

2120--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the not-for-profit corporation law, in relation to compensation of executives of certain not-for-profit corporations

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

1 Section 1. Section 63 of the executive law is amended by adding a new
2 subdivision 14 to read as follows:

3 14. PROSECUTE ALL ACTIONS IN CONNECTION WITH SECTION SEVEN HUNDRED
4 TWENTY-SEVEN AND SEVEN HUNDRED TWENTY-EIGHT OF THE NOT-FOR-PROFIT CORPO-
5 RATION LAW.

6 S 2. Subparagraph 12 of paragraph (a) of section 202 of the not-for-
7 profit corporation law is amended to read as follows:

8 (12) To elect or appoint officers, employees and other agents of the
9 corporation, define their duties, fix their reasonable compensation and
10 the reasonable compensation of directors, and to indemnify corporate
11 personnel. Such compensation shall be commensurate with services
12 performed, AND SUBJECT, WHERE APPLICABLE, TO SECTION SEVEN HUNDRED TWEN-
13 TY-SEVEN (COMPENSATION OF EXECUTIVES).

14 S 3. Paragraph (a) of section 717 of the not-for-profit corporation
15 law, as amended by chapter 490 of the laws of 2010, is amended to read
16 as follows:

17 (a) Directors and officers shall discharge the duties of their respec-
18 tive positions in good faith and with the care an ordinarily prudent
19 person in a like position would exercise under similar circumstances.
20 The factors set forth in subparagraph one of paragraph (e) of section

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

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1 552 (Standard of conduct in managing and investing an institutional
2 fund), if relevant, must be considered by a governing board delegating
3 investment management of institutional funds pursuant to section 514
4 (Delegation of investment management). For purposes of this paragraph,
5 the term institutional fund is defined in section 551 (Definitions).
6 FURTHERMORE, ANY COMPENSATION PROVIDED TO DIRECTORS, OFFICERS, EMPLOYEES
7 AND OTHER AGENTS OF THE CORPORATION SHALL BE REASONABLE AND, WHERE
8 APPLICABLE, IS SUBJECT TO SECTION 727 (COMPENSATION OF EXECUTIVES).

9 S 4. Paragraph (a) of section 719 of the not-for-profit corporation
10 law is amended by adding a new subparagraph 6 to read as follows:

11 (6) THE PROVISION OF EXCESSIVE COMPENSATION TO DIRECTORS, OFFICERS,
12 EMPLOYEES AND OTHER AGENTS OF THE CORPORATION IN VIOLATION OF SECTION
13 727 (COMPENSATION OF EXECUTIVES), WHERE APPLICABLE.

14 S 5. Paragraph (d) of section 719 of the not-for-profit corporation
15 law is amended by adding a new subparagraph 6 to read as follows:

16 (6) UPON REIMBURSEMENT TO THE CORPORATION OF THE AMOUNT OF ANY EXCES-
17 SIVE COMPENSATION PROVIDED IN VIOLATION OF SECTION 727 (COMPENSATION OF
18 EXECUTIVES), TO BE SUBROGATED TO THE RIGHTS OF THE CORPORATION AGAINST A
19 DIRECTOR, OFFICER, EMPLOYEE OR OTHER AGENT WHO RECEIVED THE EXCESSIVE
20 COMPENSATION.

21 S 6. Clauses (A) and (B) of subparagraph 1 of paragraph (a) of section
22 720 of the not-for-profit corporation law are amended to read as
23 follows:

24 (A) The neglect of, [or] THE failure to perform, or ANY other
25 violation of his duties in the management and disposition of corporate
26 assets committed to his charge.

27 (B) The acquisition by himself, transfer to others, loss or waste of
28 corporate assets due to any neglect of, [or] THE failure to perform, or
29 ANY other violation of his duties, INCLUDING VIOLATIONS OF SECTION 727
30 (COMPENSATION OF EXECUTIVES), PURSUANT TO SECTION 717 (DUTY OF DIRECTORS
31 AND OFFICERS).

32 S 7. Clauses (A) and (B) of subparagraph 1 of paragraph (a) of section
33 720 of the not-for-profit corporation law, as amended by chapter 549 of
34 the laws of 2013, are amended to read as follows:

35 (A) The neglect of, [or] THE failure to perform, or ANY other
36 violation of his duties in the management and disposition of corporate
37 assets committed to his charge.

38 (B) The acquisition by himself, transfer to others, loss or waste of
39 corporate assets due to any neglect of, [or] THE failure to perform, or
40 ANY other violation of his duties INCLUDING VIOLATIONS OF SECTION 727
41 (COMPENSATION OF EXECUTIVES), PURSUANT TO SECTION 717 (DUTY OF DIRECTORS
42 AND OFFICERS).

43 S 8. The not-for-profit corporation law is amended by adding a new
44 section 727 to read as follows:

45 S 727. COMPENSATION OF EXECUTIVES.

46 (A) DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, UNLESS OTHERWISE
47 EXPRESSLY STATED OR CONTEXT CLEARLY REQUIRES:

48 (1) "COMPENSATION" MEANS THE AGGREGATE VALUE OF ECONOMIC BENEFITS
49 CONFERRED IN EXCHANGE FOR THE PERFORMANCE OF SERVICES THAT ARE INCLUDED
50 FOR PURPOSES OF DETERMINING REASONABLENESS UNDER SECTION 26 U.S.C. 4958,
51 AS FURTHER SPECIFIED IN 26 CFR S53.4958-4(B)(II)(B), OR SUCCEEDING
52 PROVISIONS.

53 (2) "EXECUTIVE" MEANS ANY PERSON WHO HAS ULTIMATE RESPONSIBILITY FOR
54 IMPLEMENTING THE DECISIONS OF THE GOVERNING BODY OR FOR SUPERVISING THE
55 MANAGEMENT, ADMINISTRATION, OR OPERATION OF THE ORGANIZATION, AS REFER-

1 ENCED IN 26 U.S.C. S4958(F)(1)(A) AND FURTHER SPECIFIED IN 26 CFR
2 S53.4958-3(C)(2), OR SUCCEEDING PROVISIONS.

3 (3) "FAMILY MEMBER" MEANS A SPOUSE, SIBLING (BY WHOLE OR HALF BLOOD),
4 SPOUSE OF A SIBLING (BY WHOLE OR HALF BLOOD), PARENT, GRANDPARENT,
5 CHILD, GRANDCHILD, GREAT-GRANDCHILD, AND SPOUSE OF A CHILD, GRANDCHILD,
6 AND GREAT-GRANDCHILD.

7 (B) COMPENSATION EXCHANGED BY A NOT-FOR-PROFIT CORPORATION FOR THE
8 PERFORMANCE OF SERVICES BY AN EXECUTIVE MUST BE REASONABLE CONSIDERING
9 FACTORS INCLUDING, BUT NOT LIMITED TO: COMPENSATION LEVELS PAID BY SIMI-
10 LARLY SITUATED ORGANIZATIONS, WHETHER OR NOT THEY QUALIFY AS A NOT-FOR-
11 PROFIT CORPORATION AS DEFINED IN SECTION 102 (DEFINITIONS); THE AVAIL-
12 ABILITY OF SIMILAR SERVICES IN THE GEOGRAPHIC AREA OF THE APPLICABLE
13 PROVIDER OF SERVICES; CURRENT COMPENSATION SURVEYS COMPILED BY INDEPEND-
14 ENT OUTSIDE CONSULTANTS OR ENTITIES; AND ACTUAL WRITTEN OFFERS FROM
15 SIMILAR INSTITUTIONS COMPETING FOR THE SERVICES OF THE APPLICABLE EXECU-
16 TIVE.

17 (1) FOR THE PURPOSES OF THIS SECTION, WHETHER AN ORGANIZATION IS SIMI-
18 LARLY SITUATED SHALL BE DETERMINED BASED ON FACTORS INCLUDING, BUT NOT
19 LIMITED TO: GROSS ANNUAL REVENUE; GEOGRAPHIC LOCATION; AND THE DIVERSI-
20 TY AND COMPLEXITY OF PROGRAMS.

21 (2)(A) IF A NOT-FOR-PROFIT CORPORATION RECEIVES OVER TWENTY-FIVE THOU-
22 SAND DOLLARS FROM THE STATE, THE NOT-FOR-PROFIT CORPORATION MUST ANNUAL-
23 LY SUBMIT A COMPLETED INTERNAL REVENUE SERVICE FORM 990, OR A COMPARABLE
24 FORM DEVELOPED PURSUANT TO SUBCLAUSE (I) OF CLAUSE (B) OF THIS SUBPARA-
25 GRAPH, TO THE STATE AND FILED WITH THE ATTORNEY GENERAL. SUCH COMPLETED
26 FORM OR INTERNAL REVENUE SERVICE FORM 990 SHALL BE PUBLICLY AVAILABLE
27 UPON REQUEST AND IF THE ORGANIZATION MAINTAINS A WEBSITE, IT SHALL BE
28 POSTED ON THE ORGANIZATION'S WEBSITE.

29 (B) THE COMMISSIONERS OF DEVELOPMENTAL DISABILITIES, MENTAL HEALTH,
30 ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, CHILDREN AND FAMILY SERVICES,
31 HEALTH, CRIMINAL JUSTICE SERVICES AND THE DIRECTOR OF THE OFFICE FOR THE
32 AGING SHALL JOINTLY:

33 (I) DEVELOP A FORM FOR USE BY THOSE NOT-FOR-PROFIT CORPORATIONS WHO
34 ARE NOT REQUIRED BY FEDERAL LAW TO COMPLETE AN INTERNAL REVENUE SERVICE
35 FORM 990. SUCH FORM SHALL REQUIRE NO MORE INFORMATION THAN THAT WHICH
36 MUST BE SUBMITTED ON INTERNAL REVENUE SERVICE FORM 990;

37 (II) PROMULGATE REGULATIONS THAT ALLOW A NOT-FOR-PROFIT CORPORATION TO
38 SUBMIT ONE COMPLETED INTERNAL REVENUE SERVICE FORM 990, OR ONE COMPLETED
39 COMPARABLE FORM, THROUGH THE POSTAL SERVICE OR ELECTRONICALLY, FOR
40 DISTRIBUTION TO ALL AGENCIES THAT PROVIDE FUNDING TO THE NOT-FOR-PROFIT
41 CORPORATION; AND

42 (III) ESTABLISH UNIFORM PROCEDURES FOR REVIEWING SUBMITTED FORMS; AND,
43 UPON A DETERMINATION THAT EXECUTIVE COMPENSATION APPEARS TO BE EXCESSIVE
44 IN VIOLATION OF THE STANDARDS ESTABLISHED IN THIS SECTION, FOR REFERRING
45 SUCH CASES TO THE ATTORNEY GENERAL FOR FURTHER INQUIRY.

46 (C) ANNUAL COMPENSATION EXCHANGED BY A NOT-FOR-PROFIT CORPORATION FOR
47 THE PERFORMANCE OF SERVICES BY AN EXECUTIVE SHALL BE CONSIDERED REASON-
48 ABLE IF IT DOES NOT EXCEED LEVEL I OF THE FEDERAL GOVERNMENT'S RATES OF
49 BASIC PAY FOR THE EXECUTIVE SCHEDULE PROMULGATED BY THE UNITED STATES
50 OFFICE OF PERSONNEL MANAGEMENT.

51 (D) ANNUAL COMPENSATION EXCHANGED BY A NOT-FOR-PROFIT CORPORATION FOR
52 THE PERFORMANCE OF SERVICES BY AN EXECUTIVE THAT DOES EXCEED LEVEL I OF
53 THE FEDERAL GOVERNMENT'S RATES OF BASIC PAY FOR THE EXECUTIVE SCHEDULE
54 SHALL BE PRESUMED TO BE REASONABLE IF THE FOLLOWING FOUR CONDITIONS ARE
55 SATISFIED:

1 (1) THE COMPENSATION IS APPROVED IN ADVANCE BY THE GOVERNING BODY
2 (I.E., THE BOARD OF DIRECTORS, BOARD OF TRUSTEES, OR EQUIVALENT CONTROL-
3 LING BODY) OF THE NOT-FOR-PROFIT CORPORATION THAT IS COMPOSED ENTIRELY
4 OF INDIVIDUALS WHO DO NOT HAVE A CONFLICT OF INTEREST WITH RESPECT TO
5 THE COMPENSATION ARRANGEMENT.

6 (A) FOR THE PURPOSES OF DETERMINING WHETHER THE REQUIREMENTS OF THIS
7 PARAGRAPH HAVE BEEN MET WITH RESPECT TO A SPECIFIC COMPENSATION ARRANGE-
8 MENT, AN INDIVIDUAL IS NOT INCLUDED IN THE GOVERNING BODY WHEN IT IS
9 REVIEWING A TRANSACTION IF THAT INDIVIDUAL MEETS WITH OTHER MEMBERS ONLY
10 TO ANSWER QUESTIONS, AND OTHERWISE RECUSES HIMSELF OR HERSELF FROM THE
11 MEETING AND IS NOT PRESENT DURING DEBATE AND VOTING ON THE COMPENSATION
12 ARRANGEMENT.

13 (B) A MEMBER OF THE GOVERNING BODY DOES NOT HAVE A CONFLICT OF INTER-
14 EST WITH RESPECT TO A COMPENSATION ARRANGEMENT ONLY IF THE MEMBER:

15 (I) IS NOT AN EXECUTIVE PARTICIPATING IN, OR ECONOMICALLY BENEFITING
16 FROM, THE COMPENSATION ARRANGEMENT; AND IS NOT A FAMILY MEMBER OF SUCH
17 AN EXECUTIVE;

18 (II) IS NOT IN AN EMPLOYMENT RELATIONSHIP SUBJECT TO THE DIRECTION OR
19 CONTROL OF ANY EXECUTIVE, OR THE FAMILY MEMBER OF ANY EXECUTIVE, PARTIC-
20 IPATING IN OR ECONOMICALLY BENEFITING FROM THE COMPENSATION ARRANGEMENT;

21 (III) DOES NOT RECEIVE COMPENSATION OR OTHER PAYMENT SUBJECT TO
22 APPROVAL BY ANY EXECUTIVE, OR THE FAMILY MEMBER OF ANY EXECUTIVE,
23 PARTICIPATING IN OR ECONOMICALLY BENEFITING FROM THE COMPENSATION
24 ARRANGEMENT;

25 (IV) HAS NO MATERIAL FINANCIAL INTEREST AFFECTED BY THE COMPENSATION
26 ARRANGEMENT; AND

27 (V) DOES NOT APPROVE A TRANSACTION PROVIDING ECONOMIC BENEFITS TO ANY
28 EXECUTIVE, OR THE FAMILY MEMBER OF ANY EXECUTIVE, PARTICIPATING IN THE
29 COMPENSATION ARRANGEMENT, WHO IN TURN HAS APPROVED OR WILL APPROVE A
30 TRANSACTION PROVIDING ECONOMIC BENEFITS TO THE MEMBER.

31 (2) THE GOVERNING BODY OBTAINED AND RELIED UPON APPROPRIATE DATA AS TO
32 COMPARABILITY PRIOR TO MAKING ITS DETERMINATION.

33 (A) A GOVERNING BODY HAS APPROPRIATE DATA AS TO COMPARABILITY IF,
34 GIVEN THE KNOWLEDGE AND EXPERTISE OF ITS MEMBERS, IT HAS INFORMATION
35 SUFFICIENT TO DETERMINE WHETHER THE COMPENSATION ARRANGEMENT IN ITS
36 ENTIRETY IS REASONABLE. RELEVANT INFORMATION INCLUDES, BUT IS NOT LIMIT-
37 ED TO: COMPENSATION LEVELS PAID BY SIMILARLY SITUATED ORGANIZATIONS,
38 WHETHER OR NOT THEY QUALIFY AS A NOT-FOR-PROFIT CORPORATION AS DEFINED
39 IN SECTION 102 (DEFINITIONS); THE AVAILABILITY OF SIMILAR SERVICES IN
40 THE GEOGRAPHIC AREA OF THE APPLICABLE PROVIDER OF SERVICES; CURRENT
41 COMPENSATION SURVEYS COMPILED BY INDEPENDENT FIRMS; AND ACTUAL WRITTEN
42 OFFERS FROM SIMILAR INSTITUTIONS COMPETING FOR THE SERVICES OF THE
43 APPLICABLE EXECUTIVE.

44 (B) HOWEVER, FOR SMALL ORGANIZATIONS WITH ANNUAL GROSS RECEIPTS
45 (INCLUDING CONTRIBUTIONS) OF LESS THAN ONE MILLION DOLLARS REVIEWING
46 COMPENSATION ARRANGEMENTS, THE GOVERNING BODY WILL BE CONSIDERED TO HAVE
47 APPROPRIATE DATA AS TO COMPARABILITY IF IT HAS DATA ON COMPENSATION PAID
48 BY THREE COMPARABLE PROVIDERS OF SERVICES IN THE SAME OR SIMILAR COMMU-
49 NITIES FOR SIMILAR SERVICES.

50 (I) FOR THE PURPOSES OF DETERMINING WHETHER THE ABOVE RULE FOR SMALL
51 ORGANIZATIONS APPLIES, AN ORGANIZATION MAY CALCULATE ITS ANNUAL GROSS
52 RECEIPTS BASED ON AN AVERAGE OF ITS GROSS RECEIPTS DURING THE THREE
53 PRIOR TAXABLE YEARS. IF ANY APPLICABLE NOT-FOR-PROFIT CORPORATION IS
54 CONTROLLED BY OR CONTROLS ANOTHER ENTITY, THE ANNUAL GROSS RECEIPTS OF
55 SUCH ORGANIZATIONS MUST BE AGGREGATED TO DETERMINE APPLICABILITY.

1 (II) FOR PURPOSES OF THIS PARAGRAPH, CONTROL BY AN APPLICABLE
2 NOT-FOR-PROFIT CORPORATION MEANS:

3 1. IN THE CASE OF A STOCK CORPORATION, OWNERSHIP (BY VOTE OR VALUE) OF
4 MORE THAN FIFTY PERCENT OF THE STOCK IN SUCH CORPORATION;

5 2. IN THE CASE OF A PARTNERSHIP, OWNERSHIP OF MORE THAN FIFTY PERCENT
6 OF THE PROFITS INTERESTS OR CAPITAL INTERESTS IN THE PARTNERSHIP;

7 3. IN THE CASE OF A NONSTOCK ORGANIZATION (I.E., AN ENTITY IN WHICH NO
8 PERSON HOLDS A PROPRIETARY INTEREST), THAT AT LEAST FIFTY PERCENT OF THE
9 DIRECTORS OR TRUSTEES OF THE NOT-FOR-PROFIT CORPORATION ARE EITHER
10 REPRESENTATIVES (INCLUDING TRUSTEES, DIRECTORS, AGENTS, OR EMPLOYEES)
11 OF, OR DIRECTLY OR INDIRECTLY CONTROLLED BY, AN APPLICABLE TAX-EXEMPT
12 ORGANIZATION; OR

13 4. IN THE CASE OF ANY OTHER ENTITY, OWNERSHIP OF MORE THAN FIFTY
14 PERCENT OF THE BENEFICIAL INTEREST IN THE ENTITY.

15 (3) THE GOVERNING BODY ADEQUATELY DOCUMENTED THE BASIS FOR ITS DETER-
16 MINATION CONCURRENTLY WITH MAKING THAT DETERMINATION.

17 (A) FOR A DECISION TO BE DOCUMENTED ADEQUATELY, THE WRITTEN OR ELEC-
18 TRONIC RECORDS OF THE GOVERNING BODY MUST NOTE:

19 (I) THE TERMS OF THE TRANSACTION THAT WAS APPROVED, AND THE DATE IT
20 WAS APPROVED;

21 (II) THE MEMBERS OF THE GOVERNING BODY WHO WERE PRESENT DURING DEBATE
22 ON THE TRANSACTION THAT WAS APPROVED, AND THOSE WHO VOTED ON IT;

23 (III) THE COMPARABILITY DATA OBTAINED AND RELIED UPON BY THE GOVERNING
24 BODY, AND HOW THE DATA WAS OBTAINED; AND

25 (IV) ANY ACTIONS TAKEN WITH RESPECT TO CONSIDERATION OF THE TRANS-
26 ACTION BY ANYONE WHO IS OTHERWISE A MEMBER OF THE GOVERNING BODY BUT WHO
27 HAD A CONFLICT OF INTEREST WITH RESPECT TO THE TRANSACTION.

28 (B) IF THE GOVERNING BODY DETERMINES THAT REASONABLE COMPENSATION FOR
29 A SPECIFIC ARRANGEMENT IS HIGHER OR LOWER THAN THE RANGE OF COMPARABILI-
30 TY DATA OBTAINED, THE GOVERNING BODY MUST RECORD THE BASIS FOR ITS
31 DETERMINATION. FOR A DECISION TO BE DOCUMENTED CONCURRENTLY, RECORDS
32 MUST BE PREPARED BEFORE THE LATER OF THE NEXT MEETING OF THE GOVERNING
33 BODY OR SIXTY DAYS AFTER THE FINAL ACTION OR ACTIONS OF THE GOVERNING
34 BODY ARE TAKEN. RECORDS MUST BE REVIEWED AND APPROVED BY THE GOVERNING
35 BODY AS REASONABLE, ACCURATE AND COMPLETE WITHIN A REASONABLE TIME PERI-
36 OD THEREAFTER.

37 (4) THE COMPENSATION PROVIDED TO THE EXECUTIVE BY THE GOVERNING BODY
38 DOES NOT EXCEED THE HIGHEST COMPENSATION PROVIDED BY A SIMILARLY SITU-
39 ATED ORGANIZATION FOR SIMILAR SERVICES, AS IDENTIFIED IN THE COMPARABIL-
40 ITY DATA, BY MORE THAN TEN PERCENT.

41 (E) IF THE FOUR CONDITIONS OF PARAGRAPH (D) OF THIS SECTION ARE SATIS-
42 FIED, THEN THE PERSON OR ENTITY BRINGING AN ACTION FOR RELIEF PURSUANT
43 TO SECTION 720 (ACTIONS AGAINST DIRECTORS, OFFICERS AND KEY EMPLOYEES)
44 MAY REBUT THE PRESUMPTION THAT ARISES UNDER PARAGRAPH (D) OF THIS
45 SECTION ONLY IF IT DEVELOPS SUFFICIENT CONTRARY EVIDENCE TO REBUT THE
46 PROBATIVE VALUE OF THE COMPARABILITY DATA RELIED UPON BY THE GOVERNING
47 BODY. WITH RESPECT TO ANY FIXED PAYMENT, REBUTTAL EVIDENCE IS LIMITED TO
48 EVIDENCE RELATING TO FACTS AND CIRCUMSTANCES EXISTING ON THE DATE THE
49 PARTIES ENTER INTO THE CONTRACT PURSUANT TO WHICH THE PAYMENT IS MADE
50 (EXCEPT IN THE EVENT OF SUBSTANTIAL NONPERFORMANCE). WITH RESPECT TO ALL
51 OTHER PAYMENTS, REBUTTAL EVIDENCE MAY INCLUDE FACTS AND CIRCUMSTANCES UP
52 TO AND INCLUDING THE DATE OF PAYMENT.

53 (F) A NOT-FOR-PROFIT CORPORATION IS PROHIBITED FROM: (1) ENGAGING IN
54 ANY ACT THAT THE INTERNAL REVENUE SERVICE DETERMINES CONSTITUTES AN
55 "EXCESS BENEFIT TRANSACTION" UNDER SECTION 4958 OF THE INTERNAL REVENUE
56 CODE; OR (2) ENGAGING IN ANY ACT THAT WOULD CONSTITUTE AN "EXCESS BENE-

1 FIT TRANSACTION" UNDER THE STANDARDS OF SECTION 4958 OF THE INTERNAL
2 REVENUE CODE.

3 S 9. The not-for-profit corporation law is amended by adding a new
4 section 728 to read as follows:

5 S 728. WRITTEN POLICY REQUIRED.

6 (A) THE GOVERNING BODY OF A NOT-FOR-PROFIT CORPORATION SHALL HAVE A
7 WRITTEN POLICY ON:

8 (1) EMPLOYEES SERVING ON SUCH GOVERNING BODY, THEIR VOTING RIGHTS,
9 RECUSAL FROM DECISIONS OF THE GOVERNING BODY, AND THE PERCENTAGE OF THE
10 MEMBERSHIP OF THE GOVERNING BODY THAT MUST BE INDEPENDENT OF THE ORGAN-
11 IZATION;

12 (2) HIRING OF FAMILY MEMBERS OF EMPLOYEES AND GOVERNING BODY MEMBERS;
13 AND

14 (3) CONFLICT OF INTEREST COVERING BUSINESS INTERESTS.

15 (B) EMPLOYEES OF A NOT-FOR-PROFIT CORPORATION ARE PROHIBITED FROM:

16 (1) SERVING AS THE CHAIR OF SUCH ORGANIZATION'S GOVERNING BODY; AND

17 (2) SERVING AS A VOTING MEMBER OF SUCH ORGANIZATION'S GOVERNING BODY.

18 (C) NO PERSON WHO IS RELATED TO ANY EXECUTIVE AS DEFINED IN SUBPARA-
19 GRAPH TWO OF SUBPARAGRAPH (A) OF SECTION 727 (COMPENSATION OF EXECU-
20 TIVES) OR ANY MEMBER OF A GOVERNING BODY BY BLOOD OR MARRIAGE SHALL BE
21 EMPLOYED BY SUCH ORGANIZATION, EXCEPT WITH THE APPROVAL OF TWO-THIRDS OF
22 THE MEMBERS OF THE GOVERNING BODY.

23 (D) ALL WRITTEN POLICIES REQUIRED IN PARAGRAPH (A) OF THIS SECTION
24 SHALL BE AVAILABLE FOR REVIEW BY THE ATTORNEY GENERAL UPON REQUEST.

25 S 10. This act shall take effect on the one hundred eightieth day
26 after it shall have become a law; provided, however, that the commis-
27 sioners of the offices for people with developmental disabilities,
28 mental health, alcoholism and substance abuse services, children and
29 family services, health, criminal justice services and the director of
30 the office for the aging shall immediately take the necessary actions to
31 ensure that forms and regulations required by section eight of this act
32 are in place on such effective date; and provided, further, whereas the
33 authority to promulgate regulations and make rules is derived from an
34 express or implicit statutory grant provided by the legislature, all
35 agencies, divisions and departments of the state are hereby prohibited
36 from promulgating regulations and making rules pursuant to section 8.38
37 of title 9 of the official compilation of the New York Codes, Rules and
38 Regulations, or that otherwise address the extent and nature of a
39 provider's administrative costs and executive compensation, except as
40 required and necessary to implement the provisions of section six of
41 this act; and provided further, that the amendments to clauses (A) and
42 (B) of subparagraph 1 of paragraph (a) of section 720 of the not-for-
43 profit corporation law made by section seven of this act shall take
44 effect on the same date and in the same manner as chapter 549 of the
45 laws of 2013, takes effect.