
47 corporation sixty calendar days after an affirmative resolution approved
48 by two-thirds of the membership of the board of directors. Sixty calen-
49 dar days advance written notice of consideration of a resolution of
50 dissolution shall be given to the foreclosing governmental unit or units
51 that created the land bank, shall be published in a local newspaper of
52 general circulation, and POSTED PROMINENTLY AND CONTINUOUSLY ON THE
53 HOMEPAGE OF ANY WEBSITE MAINTAINED BY THE LAND BANK, AND shall be sent
54 certified mail to the trustee of any outstanding bonds of the land bank.
55 Upon dissolution of the land bank all real property, personal property
56 and other assets of the land bank shall become the assets of the fore-

1 closing governmental unit or units that created the land bank. In the
2 event that two or more foreclosing governmental units create a land bank
3 in accordance with section sixteen hundred three of this article, the
4 withdrawal of one or more foreclosing governmental units shall not
5 result in the dissolution of the land bank unless the intergovernmental
6 agreement so provides, and there is no foreclosing governmental unit
7 that desires to continue the existence of the land bank.

8 S 98. Paragraph (h) of section 8-1.4 of the estates, powers and
9 trusts law, as amended by chapter 43 of the laws of 2002, is amended to
10 read as follows:

11 (h) The attorney general shall make rules and regulations necessary
12 for the administration of this section, including rules and regulations
13 as to the time for filing reports, the contents thereof, and [the] ANY
14 manner of executing and filing them, INCLUDING BUT NOT LIMITED TO ALLOW-
15 ING OR REQUIRING ANY SUBMISSION TO THE ATTORNEY GENERAL TO BE EFFECTED
16 BY ELECTRONIC MEANS AND ELECTRONIC SIGNATURES. He or she may classify
17 trusts, estates, corporations and other trustees as to purpose, nature
18 of assets, duration, amount of assets, amounts to be devoted to charita-
19 ble purposes, or otherwise, and may establish different rules for
20 different classes as to time and nature of the reports required, to the
21 ends that he or she shall receive current financial reports as to all
22 such trusts, estates, corporations or other trustees which will enable
23 him or her to ascertain whether they are being properly administered.
24 The attorney general may suspend the filing of financial reports as to a
25 particular trustee for a reasonable, specifically designated time upon
26 written application of the trustee, signed under penalties for perjury,
27 and filed with the attorney general and after the attorney general has
28 filed in the register of trustees a written statement that the interests
29 of the beneficiaries will not be prejudiced thereby and that periodic
30 reports during the term of such suspension are not required for proper
31 supervision by his or her office. The filing of the financial reports
32 required by this section, or the exemption from such filing or the
33 suspension therefrom, shall not have the effect of absolving trustees
34 from any responsibility for accounting for property or income held by
35 them for charitable purposes. A copy of an account or other financial
36 report filed by a trustee in any court in this state, if the account or
37 other financial report substantially complies with the rules and regu-
38 lations of the attorney general, may be filed as a financial report
39 under this section.

40 S 99. Paragraph (b-1) of section 8-1.8 of the estates, powers and
41 trusts law is REPEALED.

42 S 100. The estates, powers and trusts law is amended by adding a new
43 section 8-1.9 to read as follows:

44 S 8-1.9 TRUST GOVERNANCE

45 (A) FOR PURPOSES OF THIS SECTION:

46 (1) A "TRUST" MEANS A TRUST CREATED SOLELY FOR CHARITABLE PURPOSES, OR
47 A TRUST THAT CONTINUES SOLELY FOR SUCH PURPOSES AFTER ALL NON-CHARITABLE
48 INTERESTS HAVE TERMINATED.

49 (2) "CHARITABLE PURPOSE" MEANS ANY RELIGIOUS, CHARITABLE, EDUCATIONAL
50 OR BENEVOLENT PURPOSE.

51 (3) "KEY EMPLOYEE" MEANS ANY PERSON WHO HAS RESPONSIBILITIES, POWERS
52 OR INFLUENCE OVER THE TRUST SIMILAR TO THOSE OF AN OFFICER OF A
53 NOT-FOR-PROFIT CORPORATION, OR IS OTHERWISE IN A POSITION TO EXERCISE
54 SUBSTANTIAL INFLUENCE OVER THE AFFAIRS OF THE TRUST, AS REFERENCED IN 26
55 U.S.C. S4958(F)(1)(A) AND FURTHER SPECIFIED IN 26 CFR S53.4958-3(C) AND
56 (D), OR SUCCEEDING PROVISIONS.

1 (4) AN "AFFILIATE" OF A TRUST MEANS ANY ENTITY CONTROLLED BY, IN
2 CONTROL OF, OR UNDER COMMON CONTROL WITH SUCH TRUST.

3 (5) "RELATIVE" OF AN INDIVIDUAL MEANS THE (I) SPOUSE, ANCESTOR, CHIL-
4 DREN, GRANDCHILDREN, GREAT GRANDCHILDREN, BROTHER OR SISTER (WHETHER BY
5 THE WHOLE- OR HALF-BLOOD) OF THE INDIVIDUAL; AND (II) THE SPOUSES OF
6 CHILDREN, GRANDCHILDREN, GREAT GRANDCHILDREN, BROTHER, OR SISTER (WHETH-
7 ER BY THE WHOLE- OR HALF-BLOOD) OF THE INDIVIDUAL.

8 (6) "RELATED PARTY" MEANS (I) ANY TRUSTEE OR KEY EMPLOYEE OF THE TRUST
9 OR ANY AFFILIATE OF THE TRUST; (II) ANY RELATIVE OF ANY TRUSTEE OR KEY
10 EMPLOYEE OF THE TRUST OR ANY AFFILIATE OF THE TRUST; OR (III) AN ENTITY
11 IN WHICH ANY INDIVIDUAL DESCRIBED IN CLAUSES (I) AND (II) OF THIS
12 SUBPARAGRAPH HAS A THIRTY-FIVE PERCENT OR GREATER OWNERSHIP OR BENEFI-
13 CIAL INTEREST.

14 (7) "INDEPENDENT TRUSTEE" MEANS A TRUSTEE WHO IN THE PAST THREE YEARS:
15 (I) WAS NOT EMPLOYED BY, AND DID NOT HAVE A RELATIVE WHO WAS EMPLOYED
16 BY, THE TRUST OR AN AFFILIATE OF THE TRUST; (II) WAS NOT EMPLOYED BY,
17 AND DOES NOT HAVE A RELATIVE WHO WAS EMPLOYED BY, ANY ENTITY THAT MADE
18 PAYMENTS TO, OR RECEIVED PAYMENTS FROM, THE TRUST OR ANY AFFILIATE OF
19 THE TRUST FOR GOODS, PROPERTY OR SERVICES EXCEEDING TEN THOUSAND
20 DOLLARS; (III) HAS NOT HAD, AND DOES NOT HAVE A RELATIVE WHO HAS HAD, A
21 MATERIAL FINANCIAL INTEREST IN ANY ENTITY THAT MADE PAYMENTS TO, OR
22 RECEIVED PAYMENTS FROM, THE TRUST OR ANY AFFILIATE OF THE TRUST FOR
23 GOODS, PROPERTY OR SERVICES EXCEEDING TEN THOUSAND DOLLARS; AND (IV) HAS
24 NOT RECEIVED, AND DOES NOT HAVE ANY RELATIVE WHO HAS RECEIVED, ANY OTHER
25 COMPENSATION, PAYMENT OR BENEFIT HAVING MONETARY VALUE FROM THE TRUST OR
26 ANY AFFILIATE OF THE TRUST, OTHER THAN REIMBURSEMENT FOR EXPENSES OR THE
27 PAYMENT OF TRUSTEE COMMISSIONS OR OTHER TRUSTEE COMPENSATION AS PERMIT-
28 TED BY LAW AND THE GOVERNING INSTRUMENT.

29 (8) "RELATED PARTY TRANSACTION" MEANS ANY TRANSACTION, AGREEMENT OR
30 ANY OTHER ARRANGEMENT IN WHICH A RELATED PARTY HAS A FINANCIAL INTEREST
31 AND IN WHICH THE TRUST OR ANY AFFILIATE OF THE TRUST IS A PARTICIPANT.

32 (9) "INDEPENDENT AUDITOR" MEANS ANY CERTIFIED PUBLIC ACCOUNTANT
33 PERFORMING THE AUDIT OF THE FINANCIAL STATEMENTS OF A TRUST REQUIRED BY
34 SUBDIVISION ONE OF SECTION ONE HUNDRED SEVENTY-TWO-B OF THE EXECUTIVE
35 LAW.

36 (B)(1) EVERY TRUST REQUIRED TO FILE AN INDEPENDENT CERTIFIED PUBLIC
37 ACCOUNTANT'S AUDIT REPORT WITH THE ATTORNEY GENERAL PURSUANT TO SUBDIVI-
38 SION ONE OF SECTION ONE HUNDRED SEVENTY-TWO-B OF THE EXECUTIVE LAW SHALL
39 DESIGNATE AN AUDIT COMMITTEE, CONSISTING OF ONE OR MORE INDEPENDENT
40 TRUSTEES, FOR THE PURPOSE OF OVERSEEING THE ACCOUNTING AND FINANCIAL
41 REPORTING PROCESSES OF THE TRUST AND THE INDEPENDENT CERTIFIED PUBLIC
42 ACCOUNTANT'S AUDIT OF THE TRUST'S FINANCIAL STATEMENTS. AN AUDIT COMMIT-
43 TEE THAT IS NOT MADE UP OF ALL TRUSTEES SHALL BE OVERSEEN BY AND BE
44 RESPONSIBLE TO THE TRUSTEES. IF A TRUST REQUIRED TO HAVE AN AUDIT
45 COMMITTEE PURSUANT TO THIS PARAGRAPH IS UNDER THE CONTROL OF ANOTHER
46 TRUST OR CORPORATION, THE AUDIT COMMITTEE FUNCTION MAY BE CONDUCTED BY
47 THE TRUSTEES OR THE BOARD OF DIRECTORS OF THE CONTROLLING TRUST OR
48 CORPORATION.

49 (2) THE AUDIT COMMITTEE SHALL, AT A MINIMUM:

50 (A) RETAIN AND EVALUATE THE INDEPENDENT AUDITOR, WHICH SHALL REPORT
51 DIRECTLY TO THE AUDIT COMMITTEE;

52 (B) REVIEW WITH THE INDEPENDENT AUDITOR THE SCOPE AND PLANNING OF THE
53 AUDIT;

54 (C) REVIEW AND DISCUSS WITH THE INDEPENDENT AUDITOR, AT A MINIMUM: (I)
55 THE RESULTS OF ANY AUDIT, INCLUDING BUT NOT LIMITED TO: THE MANAGEMENT
56 LETTER TO THE TRUST AND ANY MATERIAL RISKS AND WEAKNESSES IN INTERNAL

1 CONTROLS IDENTIFIED BY THE AUDITOR; (II) ANY RESTRICTIONS ON THE SCOPE
2 OF THE AUDITOR'S ACTIVITIES OR ACCESS TO REQUESTED INFORMATION; (III)
3 ANY SIGNIFICANT DISAGREEMENTS BETWEEN THE AUDITOR AND MANAGEMENT; AND
4 (IV) THE ADEQUACY AND PERFORMANCE OF THE TRUST'S ACCOUNTING FUNCTION.

5 (D) CONSIDER AT LEAST ANNUALLY THE PERFORMANCE AND INDEPENDENCE OF THE
6 INDEPENDENT AUDITOR;

7 (E) OVERSEE ADOPTION, IMPLEMENTATION OF AND COMPLIANCE WITH ANY
8 CONFLICT OF INTEREST POLICY ADOPTED BY THE TRUST PURSUANT TO PARAGRAPH
9 (E) OF THIS SECTION, AND IF APPLICABLE, ANY WHISTLEBLOWER POLICY, IF
10 THIS FUNCTION IS NOT OTHERWISE PERFORMED BY ANOTHER COMMITTEE COMPRISED
11 SOLELY OF INDEPENDENT TRUSTEES; AND

12 (F) REPORT ITS ACTIVITIES TO THE TRUSTEES AT LEAST ANNUALLY.

13 (3) THE AUDIT COMMITTEE SHALL ADOPT A CHARTER THAT SHALL STATE ITS
14 AUTHORITY AND RESPONSIBILITIES, INCLUDING THOSE PRESCRIBED BY THIS PARA-
15 GRAPH, AND THAT SHALL STATE THE SIZE, COMPOSITION AND FUNCTIONING OF THE
16 AUDIT COMMITTEE.

17 (C)(1) FOR PURPOSES OF THIS PARAGRAPH, "TOTAL COMPENSATION" MEANS (1)
18 ANY COMPENSATION, WHETHER PAID OR ACCRUED, BY OR ON BEHALF OF THE TRUST
19 OR ANY AFFILIATE OF THE TRUST, INCLUDING BUT NOT LIMITED TO SALARY,
20 BONUS, AND DEFERRED COMPENSATION, AND (2) ANY BENEFIT HAVING MONETARY
21 VALUE PROVIDED BY THE TRUST OR ON BEHALF OF THE TRUST OR ANY AFFILIATE
22 OF THE TRUST, INCLUDING BUT NOT LIMITED TO HOUSING ALLOWANCES, LIVING
23 EXPENSES, PERQUISITES, FRINGE BENEFITS, EMPLOYER CONTRIBUTIONS TO
24 DEFINED CONTRIBUTION RETIREMENT PLANS AND OTHER RETIREMENT BENEFITS.

25 (2) THE TOTAL COMPENSATION PAID BY A TRUST TO ANY EMPLOYEE OF THE
26 TRUST SHALL BE FAIR, REASONABLE AND COMMENSURATE WITH SERVICES THE
27 EMPLOYEE PROVIDES TO THE TRUST.

28 (3) NO EMPLOYEE OR OTHER INDIVIDUAL WHO MAY BENEFIT FROM COMPENSATION
29 OR BENEFITS PROVIDED BY THE TRUST MAY BE PRESENT AT OR OTHERWISE PARTIC-
30 IPATE IN TRUSTEE OR COMMITTEE DELIBERATION OR VOTE CONCERNING SUCH
31 COMPENSATION OR BENEFITS.

32 (4) EVERY TRUST THAT IS REQUIRED TO BE REGISTERED WITH THE ATTORNEY
33 GENERAL UNDER ARTICLE SEVEN-A OF THE EXECUTIVE LAW AND THAT IN THE PRIOR
34 FISCAL YEAR HAD ANNUAL REVENUES IN EXCESS OF ONE MILLION DOLLARS SHALL
35 DESIGNATE A COMPENSATION COMMITTEE OF THE TRUSTEES TO OVERSEE EXECUTIVE
36 COMPENSATION PROGRAMS AND RELATED PRACTICES OF THE TRUST.

37 (A) THE COMPENSATION COMMITTEE SHALL BE COMPRISED OF ONE OR MORE INDE-
38 PENDENT TRUSTEES. IF A TRUST CONTROLS ONE OR MORE TRUSTS OR CORPO-
39 RATIONS, THE COMPENSATION COMMITTEE OF THE CONTROLLING TRUST MAY BE
40 DEEMED TO BE THE COMPENSATION COMMITTEE FOR ITS CONTROLLED ENTITIES.

41 (B) THE COMPENSATION COMMITTEE SHALL:

42 (I) REVIEW THE TOTAL COMPENSATION PAID TO THE TRUST'S OFFICERS AND ITS
43 FIVE HIGHEST-COMPENSATED KEY EMPLOYEES.

44 (II) AFFIRMATIVELY DETERMINE THAT THE TOTAL COMPENSATION PAID TO ANY
45 SUCH INDIVIDUAL IS FAIR, REASONABLE AND COMMENSURATE WITH SERVICES
46 PROVIDED TO THE TRUST. IN MAKING THIS DETERMINATION, THE COMPENSATION
47 COMMITTEE SHALL AT A MINIMUM CONSIDER THE FOLLOWING FACTORS: (1) THE
48 TOTAL COMPENSATION PROVIDED TO THE INDIVIDUAL; (2) RELEVANT BENCHMARK
49 DATA ON THE TOTAL COMPENSATION PAID TO INDIVIDUALS SERVING IN SIMILAR
50 POSITIONS AT TRUSTS OR CORPORATIONS OF SIMILAR SIZE, TYPE, PURPOSE, AND
51 SCOPE; (3) THE INDIVIDUAL'S QUALIFICATIONS AND PERFORMANCE; (4) COMPEN-
52 SATION, PAYMENTS OR ANY OTHER BENEFITS PROVIDED TO THE INDIVIDUAL FROM
53 ANY AFFILIATE OF THE TRUST; AND (5) THE OVERALL FINANCIAL CONDITION OF
54 THE TRUST.

1 (III) MAKE AND KEEP A CONTEMPORANEOUS WRITTEN RECORD DESCRIBING THE
2 BASIS FOR ITS DETERMINATION, INCLUDING ITS ANALYSIS OF THE FACTORS SET
3 FORTH IN THIS PARAGRAPH AND HOW ANY RELEVANT DATA WAS OBTAINED AND USED.

4 (IV) APPROVE BY NOT LESS THAN A MAJORITY VOTE THE TOTAL COMPENSATION
5 PAID TO EACH SUCH INDIVIDUAL.

6 (C) IF THE COMPENSATION COMMITTEE IS COMPRISED OF FEWER THAN ALL OF
7 THE INDEPENDENT TRUSTEES, THEN: (I) THE COMPENSATION COMMITTEE SHALL
8 RECOMMEND TO ALL OF THE INDEPENDENT TRUSTEES FOR THEIR APPROVAL THE
9 TOTAL COMPENSATION OF EACH INDIVIDUAL THAT THE COMMITTEE HAS AFFIRMA-
10 TIVELY DETERMINED IS FAIR, REASONABLE, AND COMMENSURATE WITH SERVICES
11 PROVIDED TO THE TRUST, AND INCLUDE THEREWITH THE WRITTEN RECORD OF ITS
12 DETERMINATION CREATED PURSUANT TO ITEM (III) OF CLAUSE (B) OF THIS
13 SUBPARAGRAPH; (II) UPON REVIEW OF THE RECOMMENDATIONS OF THE COMPEN-
14 SATION COMMITTEE, THE TRUSTEES SHALL APPROVE BY NOT LESS THAN A MAJORITY
15 VOTE OF THE INDEPENDENT TRUSTEES THE TOTAL COMPENSATION OF EACH SUCH
16 INDIVIDUAL, WITH ONLY INDEPENDENT TRUSTEES PARTICIPATING IN ANY SUCH
17 VOTE AND ANY DISCUSSION RELATING THERETO; AND (III) THE INDEPENDENT
18 TRUSTEES SHALL KEEP A CONTEMPORANEOUS WRITTEN RECORD OF THE BASIS OF ITS
19 DETERMINATION, INCLUDING AREAS OF AGREEMENT OR DISAGREEMENT WITH THE
20 RECOMMENDATIONS OF THE COMPENSATION COMMITTEE.

21 (5) THE COMPENSATION COMMITTEE MAY RETAIN A COMPENSATION CONSULTANT TO
22 ASSIST IN THE PERFORMANCE OF ITS RESPONSIBILITIES. THE COMPENSATION
23 COMMITTEE SHALL BE DIRECTLY RESPONSIBLE FOR THE APPOINTMENT, COMPEN-
24 SATION AND OVERSIGHT OF THE WORK OF SUCH CONSULTANT, AND ANY SUCH
25 CONSULTANT SHALL REPORT DIRECTLY TO THE COMPENSATION COMMITTEE. THE
26 COMPENSATION COMMITTEE SHALL, AMONG ITS RESPONSIBILITIES, APPROVE THE
27 COMPENSATION PEER GROUP THAT THE COMPENSATION CONSULTANT RECOMMENDS BE
28 USED TO DEVELOP BENCHMARK DATA.

29 (A) PRIOR TO RETAINING ANY SUCH CONSULTANT, THE COMPENSATION COMMITTEE
30 SHALL DETERMINE THAT THE CONSULTANT IS INDEPENDENT AND QUALIFIED TO
31 RENDER ADVICE TO THE TRUST CONCERNING COMPENSATION; PROVIDED THAT NO
32 CONSULTANT MAY BE DETERMINED INDEPENDENT IF SUCH CONSULTANT OR ANY FIRM
33 THAT EMPLOYS SUCH CONSULTANT HAS (I) RECEIVED DIRECTLY OR INDIRECTLY ANY
34 PAYMENT, FEE OR OTHER COMPENSATION FROM THE TRUST OR ANY AFFILIATE OF
35 THE TRUST WITHIN THE PRECEDING TWO YEARS, OTHER THAN REASONABLE AMOUNTS
36 PAID FOR COMPENSATION CONSULTING SERVICES, OR (II) ANY BUSINESS OR
37 PERSONAL RELATIONSHIP WITH THE TRUST OR ANY AFFILIATE OF THE TRUST, OR
38 ANY OF ITS OR THEIR OFFICERS, DIRECTORS OR EMPLOYEES, THAT MAY INTERFERE
39 WITH THE ABILITY OF THE CONSULTANT TO PROVIDE OBJECTIVE ADVICE TO THE
40 COMMITTEE.

41 (B) NOTHING IN THIS SUBPARAGRAPH SHALL BE CONSTRUED TO (I) REQUIRE THE
42 COMPENSATION COMMITTEE TO IMPLEMENT OR ACT CONSISTENTLY WITH THE ADVICE
43 OR RECOMMENDATIONS PROVIDED BY THE COMPENSATION CONSULTANT TO THE
44 COMPENSATION COMMITTEE; OR (II) AFFECT THE ABILITY OR OBLIGATION OF
45 MEMBERS OF THE COMPENSATION COMMITTEE TO EXERCISE THEIR OWN JUDGMENT IN
46 FULFILLMENT OF THEIR DUTIES TO THE TRUST AND ITS BENEFICIARIES.

47 (6) THE COMPENSATION COMMITTEE SHALL ADOPT A CHARTER SETTING FORTH ITS
48 RESPONSIBILITIES, INCLUDING AS PRESCRIBED BY THIS PARAGRAPH, AS WELL AS
49 REQUIREMENTS CONCERNING THE SIZE, COMPOSITION AND FUNCTIONING OF THE
50 COMPENSATION COMMITTEE.

51 (D) (1) NOTWITHSTANDING ANY PROVISION IN THE TRUST INSTRUMENT TO THE
52 CONTRARY, NO TRUST SHALL ENTER INTO A RELATED PARTY TRANSACTION, UNLESS:

53 (A) THE MATERIAL FACTS AS TO THE RELATED PARTY'S INTEREST IN, AND
54 RELATIONSHIP TO, THE TRANSACTION ARE DISCLOSED IN GOOD FAITH TO THE
55 TRUSTEES;

1 (B) THE TRUSTEES: (I) CONSIDER ALTERNATIVE TRANSACTIONS TO THE EXTENT
2 AVAILABLE AND UPON REASONABLE DILIGENCE DETERMINE THAT SUCH ALTERNATIVE
3 TRANSACTIONS WOULD NOT BE MORE ADVANTAGEOUS TO THE TRUST AND ITS BENE-
4 FICIARIES UNDER THE CIRCUMSTANCES;

5 (II) DETERMINE BY A TWO-THIRDS VOTE OF THE TRUSTEES THAT THE RELATED
6 PARTY TRANSACTION IS FAIR, REASONABLE AND IN THE BEST INTERESTS OF THE
7 TRUST AND ITS BENEFICIARIES AND APPROVE SUCH TRANSACTION, AND THE
8 RELATED PARTY WITH AN INTEREST IN THE TRANSACTION IS NOT PRESENT AT AND
9 OTHERWISE DOES NOT OTHERWISE PARTICIPATE IN ANY DELIBERATION OR VOTING
10 RELATING THERETO; AND

11 (III) CONTEMPORANEOUSLY DOCUMENT IN WRITING THE BASIS FOR THEIR DETER-
12 MINATION AND APPROVAL OF THE TRANSACTION. THIS SUBPARAGRAPH SHALL NOT
13 APPLY TO ANY COMPENSATION REVIEWED AND APPROVED IN ACCORDANCE WITH
14 SUBPARAGRAPH FOUR OF PARAGRAPH (C) OF THIS SECTION.

15 (2) THE TRUST INSTRUMENT, BYLAWS OR CONFLICT OF INTEREST POLICY OF THE
16 TRUST MAY CONTAIN ADDITIONAL RESTRICTIONS ON RELATED PARTY TRANSACTIONS
17 AND ADDITIONAL PROCEDURES NECESSARY FOR THE REVIEW OR APPROVAL OF SUCH
18 TRANSACTIONS, OR PROVIDE THAT ANY TRANSACTIONS IN VIOLATION OF SUCH
19 RESTRICTIONS SHALL BE VOID OR VOIDABLE.

20 (3) ANY TRUSTEE OR KEY EMPLOYEE WHO HAS AN INTEREST IN A RELATED PARTY
21 TRANSACTION SHALL, PRIOR TO THE TRUSTEES' CONSIDERATION OF THE PROPOSED
22 TRANSACTION, DISCLOSE IN GOOD FAITH TO THE TRUSTEES THE MATERIAL FACTS
23 AS TO SUCH PERSON'S INTEREST IN, AND RELATIONSHIP TO, THE TRANSACTION.
24 THE TRUSTEES SHALL ADOPT AND IMPLEMENT PROCEDURES FOR THE TIMELY DISCLO-
25 SURE OF SUCH FACTS TO THE TRUSTEES.

26 (4) THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENJOIN, VOID OR
27 RESCIND ANY RELATED PARTY TRANSACTION OR A PROPOSED RELATED PARTY TRANS-
28 ACTION THAT VIOLATES ANY LAW OR IS OTHERWISE NOT FAIR, REASONABLE, OR IN
29 THE BEST INTERESTS OF THE TRUST OR ITS BENEFICIARIES, OR TO SEEK OTHER
30 RELIEF, INCLUDING BUT NOT LIMITED TO DAMAGES, RESTITUTION, THE REMOVAL
31 OF TRUSTEES, OR SEEK TO REQUIRE ANY PERSON OR ENTITY TO:

32 (A) ACCOUNT FOR ANY PROFITS MADE FROM SUCH TRANSACTION, AND PAY THEM
33 TO THE TRUST;

34 (B) PAY THE TRUST THE VALUE OF THE USE OF ANY OF ITS PROPERTY OR OTHER
35 ASSETS USED IN SUCH TRANSACTION;

36 (C) RETURN OR REPLACE ANY PROPERTY OR OTHER ASSETS LOST TO THE TRUST
37 AS A RESULT OF SUCH TRANSACTION, TOGETHER WITH ANY INCOME OR APPRECI-
38 ATION LOST TO THE TRUST BY REASON OF SUCH TRANSACTION, OR ACCOUNT FOR
39 ANY PROCEEDS OF SALE OF SUCH PROPERTY, AND PAY THE PROCEEDS TO THE TRUST
40 TOGETHER WITH INTEREST AT THE LEGAL RATE; AND

41 (D) PAY, IN THE CASE OF WILLFUL CONDUCT, AN AMOUNT UP TO DOUBLE THE
42 AMOUNT OF ANY BENEFIT IMPROPERLY OBTAINED.

43 (5) THE POWERS AND DUTIES OF THE ATTORNEY GENERAL PROVIDED IN THIS
44 PARAGRAPH ARE IN ADDITION TO ALL OTHER POWERS AND DUTIES THE ATTORNEY
45 GENERAL MAY HAVE UNDER THIS CHAPTER OR ANY OTHER LAW.

46 (E)(1) EVERY TRUST SHALL ADOPT A CONFLICT OF INTEREST POLICY TO ENSURE
47 THAT ITS TRUSTEES AND KEY EMPLOYEES ACT IN THE BEST INTEREST OF THE
48 TRUST AND ITS BENEFICIARIES AND COMPLY WITH APPLICABLE LEGAL REQUIRE-
49 MENTS, INCLUDING BUT NOT LIMITED TO THE REQUIREMENTS SET FORTH IN PARA-
50 GRAPH (D) OF THIS SECTION.

51 (2) THE CONFLICT OF INTEREST POLICY SHALL INCLUDE, AT A MINIMUM, THE
52 FOLLOWING PROVISIONS:

53 (A) A DEFINITION OF THE CIRCUMSTANCES THAT CONSTITUTE A CONFLICT OF
54 INTEREST;

55 (B) PROCEDURES FOR DISCLOSING A CONFLICT OF INTEREST TO THE AUDIT
56 COMMITTEE OR, IF THERE IS NO AUDIT COMMITTEE, TO THE TRUSTEES;

1 (C) A REQUIREMENT THAT THE PERSON WITH THE CONFLICT OF INTEREST NOT BE
2 PRESENT AT OR PARTICIPATE IN ANY DELIBERATION OR VOTE ON THE MATTER
3 GIVING RISE TO SUCH CONFLICT;

4 (D) A PROHIBITION AGAINST ANY ATTEMPT BY THE PERSON WITH THE CONFLICT
5 TO INFLUENCE THE DELIBERATION OR VOTING ON THE MATTER GIVING RISE TO
6 SUCH CONFLICT;

7 (E) A REQUIREMENT THAT THE EXISTENCE AND RESOLUTION OF THE CONFLICT BE
8 DOCUMENTED IN THE TRUST'S RECORDS, INCLUDING IN THE MINUTES OF ANY MEET-
9 ING AT WHICH THE CONFLICT WAS DISCUSSED OR VOTED UPON; AND

10 (F) PROCEDURES FOR DISCLOSING, ADDRESSING, AND DOCUMENTING RELATED
11 PARTY TRANSACTIONS IN ACCORDANCE WITH PARAGRAPH (D) OF THIS SECTION.

12 (3) THE CONFLICT OF INTEREST POLICY SHALL REQUIRE THAT PRIOR TO A
13 TRUSTEE'S INITIAL APPOINTMENT, AND ANNUALLY THEREAFTER, SUCH TRUSTEE
14 SHALL COMPLETE, SIGN AND FILE WITH THE RECORDS OF THE TRUST A WRITTEN
15 STATEMENT IDENTIFYING ANY ENTITY OF WHICH HE OR SHE IS AN OFFICER,
16 DIRECTOR, TRUSTEE, MEMBER, OWNER (EITHER AS A SOLE PROPRIETOR OR A PART-
17 NER), OR EMPLOYEE WITH WHICH THE TRUST HAS, OR MIGHT BE EXPECTED TO
18 HAVE, A RELATIONSHIP OR A TRANSACTION IN WHICH THE TRUSTEE MIGHT HAVE A
19 CONFLICTING INTEREST. THE POLICY SHALL REQUIRE THAT EACH TRUSTEE ANNUAL-
20 LY RESUBMIT SUCH WRITTEN STATEMENT. THE TRUSTEES SHALL PROVIDE A COPY OF
21 ALL COMPLETED STATEMENTS TO THE CHAIR OF THE AUDIT COMMITTEE, IF THERE
22 IS AN AUDIT COMMITTEE.

23 (4) EVERY TRUST REGISTERED OR REQUIRED TO BE REGISTERED PURSUANT TO
24 SECTION ONE HUNDRED SEVENTY-TWO OF THE EXECUTIVE LAW OR SECTION 8-1.4 OF
25 THIS PART SHALL TRANSMIT SUCH POLICIES TO THE ATTORNEY GENERAL IN THE
26 FORM AND MANNER SPECIFIED BY THE ATTORNEY GENERAL, AND SHALL WITHIN
27 THIRTY DAYS OF ANY MATERIAL CHANGE OF THESE POLICIES PROVIDE THE ATTOR-
28 NEY GENERAL WITH THE CHANGED POLICIES.

29 (5) NOTHING IN THIS PARAGRAPH SHALL BE INTERPRETED TO REQUIRE A TRUST
30 TO ADOPT ANY SPECIFIC CONFLICT OF INTEREST POLICY NOT OTHERWISE REQUIRED
31 BY LAW, OR TO SUPERSEDE OR LIMIT ANY REQUIREMENT OR DUTY GOVERNING
32 CONFLICTS OF INTEREST REQUIRED BY ANY OTHER LAW OR RULE.

33 (F)(1) EVERY TRUST THAT HAS FIVE OR MORE EMPLOYEES AND IN THE PRIOR
34 FISCAL YEAR HAD ANNUAL REVENUE IN EXCESS OF ONE MILLION DOLLARS SHALL
35 ADOPT A WHISTLEBLOWER POLICY TO PROTECT FROM RETALIATION PERSONS WHO
36 REPORT SUSPECTED IMPROPER CONDUCT. SUCH POLICY SHALL PROVIDE THAT NO
37 TRUSTEE, EMPLOYEE OR VOLUNTEER OF A TRUST WHO IN GOOD FAITH REPORTS ANY
38 ACTION OR SUSPECTED ACTION TAKEN BY OR WITHIN THE TRUST THAT IS ILLEGAL,
39 FRAUDULENT OR IN VIOLATION OF ANY ADOPTED POLICY OF THE TRUST SHALL
40 SUFFER INTIMIDATION, HARASSMENT, DISCRIMINATION OR OTHER RETALIATION OR,
41 IN THE CASE OF EMPLOYEES, ADVERSE EMPLOYMENT CONSEQUENCE.

42 (2) THE WHISTLEBLOWER POLICY SHALL INCLUDE THE FOLLOWING PROVISIONS:

43 (A) PROCEDURES FOR THE REPORTING OF VIOLATIONS OR SUSPECTED VIOLATIONS
44 OF LAWS OR TRUST POLICIES, INCLUDING PROCEDURES FOR PRESERVING THE
45 CONFIDENTIALITY OF REPORTED INFORMATION;

46 (B) PROCEDURES FOR HANDLING AND INVESTIGATING VIOLATIONS OR SUSPECTED
47 VIOLATIONS OF LAWS OR TRUST POLICIES;

48 (C) A REQUIREMENT THAT A TRUSTEE OR AN EMPLOYEE OF THE TRUST BE DESIG-
49 NATED TO ADMINISTER, IMPLEMENT AND OVERSEE COMPLIANCE OF THE WHISTLE-
50 BLOWER POLICY AND TO REPORT TO THE AUDIT COMMITTEE OR OTHER COMMITTEE OF
51 INDEPENDENT TRUSTEES, OR TO THE TRUSTEES;

52 (D) A REQUIREMENT THAT ALL DOCUMENTS CONCERNING INFORMATION REPORTED
53 UNDER THE WHISTLEBLOWER POLICY AND ANY INVESTIGATION RELATING THERETO BE
54 RETAINED BY THE TRUST FOR A MINIMUM PERIOD OF SIX YEARS; AND

1 (E) A REQUIREMENT THAT A COPY OF THE POLICY BE DISTRIBUTED TO ALL
2 TRUSTEES, EMPLOYEES AND VOLUNTEERS, WITH INSTRUCTIONS ON HOW TO COMPLY
3 WITH THE PROCEDURES SET FORTH IN THE POLICY.

4 (3) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO RELIEVE ANY TRUST
5 FROM ANY ADDITIONAL REQUIREMENTS IN RELATION TO INTERNAL COMPLIANCE,
6 RETALIATION, OR DOCUMENT RETENTION REQUIRED BY ANY OTHER LAW OR RULE.

7 S 101. Subdivision 2 of section 711 of the surrogate's court procedure
8 act is amended to read as follows:

9 2. Where by reason of his having wasted or improperly applied the
10 assets of the estate, or made investments unauthorized by law or other-
11 wise improvidently managed or injured the property committed to his
12 charge, INCLUDING BY FAILING TO COMPLY WITH SECTION 8-1.9 OF THE
13 ESTATES, POWERS AND TRUSTS LAW, or by reason of other misconduct in the
14 execution of his office or dishonesty, drunkenness, improvidence or want
15 of understanding, he is unfit for the execution of his office.

16 S 102. Section 202 of the racing, pari-mutuel wagering and breeding
17 law, as amended by chapter 18 of the laws of 2008, is amended to read as
18 follows:

19 S 202. Restriction upon commencement of business. No business corpo-
20 ration organized under the provisions of this article shall engage in
21 the prosecution or management of its business until the whole of its
22 capital stock shall have been subscribed, nor until it shall have filed
23 in the offices where certificates of incorporation were filed, a further
24 certificate stating that the whole of its capital stock has been in good
25 faith subscribed, executed and acknowledged by its president or vice-
26 president and treasurer or secretary, and verified by them to the effect
27 that the statements contained in it are true.

28 Notwithstanding the foregoing, [corporation] NO CHARITABLE CORPORATION
29 AS DEFINED IN PARAGRAPH (A) OF SECTION ONE HUNDRED TWO OF THE
30 NOT-FOR-PROFIT CORPORATION LAW OR ANY CORPORATIONS organized PRIOR TO
31 JANUARY FIRST, TWO THOUSAND THIRTEEN AS A TYPE C CORPORATION pursuant to
32 section two hundred one of the not-for-profit corporation law [as type C
33 corporations] shall [not] engage in the prosecution or management of its
34 business until its certificate of incorporation has been accepted for
35 filing by the secretary of state and such confirmation of filing has
36 been filed with the board and the franchise oversight board.

37 S 103. Subdivision 9 of section 171-a of the executive law, as amended
38 by chapter 353 of the laws of 1987, is amended to read as follows:

39 9. "Fund raising counsel." Any person who for compensation consults
40 with a charitable organization or who plans, manages, advises, or
41 assists with respect to the solicitation in this state of contributions
42 for or on behalf of a charitable organization, but who does not have
43 access to contributions or other receipts from a solicitation or author-
44 ity to pay expenses associated with a solicitation and who does not
45 solicit. A bona fide officer, volunteer, or employee of a charitable
46 organization or an attorney at law retained by a charitable organization
47 OR AN INDIVIDUAL ENGAGED SOLELY TO DRAFT APPLICATIONS FOR FUNDING FROM A
48 GOVERNMENTAL AGENCY OR AN ENTITY EXEMPT FROM TAXATION PURSUANT TO
49 SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE, shall not be deemed a
50 fund raising counsel.

51 S 104. Subdivision 1 of section 172 of the executive law is amended by
52 adding a new paragraph (k) to read as follows:

53 (K) ANY CONFLICT OF INTEREST POLICY AND ANY WHISTLEBLOWER POLICY
54 ADOPTED PURSUANT TO SECTIONS SEVEN HUNDRED FIFTEEN-A AND SEVEN HUNDRED
55 FIFTEEN-B OF THE NOT-FOR-PROFIT CORPORATION LAW OR SECTION 8-1.9 OF THE
56 ESTATES, POWERS AND TRUSTS LAW.

1 S 104-a. Subdivisions 1, 2 and 2-a of section 172-b of the executive
2 law, as amended by section 43 of the laws of 2002, are amended to read
3 as follows:

4 1. Every charitable organization registered or required to be regis-
5 tered pursuant to section one hundred seventy-two of this article which
6 shall receive in any fiscal year gross revenue and support in excess of
7 [two hundred fifty] FIVE HUNDRED thousand dollars [and every charitable
8 organization whose fund-raising functions are not carried on solely by
9 persons who are unpaid for such services] shall file with the attorney
10 general an annual written financial report, on forms prescribed by the
11 attorney general, on or before the fifteenth day of the fifth calendar
12 month after the close of such fiscal year. The annual financial report
13 shall be accompanied by an annual financial statement which includes an
14 independent certified public accountant's audit report containing an
15 opinion that the financial statements are presented fairly in all mate-
16 rial respects and in conformity with generally accepted accounting prin-
17 ciples, including compliance with all pronouncements of the financial
18 accounting standards board and the American Institute of Certified
19 Public Accountants that establish accounting principles relevant to
20 not-for-profit organizations. Such financial report shall include a
21 statement of any changes in the information required to be contained in
22 the registration form filed on behalf of such organization. The finan-
23 cial report shall be signed by the president or other authorized officer
24 and the chief fiscal officer of the organization who shall certify under
25 penalties for perjury that the statements therein are true and correct
26 to the best of their knowledge, and shall be accompanied by an opinion
27 signed by an independent public accountant that the financial statement
28 and balance sheet therein present fairly the financial operations and
29 position of the organization. A fee of twenty-five dollars payable to
30 the attorney general shall accompany such financial report at the time
31 of filing, provided however, that any such organization that is regis-
32 tered with the attorney general pursuant to article eight of the
33 estates, powers and trusts law is required to file only one annual
34 financial report which meets the filing requirements of this article and
35 section 8-1.4 of the estates, powers and trusts law.

36 2. Every charitable organization registered or required to be regis-
37 tered pursuant to section one hundred seventy-two of this article which
38 shall receive in gross revenue and support in any fiscal year at least
39 [one hundred] TWO HUNDRED FIFTY thousand dollars but not more than [two
40 hundred fifty] FIVE HUNDRED thousand dollars shall file an annual finan-
41 cial report. The annual financial report shall be accompanied by an
42 annual financial statement which includes an independent certified
43 public accountant's review report in accordance with "statements on
44 standards for accounting and review services" issued by the American
45 Institute of Certified Public Accountants. The annual financial state-
46 ment shall be prepared in conformity with generally accepted accounting
47 principles, including compliance with all pronouncements of the finan-
48 cial accounting standards board and the American Institute of Certified
49 Public Accountants that establish accounting principles relevant to
50 not-for-profit organizations. Such financial report shall be filed with
51 the attorney general, upon forms prescribed by the attorney general on
52 an annual basis on or before the fifteenth day of the fifth calendar
53 month after the close of such fiscal year, which shall include a finan-
54 cial report covering such fiscal year in accordance with such require-
55 ments as the attorney general may prescribe. Such financial report shall
56 include a statement of any changes in the information required to be

1 contained in the registration form filed on behalf of such organization.
2 The financial report shall be signed by the president or other author-
3 ized officer and the chief fiscal officer of the organization who shall
4 certify under penalties for perjury that the statements therein are true
5 and correct to the best of their knowledge. A fee of ten dollars payable
6 to the attorney general shall accompany such financial report at the
7 time of filing, provided, however, that any such organization that is
8 registered with the attorney general pursuant to article eight of the
9 estates, powers and trusts law is required to file only one annual
10 financial report which meets the filing requirements of this article and
11 section 8-1.4 of the estates, powers and trusts law. NOTWITHSTANDING THE
12 REQUIREMENTS OF THIS SECTION, IF UPON REVIEW OF AN INDEPENDENT CERTIFIED
13 PUBLIC ACCOUNTANT'S REVIEW REPORT FILED PURSUANT TO THIS SUBDIVISION,
14 THE ATTORNEY GENERAL DETERMINES THAT A CHARITABLE ORGANIZATION SHOULD
15 OBTAIN AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT'S AUDIT REPORT, SUCH
16 ORGANIZATION SHALL OBTAIN AND FILE WITH THE ATTORNEY GENERAL AN AUDIT
17 REPORT THAT MEETS THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION
18 WITHIN SIXTY DAYS OF THE ATTORNEY GENERAL'S REQUEST FOR SUCH REPORT.

19 2-a. Every charitable organization registered or required to be regis-
20 tered pursuant to section one hundred seventy-two of this article which
21 shall receive in any fiscal year of such organization gross revenue and
22 support not in excess of [one hundred thousand] TWO HUNDRED FIFTY THOU-
23 SAND dollars shall file with the attorney general an unaudited financial
24 report on forms prescribed by the attorney general, on or before the
25 fifteenth day of the fifth calendar month after the close of such fiscal
26 year. Such financial report shall include a statement of any changes in
27 the information required to be contained in the registration form filed
28 on behalf of such organization. The financial report shall be signed by
29 the president or other authorized officer and the chief fiscal officer
30 of the organization who shall certify under penalties for perjury that
31 the statements therein are true and correct to the best of their know-
32 ledge. A fee of ten dollars payable to the attorney general shall
33 accompany such financial report at the time of filing. Provided, howev-
34 er, that any such organization that is registered with the attorney
35 general pursuant to article eight of the estates, powers and trusts law
36 is required to file only one annual financial report which meets the
37 filing requirements of this article and section 8-1.4 of the estates,
38 powers and trusts law.

39 S 105. Subdivision 1 of section 177 of the executive law, as amended
40 by chapter 83 of the laws of 1995, is amended to read as follows:

41 1. The attorney general shall make rules and regulations necessary for
42 the administration of this article including, but not limited to regu-
43 lations and waiver procedures that will ensure that charitable organiza-
44 tions do not have to register twice in relation to the solicitation and
45 administration of assets, AND RULES OR REGULATIONS ALLOWING OR REQUIRING
46 ANY SUBMISSION TO THE ATTORNEY GENERAL TO BE EFFECTED BY ELECTRONIC
47 MEANS.

48 S 106. Section 223 of the education law, as amended by chapter 106 of
49 the laws of 1974, is amended to read as follows:

50 S 223. Consolidation OR MERGER of corporations. Any two or more
51 corporations chartered under the powers of the regents or incorporated
52 under a special act of the legislature or under a general law for
53 purposes for which a charter may be granted by the regents may enter
54 into an agreement for the consolidation OR MERGER of such corporations,
55 setting forth the terms and conditions of consolidation OR MERGER, the
56 name of the proposed CONSOLIDATED OR MERGED corporation, the place or

1 places where the institution or institutions to be maintained is or are
2 to be located, the number of its directors, which may be five or more,
3 the time of the annual election and the names of the persons to be
4 directors until the first OR NEXT annual meeting.

5 The agreement must be approved by three-fourths of the trustees or
6 directors of such [corporation] CORPORATIONS at a meeting of the trus-
7 tees or directors of each corporation, separately and specially called
8 for that purpose, which approval, duly verified by the chairman and
9 clerk of such meeting, shall be annexed to the petition. On presenta-
10 tion of a petition, together with the certificate of approval and the
11 agreement for consolidation OR MERGER, and on such notice to interested
12 parties as the regents shall prescribe, and after hearing such inter-
13 ested parties as desire to be heard, the regents may make and execute an
14 order for the consolidation OR MERGER of the corporations on such terms
15 and conditions as the regents may prescribe. When such order is made,
16 such corporations shall become one corporation by the name designated in
17 the order, and shall be subject only to such duties and obligations as a
18 corporation formed under this chapter for the same purposes; and all the
19 property belonging to the corporations so consolidated OR MERGED shall
20 be vested in and transferred to the new OR SURVIVING corporation, which
21 shall be subject to all the liabilities of the former corporations, to
22 the same extent as if they had been contracted or incurred by it. If
23 any corporation so consolidated OR MERGED was incorporated under a
24 special act of the legislature or under a general law pursuant to which
25 its certificate of incorporation was filed with the department of state,
26 the regents shall deliver a certified copy of the order of consolidation
27 OR MERGER to such department.

28 S 107. Paragraph c of subdivision 4 of section 216-a of the education
29 law, as added by chapter 901 of the laws of 1972, is amended to read as
30 follows:

31 c. The following provisions of the not-for-profit corporation law
32 shall not apply to education corporations: section one hundred five,
33 [section one hundred thirteen,] section one hundred fourteen, paragraph
34 (a) of section two hundred one, paragraphs (b) and (c) of section two
35 hundred two, section two hundred five, section three hundred one,
36 section three hundred two, section three hundred three, article four
37 except paragraphs (b) through (p) of section four hundred four and
38 section four hundred five, section five hundred nine, [section five
39 hundred eighteen,] section five hundred twenty-one to the extent that it
40 refers to [section five hundred eighteen,] paragraph (d) of section
41 seven hundred six, article eight except section eight hundred four,
42 section nine hundred seven, [section one thousand eleven,] section one
43 thousand twelve and article fourteen.

44 S 108. Section 13 of the religious corporations law, as amended by
45 chapter 705 of the laws of 1970, is amended to read as follows:

46 S 13. Consolidation OR MERGER of incorporated churches. Two or more
47 incorporated churches may enter into an agreement, under their respec-
48 tive corporate seals, for the consolidation OR MERGER of such corpo-
49 rations, setting forth the name of the proposed new corporation OR
50 SURVIVING CORPORATION, the denomination, if any, to which it is to
51 belong, and if the churches of such denomination have more than one
52 method of choosing trustees, by which of such methods the trustees are
53 to be chosen, the number of such trustees, the names of the persons to
54 be the first trustees of the new corporation, and the date of its first
55 annual corporate meeting. Such an agreement shall not be valid for
56 United Methodist churches unless proposed by a majority vote of the

1 charge conference of each church and approved by the superintendent or
2 superintendents of the district or districts in which the consolidating
3 churches are located, and by the majority of the members of each of such
4 churches, over the age of twenty-one years, present and voting at a
5 meeting thereof held in the usual place of public worship and called for
6 the purpose of considering such agreement by announcement made at public
7 service in such churches on two Sundays, the first not less than ten
8 days next preceding the date of such meeting. Such agreement shall not
9 be valid unless approved in the case of Protestant Episcopal churches by
10 the bishop and standing committee of the diocese in which such churches
11 are situated and in the case of churches of other denominations by the
12 governing body of the denomination, if any, to which each church
13 belongs, having jurisdiction over such church. Each corporation shall
14 thereupon make a separate petition to the supreme court for an order
15 consolidating OR MERGING the corporations, setting forth the denomi-
16 nation, if any, to which the church belongs, that the consent of the
17 governing body to the consolidation OR MERGER, if any, of that denomi-
18 nation having jurisdiction over such church has been obtained, the
19 agreement therefor, and a statement of all the property and liabilities
20 and the amount and sources of the annual income of such petitioning
21 corporation. In its discretion the court may direct that notice of the
22 hearing of such petition be given to the parties interested therein in
23 such manner and for such time as it may prescribe. After hearing all
24 the parties interested, present and desiring to be heard, the court may
25 make an order for the consolidation OR MERGER of the corporations on the
26 terms of such agreement and such other terms and conditions as it may
27 prescribe, specifying the name of such new OR SURVIVING corporation and
28 the [first] trustees thereof, and the method by which their successors
29 shall be chosen and the date of its first OR NEXT annual corporate meet-
30 ing. When such order is made and duly entered, the persons constituting
31 such CONSOLIDATED OR MERGED corporations shall BE OR become an incorpo-
32 rated church by, and said petitioning churches shall become consolidated
33 OR MERGED under, the name designated in the order, and the trustees
34 therein named shall be the [first] trustees thereof, and the future
35 trustees thereof shall be chosen by the method therein designated, and
36 all the estate, rights, powers and property of whatsoever nature belong-
37 ing to either corporation shall without further act or deed be vested in
38 and transferred to the new OR SURVIVING corporation as effectually as
39 they were vested in or belonging to the former corporations; and the
40 said new OR SURVIVING corporation shall be liable for all the debts and
41 liabilities of the former corporations in the same manner and as effec-
42 tually as if said debts or liabilities had been contracted or incurred
43 by the new OR SURVIVING corporation. A certified copy of such order
44 shall be recorded in the book for recording certificates of incorpo-
45 ration in each county clerk's office in which the certificate of incor-
46 poration of each consolidating OR MERGING church was recorded; or if no
47 such certificate was so recorded, then in the clerk's office of the
48 county in which the principal place of worship or principal office of
49 the new OR SURVIVING corporation is, or is intended to be, situated.

50 S 109. Section 15-a of the religious corporations law, as added by
51 chapter 108 of the laws of 1965, subdivisions 2, 3 and 8 as amended by
52 chapter 381 of the laws of 1985, is amended to read as follows:

53 S 15-a. Consolidation of incorporated presbyteries. 1. Two or more
54 incorporated presbyteries may enter into an agreement for the consol-
55 idation OR MERGER of such corporations and such corporations may be
56 consolidated OR MERGED so as to form a single corporation which may be

1 either a new corporation or one of the [constituent] CONSTITUENT corpo-
2 rations. Said agreement shall set forth the name of the proposed new
3 corporation or the name of the existing corporation if it is to become
4 the consolidated OR MERGED corporation, the method of choosing trustees,
5 the names of the persons to be the first trustees of the new corporation
6 if the consolidated OR MERGED corporation is to be a new corporation and
7 the date of the first annual corporate meeting.

8 2. Such agreement must be authorized and approved by a majority vote
9 of the members of each contracting presbytery taken at a meeting at
10 which a quorum is present duly called in accordance with the form of
11 government of the Presbyterian Church (U.S.A.) and the notice of such
12 meeting shall state the purpose of the meeting.

13 3. Before such agreement is approved as aforesaid, such consolidation
14 OR MERGER must be directed and approved by the Synod of the Northeast
15 and the General Assembly of the Presbyterian Church (U.S.A.).

16 4. Each presbytery shall thereafter join in a petition to the supreme
17 court for an order consolidating OR MERGING the corporation, setting
18 forth the agreement of the contracting presbyteries, the direction and
19 approval of the bodies as set forth in subdivision three [hereof] OF
20 THIS SECTION, a statement of all the property and liabilities and the
21 sources of the annual income of each presbytery and a description of any
22 property held by such presbyteries in trust for specific purposes. In
23 its discretion the court may direct that notice of the hearing of such
24 petition be given to the parties interested therein in such manner as it
25 may prescribe.

26 5. After hearing all the parties interested, present and desiring to
27 be heard, the court may make an order for the consolidation OR MERGER of
28 the presbyteries on the terms of such agreement and such other terms and
29 conditions as it may prescribe, specifying the name of the new corpo-
30 ration or the name the continuing corporation will have if one of the
31 [constituent] CONSTITUENT corporations is to become the consolidated OR
32 MERGED corporation, the first trustees thereof if a new corporation is
33 to be created and the method by which their successors shall be chosen
34 and the date of the first annual corporate meeting if a new corporation
35 is to be created.

36 6. When such order is made and duly entered, the persons constituting
37 such corporate presbyteries shall become one incorporated consolidated
38 OR MERGED presbytery by, and said petitioning presbyteries shall become
39 consolidated OR MERGED under, the name designated in the order, and the
40 trustees therein named, if it is a new corporation, shall be the first
41 trustees thereof, and if it is a new corporation the trustees thereof
42 shall be chosen by the method therein designated, and all the estate,
43 rights, powers and property of whatsoever nature, belonging to either
44 corporation shall without further act or deed be vested in and/or trans-
45 ferred to the new corporation as effectually as they were vested in or
46 belonging to the former corporations, and the new or continuing corpo-
47 rations shall be liable for all the debts and liabilities of the former
48 corporations in the same manner and as effectually as if said debts or
49 liabilities had been contracted or incurred by the new corporation.

50 7. The order or a certified copy thereof shall be recorded in the book
51 for recording certificates of incorporation in each county clerk's
52 office in which the certificate of incorporation of each constituent
53 presbytery was recorded.

54 8. Such consolidated OR MERGED presbytery shall have all the powers
55 and responsibilities conferred upon presbyteries by the constitution and
56 form of government of the Presbyterian Church (U.S.A.).

1 S 110. Section 208 of the religious corporations law, as added by
2 chapter 117 of the laws of 1927, is amended to read as follows:

3 S 208. Consolidation. Any two or more religious corporations of the
4 Jewish faith, incorporated under or by general or special laws, may
5 enter into an agreement for the consolidation OR MERGER of such corpo-
6 rations, setting forth the terms and conditions of consolidation, the
7 name of the proposed OR SURVIVING corporation, the number of its trus-
8 tees, the time of the annual election and the names of the persons to be
9 its trustees until the first OR NEXT annual meeting. Each corporation
10 may petition the supreme court for an order consolidating OR MERGING the
11 corporations, setting forth the agreement for consolidation OR MERGER
12 and a statement of its real property and of its liabilities. Before the
13 presentation of the petition to the court the agreement and petition
14 must be approved by two-thirds of the votes cast in person or by proxy
15 at a meeting of the members of each corporation called for the purpose
16 of considering the proposed consolidation OR MERGER in the manner
17 prescribed by section [forty-three of the membership corporations law]
18 SIX HUNDRED FIVE OF THE NOT-FOR-PROFIT CORPORATION LAW. An affidavit by
19 the president and the secretary of each corporation stating that such
20 approval has been given shall be annexed to the petition. On presenta-
21 tion to the court of such petition and agreement for consolidation OR
22 MERGER and on such notice as the court may direct, the court after hear-
23 ing all the parties interested desiring to be heard, may make an order
24 approving the consolidation OR MERGER. When such order is made and duly
25 entered and a certified copy thereof filed with the secretary of state
26 and in the offices of the clerks of the counties in which the certif-
27 icates of incorporation of the several constituent corporations were
28 recorded, or if no such certificate was recorded, then in the office of
29 the clerk of the county in which the principal place of worship of the
30 new OR SURVIVING corporation is intended to be situated, such corpo-
31 rations shall become one corporation by the name designated in the order
32 and the trustees named in the agreement for consolidation OR MERGER
33 shall be the [first] trustees of the consolidated corporation.

34 S 111. Section 209 of the religious corporations law, as added by
35 chapter 117 of the laws of 1927, is amended to read as follows:

36 S 209. Effect of consolidation. The consolidated OR MERGED corpo-
37 ration shall possess all the powers of the constituent corporations and
38 shall have the power and be subject to the duties and obligations of a
39 congregation of the Jewish faith formed for like purposes under the
40 religious corporations law. All the rights, privileges and interests of
41 each of the constituent corporations, all the property, real, personal
42 and mixed, and all the debts due on whatever account to either of them,
43 and all things in action, belonging to either of them, shall be deemed
44 to be transferred to and vested in such new corporation without further
45 act or deed; and all claims, demands, property, and every other inter-
46 est, belonging to the several constituent corporations, shall be as
47 effectually the property of the new corporation as they were of the
48 constituent corporations, and the title to all real property, held or
49 taken by deed or otherwise under the laws of this state, vested in the
50 several constituent corporations shall not be deemed to revert or to be
51 in any way impaired by reason of the consolidation but shall be vested
52 in the new corporation. Any devise, bequest, gift, grant, or declaration
53 of trust, contained in any deed, will, or other instrument, in trust or
54 otherwise, made before or after such consolidation, OR MERGER to or for
55 any of the constituent corporations, shall inure to the benefit of the
56 consolidated OR MERGED corporation. The consolidated corporation shall

1 be deemed to have assumed and shall be liable for all debts and obli-
2 gations of the constituent corporations in the same manner as if such
3 new corporation had itself incurred such debts or obligations.

4 S 112. Paragraph (c) of subdivision 1 of section 2-b of the religious
5 corporations law, as amended by chapter 490 of the laws of 2010, is
6 amended to read as follows:

7 (c) The following provisions of the not-for-profit corporation law
8 shall not apply to religious corporations: subparagraphs (7) and (8) of
9 paragraph (a) of section one hundred twelve, [section one hundred thir-
10 teen,] section one hundred fourteen, section two hundred one, section
11 three hundred three, section three hundred four, section three hundred
12 five, section three hundred six, article four except section four
13 hundred one, section five hundred fourteen, that portion of section five
14 hundred fifty-five (b) and section five hundred fifty-five (c) which
15 reads "The institution shall notify the donor, if available, and the
16 attorney general of the application, and the attorney general and such
17 donor must be given an opportunity to be heard", section six hundred
18 five, section six hundred seven, section six hundred nine, section eight
19 hundred four, article nine except section nine hundred ten, article ten
20 except as provided in section eleven hundred fifteen, section eleven
21 hundred two, and article fifteen except paragraph (c) of section fifteen
22 hundred seven.

23 S 113. Paragraph (c) of subdivision 1 of section 1-a of the benevo-
24 lent orders law, as added by chapter 703 of the laws of 1970, is amended
25 to read as follows:

26 (c) The following provisions of the not-for-profit corporation law
27 shall not apply to benevolent orders: [section one hundred thirteen,]
28 section two hundred one, article four, paragraphs (a), (b), and (c) of
29 section eight hundred four, section nine hundred seven, section nine
30 hundred eight, section nine hundred nine, [section ten hundred eleven,]
31 section ten hundred twelve, and article fourteen.

32 S 114. Subdivision 1 of section 1825 of the public authorities law,
33 as amended by chapter 1045 of the laws of 1974, is amended to read as
34 follows:

35 1. The corporation shall (a) be incorporated or reincorporated under
36 [article nineteen of the membership corporations law, or under] section
37 fourteen hundred eleven of the not-for-profit corporation law, or (b) be
38 incorporated under [article two of the membership corporations law, or
39 under] article four of the not-for-profit corporation law, in addition
40 to other purposes, to construct new industrial or manufacturing plants
41 or new research and development buildings and acquire machinery and
42 equipment deemed related thereto or acquire, rehabilitate, and improve
43 for use by others, industrial or manufacturing plants in the area of the
44 state in which an assisted project is to be located, to assist finan-
45 cially in such construction, acquisition, rehabilitation and improvement
46 and to maintain such plants, buildings and equipment for others, and may
47 also be authorized to study and promote, alone or in concert with local
48 officials and interested local groups, the economic growth and business
49 prosperity of the area and the solution of other civic problems of the
50 region which includes such areas[, and (c) if incorporated or reincorpo-
51 rated under the membership corporations law, have complied with the
52 requirements of section one hundred thirteen of the not-for-profit
53 corporation law].

54 S 115. Subdivision 1 of section 1840-q of the public authorities law,
55 as added by chapter 273 of the laws of 1979, is amended to read as
56 follows:

1 1. The corporation shall be incorporated or reincorporated under the
2 not-for-profit corporation law, in addition to other purposes, [to adopt
3 those purposes of the authority specified in section eighteen hundred
4 forty-c, and] may also be authorized to study and promote, alone or in
5 concert with local officials and interested local groups, the economic
6 growth and business prosperity of the area and the solution of other
7 civic problems of the bi-county region which includes such areas[, and
8 have complied with the requirements of section one hundred thirteen of
9 the not-for-profit corporation law].

10 S 116. Subsection (a) of section 3435 of the insurance law, as added
11 by chapter 220 of the laws of 1986, is amended to read as follows:

12 (a) This section shall apply to public entities as defined in section
13 one hundred seven of this chapter, organizations described by section
14 501(c)(3) of the United States internal revenue code, [Type B] CHARITA-
15 BLE corporations AS DEFINED IN PARAGRAPH (A) OF SECTION ONE HUNDRED TWO
16 (DEFINITIONS) OF THE NOT-FOR-PROFIT CORPORATION LAW AND formed pursuant
17 to paragraph [(b)] (A) of section two hundred one of the not-for-profit
18 corporation law, and organizations described by section two hundred
19 sixteen-a of the education law.

20 S 117. Subsection (a) of section 6703 of the insurance law, as added
21 by chapter 598 of the laws of 2000, is amended to read as follows:

22 (a) A corporation may be organized as a [type B] CHARITABLE corpo-
23 ration [pursuant to paragraph (b) of section two hundred one] AS DEFINED
24 IN PARAGRAPH (A) OF SECTION ONE HUNDRED TWO (DEFINITIONS) of the not-
25 for-profit corporation law or as a nonprofit reciprocal insurer under
26 article sixty-one of this chapter to write the kinds of insurance speci-
27 fied in subsection (a) of section one thousand one hundred thirteen of
28 this chapter other than (1) those types of insurance specified in para-
29 graphs one, two, eighteen, twenty-two, twenty-three and twenty-five of
30 such subsection, (2) insurance against legal liability of the insured,
31 and against loss, damage or expense incident to a claim of such liabil-
32 ity arising out of death or injury of any person, due to medical or
33 hospital malpractice by any licensed physician or hospital, and (3)
34 insurance subject to section three thousand four hundred twenty-five of
35 this chapter.

36 S 118. The opening paragraph of subsection (b) of section 6704 of the
37 insurance law, as added by chapter 598 of the laws of 2000, is amended
38 to read as follows:

39 The superintendent may pursuant to this article issue a license to a
40 nonprofit property/casualty insurance company that is organized as a
41 [type B] CHARITABLE corporation [pursuant to paragraph (b) of section
42 two hundred one] AS DEFINED IN PARAGRAPH (A) OF SECTION ONE HUNDRED TWO
43 (DEFINITIONS) of the not-for-profit corporation law if such company:

44 S 119. Subsection (a) of section 6706 of the insurance law, as added
45 by chapter 598 of the laws of 2000, is amended to read as follows:

46 (a) Except as otherwise provided in this article, where inconsistent
47 with this article, or where the context otherwise requires, all of the
48 provisions of this chapter and the rules and regulations of the super-
49 intendent, relating to all insurers and those relating to
50 property/casualty insurance companies transacting the same kind or kinds
51 of insurance shall be applicable to a nonprofit property/casualty insur-
52 ance company organized as a [type B] CHARITABLE corporation AS DEFINED
53 IN PARAGRAPH (A) OF SECTION ONE HUNDRED TWO (DEFINITIONS) OF THE
54 NOT-FOR-PROFIT CORPORATION LAW AND FORMED pursuant to paragraph (b) of
55 section two hundred one of the not-for-profit corporation law and
56 licensed pursuant to subsection (b) of section six thousand seven

1 hundred four of this article. Where any of such provisions of law refer
2 to a corporation, company or insurer, such references, when read in
3 connection with and applicable to this article, shall mean such a
4 nonprofit property/casualty insurance company.

5 S 120. Section 202 of the racing, pari-mutuel wagering and breeding
6 law, as amended by chapter 18 of the laws of 2008, is amended to read as
7 follows:

8 S 202. Restriction upon commencement of business. No business corpo-
9 ration organized under the provisions of this article shall engage in
10 the prosecution or management of its business until the whole of its
11 capital stock shall have been subscribed, nor until it shall have filed
12 in the offices where certificates of incorporation were filed, a further
13 certificate stating that the whole of its capital stock has been in good
14 faith subscribed, executed and acknowledged by its president or vice-
15 president and treasurer or secretary, and verified by them to the effect
16 that the statements contained in it are true.

17 Notwithstanding the foregoing, corporations organized pursuant to
18 section two hundred one of the not-for-profit corporation law as [type
19 C] CHARITABLE corporations AS DEFINED IN PARAGRAPH (A) OF SECTION ONE
20 HUNDRED TWO (DEFINITIONS) OF THE NOT-FOR-PROFIT CORPORATION LAW shall
21 not engage in the prosecution or management of its business until its
22 certificate of incorporation has been accepted for filing by the secre-
23 tary of state and such confirmation of filing has been filed with the
24 board and the franchise oversight board.

25 S 121. Subdivision 2 of section 2-b of the religious corporations law,
26 as added by chapter 956 of the laws of 1971, is amended to read as
27 follows:

28 2. Every corporation to which the not-for-profit corporation law is
29 made applicable by this section is a [type B] CHARITABLE corporation AS
30 DEFINED IN PARAGRAPH (A) OF SECTION ONE HUNDRED TWO (DEFINITIONS) OF THE
31 NOT-FOR-PROFIT CORPORATION LAW for all purposes of that law.

32 S 122. Subdivision 2 of section 13-a of the private housing finance
33 law, as added by chapter 547 of the laws of 1971, is amended to read as
34 follows:

35 2. Every corporation to which the not-for-profit corporation law is
36 made applicable by this section is a [type B] CHARITABLE corporation AS
37 DEFINED IN PARAGRAPH (A) OF SECTION ONE HUNDRED TWO (DEFINITIONS) OF THE
38 NOT-FOR-PROFIT CORPORATION LAW for all purposes of that law.

39 S 123. Subdivision 5 of section 216-a of the education law, as added
40 by chapter 901 of the laws of 1972, is amended to read as follows:

41 5. Every corporation to which the not-for-profit corporation law is
42 made applicable by this section, is a [type B] CHARITABLE corporation AS
43 DEFINED IN PARAGRAPH (A) OF SECTION ONE HUNDRED TWO (DEFINITIONS) OF THE
44 NOT-FOR-PROFIT CORPORATION LAW under all applicable provisions of that
45 law.

46 S 124. Section 579 of the banking law, as amended by chapter 629 of
47 the laws of 2002, is amended to read as follows:

48 S 579. Doing business without license prohibited. Only a [type B not-
49 for-profit] CHARITABLE corporation as defined in [section two hundred
50 one] PARAGRAPH (A) OF SECTION ONE HUNDRED TWO (DEFINITIONS) of the not-
51 for-profit corporation law of this state, or an entity incorporated in
52 another state and having a similar not-for-profit status, shall engage
53 in the business of budget planning as defined in subdivision one of
54 section four hundred fifty-five of the general business law of this
55 state except as authorized by this article and without first obtaining a
56 license from the superintendent.

1 S 125. Subdivision 4 of section 455 of the general business law, as
2 amended by chapter 456 of the laws of 2006, is amended to read as
3 follows:

4 4. Person or entity as used in this article shall not include a [type
5 B not-for-profit] CHARITABLE corporation as defined in [section two
6 hundred one] PARAGRAPH (A) OF SECTION ONE HUNDRED TWO (DEFINITIONS) of
7 the not-for-profit corporation law of this state, or an entity incorpo-
8 rated in another state and having a similar not-for-profit status,
9 licensed by the superintendent, to engage in the business of budget
10 planning as defined in this section.

11 S 126. Paragraph (a) of subdivision 1 of section 458-b of the general
12 business law, as added by chapter 386 of the laws of 1986, is amended to
13 read as follows:

14 (a) Any [type B not-for-profit] CHARITABLE corporation AS DEFINED IN
15 PARAGRAPH (A) OF SECTION ONE HUNDRED TWO (DEFINITIONS) OF THE
16 NOT-FOR-PROFIT CORPORATION LAW licensed pursuant to article twelve-c of
17 the banking law.

18 S 127. Subdivision (b) of section 16.32 of the mental hygiene law, as
19 amended by chapter 669 of the laws of 1995, is amended to read as
20 follows:

21 (b) No loans, other than through the purchase of bonds, debentures, or
22 similar obligations of the type customarily sold in public offerings, or
23 through ordinary deposit of funds in a bank, shall be made by a not-for-
24 profit corporation which is certified as a provider of services pursuant
25 to this article to its employee who receives an annual salary in excess
26 of thirty thousand dollars, or to any other corporation, firm, associ-
27 ation or other entity in which such employee is a director or officer or
28 employee or holds a direct or indirect substantial financial interest,
29 except a loan by one corporation incorporated as a [type B] CHARITABLE
30 corporation [pursuant to] AS DEFINED IN PARAGRAPH (A) OF SECTION ONE
31 HUNDRED TWO (DEFINITIONS) OF the not-for-profit corporation law to
32 another type B corporation, or a loan for a temporary or emergency
33 purpose which will further the health and welfare of the employee so
34 long as the purpose and amount of such loan are disclosed to and
35 approved by the board of directors of such agency. Such disclosure shall
36 be filed with the secretary of the corporation and entered in the
37 minutes of the meeting, and, if approved by such board, such disclosure
38 shall also be forwarded in writing to the commissioner and to the direc-
39 tor of community services of each local governmental unit that has, at
40 the time of such disclosure, a contract with such corporation for the
41 rendition of services pursuant to article forty-one of this chapter. A
42 loan made in violation of this section shall be a violation of the duty
43 to the not-for-profit corporation of the directors or officers authoriz-
44 ing it or participating in it, but the obligation of the borrower with
45 respect to the loan shall not be affected thereby.

46 S 128. Subdivision (b) of section 31.31 of the mental hygiene law, as
47 amended by chapter 669 of the laws of 1995, is amended to read as
48 follows:

49 (b) No loans, other than through the purchase of bonds, debentures, or
50 similar obligations of the type customarily sold in public offerings, or
51 through ordinary deposit of funds in a bank, shall be made by a not-for-
52 profit corporation which is licensed as a provider of services pursuant
53 to this article to its employee who receives an annual salary in excess
54 of thirty thousand dollars, or to any other corporation, firm, associ-
55 ation or other entity in which such employee is a director or officer or
56 employee or holds a direct or indirect substantial financial interest,

1 except a loan by one corporation incorporated as a [type B] CHARITABLE
2 corporation [pursuant to] AS DEFINED IN PARAGRAPH (A) OF SECTION ONE
3 HUNDRED TWO (DEFINITIONS) OF the not-for-profit corporation law to
4 another type B corporation, or a loan for a temporary or emergency
5 purpose which will further the health and welfare of the employee so
6 long as the purpose and amount of such loan are disclosed to and
7 approved by the board of directors of such agency. Such disclosure shall
8 be filed with the secretary of the corporation and entered in the
9 minutes of the meeting, and, if approved by such board, such disclosure
10 shall also be forwarded in writing to the commissioner and to the direc-
11 tor of community services of each local governmental unit that has, at
12 the time of such disclosure, a contract with such corporation for the
13 rendition of services pursuant to article forty-one of this chapter. A
14 loan made in violation of this section shall be a violation of the duty
15 to the not-for-profit corporation of the directors or officers authoriz-
16 ing it or participating in it, but the obligation of the borrower with
17 respect to the loan shall not be affected thereby.

18 S 129. Paragraph (f) of subdivision 7 of section 75 of the public
19 lands law, as added by chapter 791 of the laws of 1992, is amended to
20 read as follows:

21 (f) The commissioner, in consultation with the commissioner of envi-
22 ronmental conservation, the secretary of state, the office of parks,
23 recreation and historic preservation and other interested state agencies
24 administering state-owned lands underwater, shall promulgate pursuant to
25 article two of the state administrative procedure act such rules with
26 respect to grants, leases, easements and lesser interests for the use of
27 state-owned land underwater, and the cession of jurisdiction thereof, as
28 in his or her judgment are reasonable and necessary to protect the
29 interests of the people in such lands underwater. Such regulations shall
30 include without being limited to: the fees to be charged, consistent
31 with the provisions of this section, including mitigation of such fees
32 in the event of economic hardship on existing commercial enterprises;
33 fee limitations to administrative expenses for municipal uses which are
34 public, non-commercial and offer services free or for nominal fees, and
35 for uses undertaken and operated for public and non-commercial purposes
36 by not-for-profit corporations characterized as ["Type B"] CHARITABLE
37 corporations [pursuant to paragraph (b) of section two hundred one] AS
38 DEFINED IN PARAGRAPH (A) OF SECTION ONE HUNDRED TWO (DEFINITIONS) of the
39 not-for-profit corporation law, and for uses undertaken and operated for
40 public purposes by a corporation formed pursuant to the religious corpo-
41 ration law or by a corporation formed pursuant to A special act of this
42 state and which has as its principal purpose a religious purpose; such
43 further exemptions for projects as the commissioner determines do not
44 represent significant encroachments; limitations on grants, including
45 conversion grants, with respect to underwater lands consistent with the
46 public purposes of this subdivision and limiting such grants to excep-
47 tional circumstances; and factors to be examined in considering an
48 application for a lease, easement or other interest. Those factors shall
49 include without limitation the following: (i) the environmental impact
50 of the project; (ii) the values for natural resource management, recre-
51 ational uses, and commercial uses of the pertinent underwater land;
52 (iii) the size, character and effects of the project in relation to
53 neighboring uses; (iv) the potential for interference with navigation,
54 public uses of the waterway and rights of other riparian owners; (v) the
55 effect of the project on the natural resource interests of the state in
56 the lands; (vi) the water-dependent nature of the use; (vii) and any

1 adverse economic impact on existing commercial enterprises. The final
2 promulgation of rules establishing fees or fee structures shall be
3 subject to the approval of the director of the budget.
4 S 130. This act shall take effect January 1, 2013, provided that
5 section forty-four of this act shall take effect January 1, 2014.