STATE OF NEW YORK

2267

2019-2020 Regular Sessions

IN SENATE

January 23, 2019

Introduced by Sens. COMRIE, 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, 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:

Section 1. Paragraph (a) and subparagraph 4 of paragraph (b) of section 715-b of the not-for-profit corporation law, as amended by chapter 466 of the laws of 2016, are 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, **key person,** 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.

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

§ 2. Section 716 of the not-for-profit corporation law, as amended by 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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§ 716. Loans to directors [~~and~~], officers **and key persons**.

No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by a corporation to its directors [~~or~~], officers **or key persons**, or to any other corporation, firm, association or other entity in which one or more of its directors [~~or~~], officers **or key persons** are directors [~~or~~], officers **or key persons** or hold a substantial financial interest, except a loan by one charitable corporation to another charitable corporation. A loan made in violation of this section shall be a violation of the duty to the corporation of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

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

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

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

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

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

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

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

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

(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.

§ 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:

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

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.

§ 6. This act shall take effect immediately.