

10365--B

I N A S S E M B L Y

May 24, 2016

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

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

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

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

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

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

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

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

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

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

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

11 S 114. Visitation of supreme court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (J) IN AN ACTION BY THE ATTORNEY GENERAL WITH RESPECT TO A RELATED  
21 PARTY TRANSACTION NOT APPROVED IN ACCORDANCE WITH PARAGRAPHS (A) OR (B)  
22 OF THIS SECTION AT THE TIME IT WAS ENTERED INTO, WHICHEVER IS APPLICA-  
23 BLE, IT SHALL BE A DEFENSE TO A CLAIM OF VIOLATION OF ANY PROVISIONS OF  
24 THIS SECTION THAT (1) THE TRANSACTION WAS FAIR, REASONABLE AND IN THE  
25 CORPORATION'S BEST INTEREST AT THE TIME THE CORPORATION APPROVED THE  
26 TRANSACTION AND (2) PRIOR TO RECEIPT OF ANY REQUEST FOR INFORMATION BY  
27 THE ATTORNEY GENERAL REGARDING THE TRANSACTION, THE BOARD HAS: (A) RATI-  
28 FIED THE TRANSACTION BY FINDING IN GOOD FAITH THAT IT WAS FAIR, REASON-  
29 ABLE AND IN THE CORPORATION'S BEST INTEREST AT THE TIME THE CORPORATION  
30 APPROVED THE TRANSACTION; AND, WITH RESPECT TO ANY RELATED PARTY TRANS-  
31 ACTION INVOLVING A CHARITABLE CORPORATION AND IN WHICH A RELATED PARTY  
32 HAS A SUBSTANTIAL FINANCIAL INTEREST, CONSIDERED ALTERNATIVE TRANS-  
33 ACTIONS TO THE EXTENT AVAILABLE, APPROVING THE TRANSACTION BY NOT LESS  
34 THAN A MAJORITY VOTE OF THE DIRECTORS OR COMMITTEE MEMBERS PRESENT AT  
35 THE MEETING; (B) DOCUMENTED IN WRITING THE NATURE OF THE VIOLATION AND  
36 THE BASIS FOR THE BOARD'S OR COMMITTEE'S RATIFICATION OF THE TRANS-  
37 ACTION; AND (C) PUT INTO PLACE PROCEDURES TO ENSURE THAT THE CORPORATION  
38 COMPLIES WITH PARAGRAPHS (A) AND (B) OF THIS SECTION AS TO RELATED PARTY  
39 TRANSACTIONS IN THE FUTURE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 53.4958-3(c), (d) and (e), or succeeding provisions to the extent such  
2 provisions are applicable] (I) HAS RESPONSIBILITIES, OR EXERCISES POWERS  
3 OF INFLUENCE OVER THE TRUST AS A WHOLE SIMILAR TO THE RESPONSIBILITIES,  
4 POWERS, OR INFLUENCE OF TRUSTEES AND OFFICERS; (II) MANAGES THE TRUST,  
5 OR A SEGMENT OF THE TRUST THAT REPRESENTS A SUBSTANTIAL PORTION OF THE  
6 ACTIVITIES, ASSETS, INCOME OR EXPENSES OF THE TRUST; OR (III) ALONE OR  
7 WITH OTHERS CONTROLS OR DETERMINES A SUBSTANTIAL PORTION OF THE TRUST'S  
8 CAPITAL EXPENDITURES OR OPERATING BUDGET.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

30 S 19. Clauses (B) and (C) of subparagraph 2 of paragraph (e) of  
31 section 8-1.9 of the estates, powers and trusts law, clause (B) as added  
32 by chapter 549 of the laws of 2013 and clause (C) as amended by chapter  
33 555 of the laws of 2015, are amended to read as follows:

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

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

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

1 S 20. Severability. If any clause, sentence, paragraph, section or  
2 part of this act shall be adjudged by any court of competent jurisdic-  
3 tion to be invalid, the judgment shall not affect, impair, or invalidate  
4 the remainder thereof, but shall be confined in its operation to the  
5 clause, sentence, paragraph, section or part thereof directly involved  
6 in the controversy in which the judgement shall have been rendered.

7 S 21. This act shall take effect on the one hundred eightieth day  
8 after it shall have become a law; provided, however, that the amendments  
9 to paragraph (f) of section 713 of the not-for-profit corporation law  
10 made by section six of this act shall take effect on the same date and  
11 in the same manner as section 132 of chapter 549 of the laws of 2013, as  
12 amended, takes effect.