S T A T E O F N E W Y O R K

7913

I N S E N A T E

May 24, 2016

Introduced by Sen. RANZENHOFER -- 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 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:

Section 1. Subparagraphs 21, 23, 24 and 25 of paragraph (a) of section 102 of the not-for-profit corporation law, subparagraphs 21, 23 and 25 as amended by chapter 555 of the laws of 2015 and subparagraph 24 as added by chapter 549 of the laws of 2013, are amended to read as follows:

(21) "Independent director" means a director who: (i) is not, and has not been within the last three years, [an employee] A DIRECTOR EMPLOYED BY OR RECEIVING COMPENSATION FROM THE CORPORATION OR A KEY PERSON of the corporation or an affiliate of the corporation, and does not have a relative who is, or has been within the last three years, a key [employee] PERSON of the corporation or an affiliate of the corporation; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the corporation or an affiliate of the corporation [(other than reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director as permitted by paragraph (a) of section 202 (General and special powers))]; (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has [made payments] PROVIDED PAYMENTS, PROPERTY OR SERVICES to, or received payments, PROPERTY OR SERVICES from, the corporation or an affiliate of the corporation [for] IF THE AMOUNT PAID BY THE CORPORATION TO THE ENTITY OR RECEIVED BY THE CORPORATION FROM THE ENTITY FOR SUCH property or

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

LBD14985-03-6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Committees, other than committees of the board, whether created by the board or by the members, shall be committees of the corporation. No such committee shall have the authority to bind the board. [Provisions

of this chapter applicable to officers generally shall apply to members of such committees.] Members of such committees of the corporation, who may be non-directors, shall be elected or appointed in the manner set forth in the by-laws, or if not set forth in the by-laws, in the same manner as officers of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A requirement that an employee, officer or director of the corporation be designated to administer the whistleblower policy and to report to [the audit committee or other committee of independent directors or, if there are no such committees, to] the board OR AN AUTHORIZED COMMITTEE THEREOF CONSISTING OF A MAJORITY OF INDEPENDENT DIRECTORS, EXCEPT THAT DIRECTORS WHO ARE EMPLOYEES MAY NOT PARTICIPATE IN ANY BOARD OR COMMITTEE DELIBERATIONS OR VOTING RELATING TO ADMINISTRATION OF THE WHISTLEBLOWER POLICY, PROVIDED THAT NOTHING IN THIS PARAGRAPH SHALL PROHIBIT THE BOARD OR COMMITTEE FROM REQUESTING THAT A PERSON WITH AN INTEREST IN THE MATTER PRESENT INFORMATION AS BACKGROUND OR ANSWER QUESTIONS AT A COMMITTEE OR BOARD MEETING PRIOR TO THE COMMENCEMENT OF DELIBERATIONS OR VOTING RELATING THERETO; and

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

(3) "Key [employee] PERSON" means any person OTHER THAN A TRUSTEE, WHETHER OR NOT AN EMPLOYEE, who [is in a position to exercise substantial influence over the affairs of the trust, as referenced in 26 U.S.C. section 4958(f)(1)(A) and further specified in 26 C.F.R. section 53.4958-3(c), (d) and (e), or succeeding provisions to the extent such provisions are applicable] (I) HAS RESPONSIBILITIES, OR EXERCISES POWERS OF INFLUENCE OVER THE TRUST AS A WHOLE SIMILAR TO THE RESPONSIBILITIES,

POWERS, OR INFLUENCE OF TRUSTEES AND OFFICERS; (II) MANAGES THE TRUST, OR A SEGMENT OF THE TRUST THAT REPRESENTS A SUBSTANTIAL PORTION OF THE ACTIVITIES, ASSETS, INCOME OR EXPENSES OF THE TRUST; OR (III) ALONE OR WITH OTHERS CONTROLS OR DETERMINES A SUBSTANTIAL PORTION OF THE TRUST'S CAPITAL EXPENDITURES OR OPERATING BUDGET.

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

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

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

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

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

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

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

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

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

(1) Except as provided in subparagraph four of this paragraph, every trust shall adopt a conflict of interest policy to ensure that its trustees, officers and key [employees] PERSONS act in the best interest of

the trust and its beneficiaries and comply with applicable legal requirements, including but not limited to the requirements set forth in this paragraph.

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

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

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

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

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

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

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

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