

10365

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

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] A DIRECTOR EMPLOYED
8 BY OR RECEIVING COMPENSATION FROM THE CORPORATION OR A KEY PERSON of the
9 corporation or an affiliate of the corporation, and does not have a
10 relative who is, or has been within the last three years, a key [employ-
11 ee] PERSON of the corporation or an affiliate of the corporation; (ii)
12 has not received, and does not have a relative who has received, in any
13 of the last three fiscal years, more than ten thousand dollars in direct
14 compensation from the corporation or an affiliate of the corporation
15 [(other than reimbursement for expenses reasonably incurred as a direc-
16 tor or reasonable compensation for service as a director as permitted by
17 paragraph (a) of section 202 (General and special powers))]; (iii) is
18 not a current employee of or does not have a substantial financial
19 interest in, and does not have a relative who is a current officer of or
20 has a substantial financial interest in, any entity that has [made
21 payments] PROVIDED PAYMENTS, PROPERTY OR SERVICES to, or received
22 payments, PROPERTY OR SERVICES from, the corporation or an affiliate of
23 the corporation [for] IF THE AMOUNT PAID BY THE CORPORATION TO THE ENTI-
24 TY OR RECEIVED BY THE CORPORATION FROM THE ENTITY FOR SUCH property or
25 services [in an amount which], in any of the last three fiscal years,

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

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

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

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

48 (25) "Key [employee] PERSON" means any person [who is in a position to
49 exercise substantial influence over the affairs of the corporation, as
50 referenced in 26 U.S.C. S 4958(f)(1)(A) and further specified in 26 CFR
51 S 53.4958-3(c), (d) and (e), or succeeding provisions to the extent such
52 provisions are applicable], WHETHER OR NOT AN EMPLOYEE OF THE CORPO-
53 RATION, WHO (I) HAS RESPONSIBILITIES, OR EXERCISES POWERS OR INFLUENCE
54 OVER THE CORPORATION AS A WHOLE SIMILAR TO THE RESPONSIBILITIES, POWERS,
55 OR INFLUENCE OF DIRECTORS AND OFFICERS; (II) MANAGES THE CORPORATION, OR
56 A SEGMENT OF THE CORPORATION THAT REPRESENTS A SUBSTANTIAL PORTION OF

1 THE ACTIVITIES, ASSETS, INCOME OR EXPENSES OF THE CORPORATION; OR (III)
2 ALONE OR WITH OTHERS CONTROLS OR DETERMINES A SUBSTANTIAL PORTION OF THE
3 CORPORATION'S CAPITAL EXPENDITURES OR OPERATING BUDGET.

4 S 2. Section 309 of the not-for-profit corporation law, as added by
5 chapter 549 of the laws of 2013, is amended to read as follows:

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

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

14 S 3. Paragraphs (a) and (e) of section 712 of the not-for-profit
15 corporation law, paragraph (a) as amended by chapter 549 of the laws of
16 2013 and paragraph (e) as amended by chapter 555 of the laws of 2015,
17 are amended to read as follows:

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

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

39 (2) The filling of vacancies in the board of directors or in any
40 committee.

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

43 (4) The amendment or repeal of the by-laws or the adoption of new
44 by-laws.

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

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

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

49 (8) THE AUTHORIZATION OR ADOPTION OF A RESOLUTION RECOMMENDING TO THE
50 MEMBERS ACTION ON THE SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF ALL
51 OR SUBSTANTIALLY ALL THE ASSETS.

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

53 (e) Committees, other than committees of the board, whether created by
54 the board or by the members, shall be committees of the corporation. No
55 such committee shall have the authority to bind the board. [Provisions
56 of this chapter applicable to officers generally shall apply to members

1 of such committees.] Members of such committees of the corporation, who
2 may be non-directors, shall be elected or appointed in the manner set
3 forth in the by-laws, or if not set forth in the by-laws, in the same
4 manner as officers of the corporation.

5 S 4. Paragraph (c) of section 712-a of the not-for-profit corporation
6 law is REPEALED.

7 S 5. Paragraph (f) of section 713 of the not-for-profit corporation
8 law, as added by chapter 549 of the laws of 2013, is amended to read as
9 follows:

10 (f) No employee of the corporation shall serve as chair of the board
11 or hold any other title with similar responsibilities, UNLESS THE BOARD
12 APPROVES SUCH EMPLOYEE SERVING AS CHAIR OF THE BOARD BY A TWO-THIRDS
13 VOTE OF THE ENTIRE BOARD AND CONTEMPORANEOUSLY DOCUMENTS IN WRITING THE
14 BASIS FOR THE BOARD APPROVAL; PROVIDED, HOWEVER, THAT NO SUCH EMPLOYEE
15 SHALL BE CONSIDERED AN INDEPENDENT DIRECTOR FOR THE PURPOSES OF THIS
16 CHAPTER.

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

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

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

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

52 S 7. Paragraph (a) of section 715-a of the not-for-profit corporation
53 law, as added by chapter 549 of the laws of 2013, is amended to read as
54 follows:

55 (a) Except as provided in paragraph (d) of this section, [every corpo-
56 ration] THE BOARD shall adopt, AND OVERSEE THE IMPLEMENTATION OF, AND

1 COMPLIANCE WITH, a conflict of interest policy to ensure that its direc-
2 tors, officers and key [employees] PERSONS act in the corporation's best
3 interest and comply with applicable legal requirements, including but
4 not limited to the requirements set forth in section seven hundred
5 fifteen of this article.

6 S 8. Subparagraph 2 of paragraph (b) of section 715-a of the not-for-
7 profit corporation law, as added by chapter 549 of the laws of 2013, is
8 amended to read as follows:

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

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

17 (a) Except as provided in paragraph (c) of this section, THE BOARD OF
18 every corporation that has twenty or more employees and in the prior
19 fiscal year had annual revenue in excess of one million dollars shall
20 adopt, AND OVERSEE THE IMPLEMENTATION OF, AND COMPLIANCE WITH, a whist-
21 leblower policy to protect from retaliation persons who report suspected
22 improper conduct. Such policy shall provide that no director, officer,
23 employee or volunteer of a corporation who in good faith reports any
24 action or suspected action taken by or within the corporation that is
25 illegal, fraudulent or in violation of any adopted policy of the corpo-
26 ration shall suffer intimidation, harassment, discrimination or other
27 retaliation or, in the case of employees, adverse employment conse-
28 quence.

29 S 10. Subparagraph 2 of paragraph (b) of section 715-b of the not-for-
30 profit corporation law, as added by chapter 549 of the laws of 2013, is
31 amended to read as follows:

32 (2) A requirement that an employee, officer or director of the corpo-
33 ration be designated to administer the whistleblower policy and to
34 report to [the audit committee or other committee of independent direc-
35 tors or, if there are no such committees, to] the board OR AN AUTHORIZED
36 COMMITTEE THEREOF CONSISTING OF A MAJORITY OF INDEPENDENT DIRECTORS,
37 EXCEPT THAT DIRECTORS WHO ARE EMPLOYEES MAY NOT PARTICIPATE IN ANY BOARD
38 OR COMMITTEE DELIBERATIONS OR VOTING RELATING TO ADMINISTRATION OF THE
39 WHISTLEBLOWER POLICY, PROVIDED THAT NOTHING IN THIS PARAGRAPH SHALL
40 PROHIBIT THE BOARD OR COMMITTEE FROM REQUESTING THAT A PERSON WITH AN
41 INTEREST IN THE MATTER PRESENT INFORMATION AS BACKGROUND OR ANSWER QUES-
42 TIONS AT A COMMITTEE OR BOARD MEETING PRIOR TO THE COMMENCEMENT OF
43 DELIBERATIONS OR VOTING RELATING THERETO; and

44 S 11. Subparagraphs 3, 6, 7 and 8 of paragraph (a) of section 8-1.9 of
45 the estates, powers and trusts law, subparagraphs 3, 6 and 7 as amended
46 by chapter 555 of the laws of 2015 and subparagraph 8 as added by chap-
47 ter 549 of the laws of 2013, are amended to read as follows:

48 (3) "Key [employee] PERSON" means any person OTHER THAN A TRUSTEE,
49 WHETHER OR NOT AN EMPLOYEE, who [is in a position to exercise substan-
50 tial influence over the affairs of the trust, as referenced in 26 U.S.C.
51 section 4958(f)(1)(A) and further specified in 26 C.F.R. section
52 53.4958-3(c), (d) and (e), or succeeding provisions to the extent such
53 provisions are applicable] (I) HAS RESPONSIBILITIES, OR EXERCISES POWERS
54 OF INFLUENCE OVER THE TRUST AS A WHOLE SIMILAR TO THE RESPONSIBILITIES,
55 POWERS, OR INFLUENCE OF TRUSTEES AND OFFICERS; (II) MANAGES THE TRUST,
56 OR A SEGMENT OF THE TRUST THAT REPRESENTS A SUBSTANTIAL PORTION OF THE

1 ACTIVITIES, ASSETS, INCOME OR EXPENSES OF THE TRUST; OR (III) ALONE OR
2 WITH OTHERS CONTROLS OR DETERMINES A SUBSTANTIAL PORTION OF THE TRUST'S
3 CAPITAL EXPENDITURES OR OPERATING BUDGET.

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

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

54 (8) "Related party transaction" means any transaction, agreement or
55 any other arrangement in which a related party has a financial interest
56 and in which the trust or any affiliate of the trust is a participant,

1 EXCEPT THAT A TRANSACTION SHALL NOT BE A RELATED PARTY TRANSACTION IF:
2 (I) THE TRANSACTION OR THE RELATED PARTY'S FINANCIAL INTEREST IN THE
3 TRANSACTION IS DE MINIMIS, (II) THE TRANSACTION WOULD NOT CUSTOMARILY BE
4 REVIEWED BY THE BOARD, OR BOARDS OF SIMILAR ORGANIZATIONS, IN THE ORDI-
5 NARY COURSE OF BUSINESS AND IS AVAILABLE TO OTHERS ON THE SAME OR SIMI-
6 LAR TERMS, OR (III) THE TRANSACTION CONSTITUTES A BENEFIT PROVIDED TO A
7 RELATED PARTY SOLELY AS A MEMBER OF A CLASS OF THE BENEFICIARIES THAT
8 THE TRUST INTENDS TO BENEFIT AS PART OF THE ACCOMPLISHMENT OF ITS
9 MISSION WHICH BENEFIT IS AVAILABLE TO ALL MEMBERS SIMILARLY SITUATED OF
10 THE SAME CLASS ON THE SAME TERMS.

11 S 12. Subparagraph 3 of paragraph (b) of section 8-1.9 of the estates,
12 powers and trusts law is REPEALED.

13 S 13. Subparagraph 1 of paragraph (c) of section 8-1.9 of the estates,
14 powers and trusts law, as added by chapter 549 of the laws of 2013, is
15 amended and two new subparagraphs 7 and 8 are added to read as follows:

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

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

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

48 S 14. Subparagraph 1 of paragraph (d) of section 8-1.9 of the estates,
49 powers and trusts law, as added by chapter 549 of the laws of 2013, is
50 amended to read as follows:

51 (1) Except as provided in subparagraph four of this paragraph, every
52 trust shall adopt a conflict of interest policy to ensure that its trust-
53 tees, officers and key [employees] PERSONS act in the best interest of
54 the trust and its beneficiaries and comply with applicable legal
55 requirements, including but not limited to the requirements set forth in
56 this paragraph.

1 S 15. Clause (B) of subparagraph 2 of paragraph (d) of section 8-1.9
2 of the estates, powers and trusts law, as added by chapter 549 of the
3 laws of 2013, is amended to read as follows:

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

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

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

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

26 (B) A requirement that a trustee, officer or employee of the trust be
27 designated to administer, the whistleblower policy and to report to [the
28 audit committee or other committee of independent trustees, or to] the
29 trustees OR AN AUTHORIZED COMMITTEE THEREOF CONSISTING OF A MAJORITY OF
30 INDEPENDENT TRUSTEES, EXCEPT THAT TRUSTEES WHO ARE EMPLOYEES MAY NOT
31 PARTICIPATE IN ANY BOARD OR COMMITTEE DELIBERATIONS OR VOTING RELATING
32 TO ADMINISTRATION OF THE WHISTLEBLOWER POLICY, PROVIDED THAT NOTHING IN
33 THIS PARAGRAPH SHALL PROHIBIT THE TRUSTEES OR COMMITTEE FROM REQUESTING
34 THAT A PERSON WITH AN INTEREST IN THE MATTER PRESENT INFORMATION AS
35 BACKGROUND OR ANSWER QUESTIONS AT A TRUSTEES OR COMMITTEE MEETING PRIOR
36 TO THE COMMENCEMENT OF DELIBERATIONS OR VOTING RELATING THERETO; and

37 S 18. Severability. If any clause, sentence, paragraph, section or
38 part of this act shall be adjudged by any court of competent jurisdic-
39 tion to be invalid, the judgment shall not affect, impair, or invalidate
40 the remainder thereof, but shall be confined in its operation to the
41 clause, sentence, paragraph, section or part thereof directly involved
42 in the controversy in which the judgement shall have been rendered.

43 S 19. This act shall take effect immediately; provided, however, that
44 paragraph (f) of section 713 of the not-for-profit corporation law made
45 by section five of this act shall take effect on the same date and in
46 the same manner as section 132 of chapter 549 of the laws of 2013, as
47 amended, takes effect.