§ 216-a. Applicability of not-for-profit corporation law. 1. The term "education corporation" as used in this section means a corporation (a) chartered or incorporated by the regents or otherwise formed under this chapter, or (b) formed by a special act of this state with its principal purpose an education purpose and which is a member of the university of the state of New York, or (c) formed under laws other than the statutes of this state which, if it were to be formed currently under the laws of this state, might be chartered by the regents, and which has been authorized to conduct its activities in this state by the regents or as an authorized foreign education corporation with the consent of the commissioner. A corporation as defined in the business corporation law is not an education corporation under this section.

2. An education corporation formed prior to September first, nineteen hundred seventy-three which has authority to issue stock, is subject to the business corporation law in all matters involving shares of stock. To that extent, the not-for-profit corporation law does not apply to such education corporation.

3. A corporation within clause (c) of subdivision one of this section (a) may be granted authority to conduct activities in this state by the regents pursuant to this section and subject to such provisions, not inconsistent with this section, as the regents may prescribe, or (b) with the consent of the commissioner, may receive authority under article 13 (Foreign Corporations) of the not-for-profit corporation law to conduct activities in this state as an authorized foreign not-for-profit corporation. If required by the commissioner and subject to such provisions, not inconsistent with this section, as he may prescribe, an authorized foreign not-for-profit corporation shall be designated as an "authorized foreign education corporation" in its certificate of authority filed with the department of state. A foreign corporation granted authority by the regents hereunder or an "authorized foreign education corporation" is an "education corporation" under this section.

4. Except as provided in subdivisions 2 and 3 of this section, the not-for-profit corporation law applies to a domestic education

corporation and an authorized foreign education corporation, provided that:

a. If a provision of the not-for-profit corporation law conflicts with a provision of this chapter or of a special act by which an education corporation is formed, the provision of this chapter or of such special act shall prevail and the not-for-profit corporation law shall not apply in such case. If an applicable provision of this chapter or of such special act relates to a matter embraced in the not-for-profit corporation law but is not in conflict therewith, both provisions shall apply.

b. An education corporation to which the not-for-profit corporation law is made applicable by this section shall be treated as a "corporation", "domestic corporation", "foreign corporation", or "authorized foreign corporation" as such terms are used in the not-for-profit corporation law as modified by this section, except that the purposes of an education corporation shall not thereby be extended.

c. The following provisions of the not-for-profit corporation law shall not apply to education corporations: section one hundred five, section one hundred fourteen, paragraph (a) of section two hundred one, paragraphs (b) and (c) of section two hundred two, section two hundred five, section three hundred one, section three hundred two, section three hundred three, article four except paragraphs (b) through (p) of section four hundred four and section four hundred five, section five hundred nine, article eight except section eight hundred four, section nine hundred seven, section one thousand twelve and article fourteen.

d. The following adjusting provisions shall apply in the application of the not-for-profit corporation law under this section:

(1) The opening clause of paragraph (a) of section one hundred twelve shall read: "At the request of the regents of the university of the state of New York, the attorney-general may maintain an action or special proceeding:"

(2) The first sentence of section five hundred one shall read: "Except when the charter or certificate of incorporation so permits, a

corporation shall not have stock or shares or certificates for stock or for shares, but may issue nontransferable membership certificates or cards to evidence membership, whether or not connected with any financial contribution to the corporation, as provided in section six hundred one (Members). The fact that the corporation is an education corporation, and that the membership certificate or card is non-transferable shall be noted conspicuously on the face or back of each such certificate or card."

(3) The first sentence of paragraph (b) of section five hundred eleven shall read as follows: "Upon presentation of the petition, the Court shall direct that notice of the application be given promptly to the attorney general and the commissioner, and in its discretion may direct that notice of the application be given, personally or by mail, to any person interested therein, as member, officer or creditor of the corporation."

(4) Paragraph (a) of section five hundred fifteen shall read as follows: "Except when the charter or certificate of incorporation authorizes the issuance of stock, a corporation shall not pay dividends or distribute any part of its income or profit to its members, directors or officers."

(5) Section five hundred twenty shall include after the words, "suit of the attorney general" the following words, "at the request of the regents of the university of the state of New York,"

(6) Paragraph (b) of section seven hundred three, and section seven hundred four shall not reduce the term of office of directors as provided in the charter or certificate of incorporation of a corporation, or of the number of classes into which its board is divided, if, as of September first, nineteen hundred seventy-three, such term of office of a director is greater than five years or the board is divided into more than five classes. Such term of office or number of classes shall not be increased after September first, nineteen hundred seventy-three.

(7) The requirement of the affirmative vote of a majority of the entire board under paragraph (f) of section seven hundred fifteen for fixing the salaries of officers, if not done in or pursuant to the by-laws, shall not apply where the number of the entire board is over twenty. In such case the affirmative vote of a number of directors at

least equal to the applicable quorum requirement of such board for the transaction of business shall be sufficient.

(8) Section seven hundred sixteen shall not apply to a loan by an education corporation if its board, in the discharge of its duty to the corporation, finds that such loan (1) is in the best interests of the education corporation and (2) is (a) to an officer or director thereof pursuant to a plan of employee or faculty assistance, or (b) to a business corporation the shares of which are wholly owned by such education corporation, or (c) to a not-for-profit corporation which is controlled by such education corporation, or by a group of education corporations including such education corporation, or (d) to any corporation on the board of which a director or officer of such education corporation is serving as a director at the request of the board of such lending education corporation; provided, however, that any loan by an education corporation to any corporation or other entity in which a director or officer of such education corporation has, directly or indirectly, a substantial financial interest, is prohibited. The provisions of this subparagraph shall not apply to a private foundation under section two hundred sixteen-b of this chapter.

(9) The opening clause of paragraph (b) of section seven hundred twenty shall read as follows: "An action may be brought for the relief provided in this section and in paragraph (a) of section seven hundred nineteen (Liabilities of director in certain cases) by the attorney general at the request of the regents of the university of the state of New York, by the corporation, or, in the right of the corporation, by any of the following:"

(10) Under section nine hundred six, if any constituent corporation or the consolidated corporation is or would be an education corporation, the consent of the commissioner shall be endorsed on or annexed to the certificate of merger or consolidation prior to the filing by the department of state.

(11) In addition to the requirements of section nine hundred nine (Consent to filing), the consent of the regents shall be endorsed on or annexed to a certificate of merger or consolidation if any constituent or consolidated corporation was chartered, or formed by special act with a purpose for which a corporation might be created by the regents.

(12) The opening clause of paragraph (a) of section eleven hundred one

shall read: "At the request of the regents of the university of the state of New York, the attorney general may bring an action for the dissolution of a corporation upon one or more of the following grounds:"

(13) The opening clause of paragraph (a) of section eleven hundred two shall read: "With the consent of the regents of the university of the state of New York, a petition for the judicial dissolution of a corporation may be presented:"

(14) The opening clause of paragraph (a) of section twelve hundred two shall read: "Upon notice to the attorney general and the commissioner, a receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:"

e. Any reference in the not-for-profit corporation law to the delivery of any certificate or other instrument to the department of state for filing shall refer to and provide for corresponding action of the regents or the commissioner relating thereto, as the case may be, except that in cases where the commissioner consents to the filing under article thirteen of the not-for-profit corporation law of a certificate of authority in which the authorized foreign corporation is designated as an "authorized foreign education corporation", filing under article thirteen shall mean filing with the department of state.

5. Every corporation to which the not-for-profit corporation law is made applicable by this section, is a charitable corporation as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law under all applicable provisions of that law.

6. From and after the effective date of this section the general corporation law shall not apply to an education corporation.

7. For the purpose of this section and elsewhere in this chapter, the effective date of the not-for-profit corporation law as to corporations to which the not-for-profit corporation law is made applicable by this section, shall be September one, nineteen hundred seventy-three.

8. Nothing in this section shall impair the rights and powers,

otherwise granted by law, of the courts or the attorney general of this state.