

# STATE OF NEW YORK

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433

2019-2020 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 9, 2019

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Introduced by M. of A. PAULIN, SEAWRIGHT -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to the regulation of key persons

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) and subparagraph 4 of paragraph (b) of  
2 section 715-b of the not-for-profit corporation law, as amended by chap-  
3 ter 466 of the laws of 2016, are amended to read as 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 key person, employee or volunteer of a corporation who in good faith  
11 reports any action or suspected action taken by or within the corpo-  
12 ration that is illegal, fraudulent or in violation of any adopted policy  
13 of the corporation shall suffer intimidation, harassment, discrimination  
14 or other retaliation or, in the case of employees, adverse employment  
15 consequence.

16 (4) A requirement that a copy of the policy be distributed to all  
17 directors, officers, key persons, employees and to volunteers who  
18 provide substantial services to the corporation. For purposes of this  
19 subdivision, posting the policy on the corporation's website or at the  
20 corporation's offices in a conspicuous location accessible to employees  
21 and volunteers are among the methods a corporation may use to satisfy  
22 the distribution requirement.

23 § 2. Section 716 of the not-for-profit corporation law, as amended by  
24 chapter 549 of the laws of 2013, is amended to read as follows:

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

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1 § 716. Loans to directors [~~and~~], officers and key persons.

2 No loans, other than through the purchase of bonds, debentures, or  
3 similar obligations of the type customarily sold in public offerings, or  
4 through ordinary deposit of funds in a bank, shall be made by a corpo-  
5 ration to its directors [~~or~~], officers or key persons, or to any other  
6 corporation, firm, association or other entity in which one or more of  
7 its directors [~~or~~], officers or key persons are directors [~~or~~], officers  
8 or key persons or hold a substantial financial interest, except a loan  
9 by one charitable corporation to another charitable corporation. A loan  
10 made in violation of this section shall be a violation of the duty to  
11 the corporation of the directors or officers authorizing it or partic-  
12 ipating in it, but the obligation of the borrower with respect to the  
13 loan shall not be affected thereby.

14 § 3. Section 717 of the not-for-profit corporation law, paragraph (a)  
15 as amended by chapter 490 of the laws of 2010 and paragraph (b) as  
16 amended by chapter 734 of the laws of 1988, is amended to read as  
17 follows:

18 § 717. Duty of directors [~~and~~], officers and key persons.

19 (a) Directors [~~and~~], officers and key persons shall discharge the  
20 duties of their respective positions in good faith and with the care an  
21 ordinarily prudent person in a like position would exercise under simi-  
22 lar circumstances. The factors set forth in subparagraph one of para-  
23 graph (e) of section 552 (Standard of conduct in managing and investing  
24 an institutional fund), if relevant, must be considered by a governing  
25 board delegating investment management of institutional funds pursuant  
26 to section 514 (Delegation of investment management) For purposes of  
27 this paragraph, the term institutional fund is defined in section 551  
28 (Definitions).

29 (b) In discharging their duties, directors [~~and~~], officers and key  
30 persons, when acting in good faith, may rely on information, opinions,  
31 reports or statements including financial statements and other financial  
32 data, in each case prepared or presented by: (1) one or more officers or  
33 employees of the corporation, whom the director believes to be reliable  
34 and competent in the matters presented, (2) counsel, public accountants  
35 or other persons as to matters which the directors [~~or~~], officers or key  
36 persons believe to be within such person's professional or expert compe-  
37 tence or (3) a committee of the board upon which they do not serve, duly  
38 designated in accordance with a provision of the certificate of incorpo-  
39 ration or the bylaws, as to matters within its designated authority,  
40 which committee the directors [~~or~~], officers or key persons believe to  
41 merit confidence, so long as in so relying they shall be acting in good  
42 faith and with that degree of care specified in paragraph (a) of this  
43 section. Persons shall not be considered to be acting in good faith if  
44 they have knowledge concerning the matter in question that would cause  
45 such reliance to be unwarranted. Persons who so perform their duties  
46 shall have no liability by reason of being or having been directors  
47 [~~or~~], officers or key persons of the corporation.

48 § 4. Section 718 of the not-for-profit corporation law, as amended by  
49 chapter 549 of the laws of 2013, is amended to read as follows:

50 § 718. List of directors [~~and~~], officers and key persons.

51 (a) If a member or creditor of a corporation, in person or by his  
52 attorney or agent, or a representative of the district attorney or of  
53 the secretary of state, the attorney general, or other state official,  
54 makes a written demand on a corporation to inspect a current list of its  
55 directors [~~and~~], officers and key persons, the corporation shall, within  
56 two business days after receipt of the demand and for a period of one

1 week thereafter, make the list available for such inspection at its office during usual business hours.

3 (b) Upon refusal by the corporation to make a current list of its directors [~~and~~], officers and key persons available, as provided in paragraph (a) of this section, the person making a demand for such list may apply, ex parte, to the supreme court at a special term held within the judicial district where the office of the corporation is located for an order directing the corporation to make such list available. The court may grant such order or take such other action as it may deem just and proper.

11 § 5. Section 720-a of the not-for-profit corporation law, as added by chapter 220 of the laws of 1986, is amended to read as follows:

13 § 720-a. Liability of directors, officers [~~and~~], trustees and key persons.

15 Except as provided in sections seven hundred nineteen and seven hundred twenty of this chapter, and except any action or proceeding brought by the attorney general or, in the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of such trust, no person serving without compensation as a director, officer, key person or trustee of a corporation, association, organization or trust described in section 501 (c) (3) of the United States internal revenue code shall be liable to any person other than such corporation, association, organization or trust based solely on his or her conduct in the execution of such office unless the conduct of such director, officer, key person or trustee with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting such liability. For purposes of this section, such a director, officer, key person or trustee shall not be considered compensated solely by reason of payment of his or her actual expenses incurred in attending meetings or otherwise in the execution of such office.

32 § 6. This act shall take effect immediately.