

STATE OF NEW YORK

8072

2013-2014 Regular Sessions

IN ASSEMBLY

June 17, 2013

Introduced by M. of A. BRENNAN, WEINSTEIN, ENGLEBRIGHT -- (at request of the Department of Law) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the executive law, the banking law, the benevolent orders law, the education law, the general business law, the insurance law, the mental hygiene law, the public authorities law, the private housing finance law, the public lands law, the racing, pari-mutuel wagering and breeding law, the religious corporations law, the surrogate's court procedure act, the not-for-profit corporation law, and the estates, powers and trusts law, in relation to reform of charitable organizations; and to repeal certain provisions of the not-for-profit corporation law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. This act shall be known and may be cited as the "non-profit
2 revitalization act of 2013".
3 § 2. Subdivision 9 of section 171-a of the executive law, as amended
4 by chapter 353 of the laws of 1987, is amended to read as follows:
5 9. "Fund raising counsel." Any person who for compensation consults
6 with a charitable organization or who plans, manages, advises, or
7 assists with respect to the solicitation in this state of contributions
8 for or on behalf of a charitable organization, but who does not have
9 access to contributions or other receipts from a solicitation or author-
10 ity to pay expenses associated with a solicitation and who does not
11 solicit. A bona fide officer, volunteer, or employee of a charitable
12 organization or an attorney at law retained by a charitable organization
13 or an individual engaged solely to draft applications for funding from a
14 governmental agency or an entity exempt from taxation pursuant to
15 section 501(c)(3) of the internal revenue code, shall not be deemed a
16 fund raising counsel.

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

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1 § 3. Subdivisions 1, 2 and 2-a of section 172-b of the executive law,
2 as amended by chapter 43 of the laws of 2002, are amended to read as
3 follows:

4 1. Every charitable organization registered or required to be regis-
5 tered pursuant to section one hundred seventy-two of this article which
6 shall receive in any fiscal year gross revenue and support in excess of
7 [~~two hundred fifty~~] five hundred thousand dollars [~~and every charitable~~
8 ~~organization whose fund-raising functions are not carried on solely by~~
9 ~~persons who are unpaid for such services~~] shall file with the attorney
10 general an annual written financial report, on forms prescribed by the
11 attorney general, on or before the fifteenth day of the fifth calendar
12 month after the close of such fiscal year. The annual financial report
13 shall be accompanied by an annual financial statement which includes an
14 independent certified public accountant's audit report containing an
15 opinion that the financial statements are presented fairly in all mate-
16 rial respects and in conformity with generally accepted accounting prin-
17 ciples, including compliance with all pronouncements of the financial
18 accounting standards board and the American Institute of Certified
19 Public Accountants that establish accounting principles relevant to
20 not-for-profit organizations. Such financial report shall include a
21 statement of any changes in the information required to be contained in
22 the registration form filed on behalf of such organization. The finan-
23 cial report shall be signed by the president or other authorized officer
24 and the chief fiscal officer of the organization who shall certify under
25 penalties for perjury that the statements therein are true and correct
26 to the best of their knowledge, and shall be accompanied by an opinion
27 signed by an independent public accountant that the financial statement
28 and balance sheet therein present fairly the financial operations and
29 position of the organization. A fee of twenty-five dollars payable to
30 the attorney general shall accompany such financial report at the time
31 of filing, provided however, that any such organization that is regis-
32 tered with the attorney general pursuant to article eight of the
33 estates, powers and trusts law is required to file only one annual
34 financial report which meets the filing requirements of this article and
35 section 8-1.4 of the estates, powers and trusts law.

36 2. Every charitable organization registered or required to be regis-
37 tered pursuant to section one hundred seventy-two of this article which
38 shall receive in gross revenue and support in any fiscal year at least
39 [~~one hundred~~] two hundred fifty thousand dollars but not more than [~~two~~
40 ~~hundred fifty~~] five hundred thousand dollars shall file an annual finan-
41 cial report. The annual financial report shall be accompanied by an
42 annual financial statement which includes an independent certified
43 public accountant's review report in accordance with "statements on
44 standards for accounting and review services" issued by the American
45 Institute of Certified Public Accountants. The annual financial state-
46 ment shall be prepared in conformity with generally accepted accounting
47 principles, including compliance with all pronouncements of the finan-
48 cial accounting standards board and the American Institute of Certified
49 Public Accountants that establish accounting principles relevant to
50 not-for-profit organizations. Such financial report shall be filed with
51 the attorney general, upon forms prescribed by the attorney general on
52 an annual basis on or before the fifteenth day of the fifth calendar
53 month after the close of such fiscal year, which shall include a finan-
54 cial report covering such fiscal year in accordance with such require-
55 ments as the attorney general may prescribe. Such financial report shall
56 include a statement of any changes in the information required to be

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1 contained in the registration form filed on behalf of such organization.
2 The financial report shall be signed by the president or other author-
3 ized officer and the chief fiscal officer of the organization who shall
4 certify under penalties for perjury that the statements therein are true
5 and correct to the best of their knowledge. A fee of [~~ten~~] twenty-five
6 dollars payable to the attorney general shall accompany such financial
7 report at the time of filing, provided, however, that any such organiza-
8 tion that is registered with the attorney general pursuant to article
9 eight of the estates, powers and trusts law is required to file only one
10 annual financial report which meets the filing requirements of this
11 article and section 8-1.4 of the estates, powers and trusts law.
12 Notwithstanding the requirements of this section, if upon review of an
13 independent certified public accountant's review report filed pursuant
14 to this subdivision, the attorney general determines that a charitable
15 organization should obtain an independent certified public accountant's
16 audit report, such organization shall obtain and file with the attorney
17 general an audit report that meets the requirements of subdivision one
18 of this section within one hundred twenty days of the attorney general's
19 request for such report.

20 2-a. Every charitable organization registered or required to be regis-
21 tered pursuant to section one hundred seventy-two of this article which
22 shall receive in any fiscal year of such organization gross revenue and
23 support not in excess of [~~one hundred thousand~~] two hundred fifty thou-
24 sand dollars shall file with the attorney general an unaudited financial
25 report on forms prescribed by the attorney general, on or before the
26 fifteenth day of the fifth calendar month after the close of such fiscal
27 year. Such financial report shall include a statement of any changes in
28 the information required to be contained in the registration form filed
29 on behalf of such organization. The financial report shall be signed by
30 the president or other authorized officer and the chief fiscal officer
31 of the organization who shall certify under penalties for perjury that
32 the statements therein are true and correct to the best of their know-
33 ledge. A fee of [~~ten~~] twenty-five dollars payable to the attorney
34 general shall accompany such financial report at the time of filing.
35 Provided, however, that any such organization that is registered with
36 the attorney general pursuant to article eight of the estates, powers
37 and trusts law is required to file only one annual financial report
38 which meets the filing requirements of this article and section 8-1.4 of
39 the estates, powers and trusts law.

40 § 3-a. Subdivisions 1 and 2 of section 172-b of the executive law, as
41 amended by chapter 43 of the laws of 2002, are amended to read as
42 follows:

43 1. Every charitable organization registered or required to be regis-
44 tered pursuant to section one hundred seventy-two of this article which
45 shall receive in any fiscal year gross revenue and support in excess of
46 [~~two hundred fifty~~] seven hundred fifty thousand dollars [~~and every~~
47 ~~charitable organization whose fund-raising functions are not carried on~~
48 ~~solely by persons who are unpaid for such services~~] shall file with the
49 attorney general an annual written financial report, on forms prescribed
50 by the attorney general, on or before the fifteenth day of the fifth
51 calendar month after the close of such fiscal year. The annual financial
52 report shall be accompanied by an annual financial statement which
53 includes an independent certified public accountant's audit report
54 containing an opinion that the financial statements are presented fairly
55 in all material respects and in conformity with generally accepted
56 accounting principles, including compliance with all pronouncements of

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1 the financial accounting standards board and the American Institute of
2 Certified Public Accountants that establish accounting principles rele-
3 vant to not-for-profit organizations. Such financial report shall
4 include a statement of any changes in the information required to be
5 contained in the registration form filed on behalf of such organization.
6 The financial report shall be signed by the president or other author-
7 ized officer and the chief fiscal officer of the organization who shall
8 certify under penalties for perjury that the statements therein are true
9 and correct to the best of their knowledge, and shall be accompanied by
10 an opinion signed by an independent public accountant that the financial
11 statement and balance sheet therein present fairly the financial oper-
12 ations and position of the organization. A fee of twenty-five dollars
13 payable to the attorney general shall accompany such financial report at
14 the time of filing, provided however, that any such organization that is
15 registered with the attorney general pursuant to article eight of the
16 estates, powers and trusts law is required to file only one annual
17 financial report which meets the filing requirements of this article and
18 section 8-1.4 of the estates, powers and trusts law.

19 2. Every charitable organization registered or required to be regis-
20 tered pursuant to section one hundred seventy-two of this article which
21 shall receive in gross revenue and support in any fiscal year at least
22 [~~one hundred~~] two hundred fifty thousand dollars but not more than [~~two~~
23 ~~hundred fifty~~] seven hundred fifty thousand dollars shall file an annual
24 financial report. The annual financial report shall be accompanied by an
25 annual financial statement which includes an independent certified
26 public accountant's review report in accordance with "statements on
27 standards for accounting and review services" issued by the American
28 Institute of Certified Public Accountants. The annual financial state-
29 ment shall be prepared in conformity with generally accepted accounting
30 principles, including compliance with all pronouncements of the finan-
31 cial accounting standards board and the American Institute of Certified
32 Public Accountants that establish accounting principles relevant to
33 not-for-profit organizations. Such financial report shall be filed with
34 the attorney general, upon forms prescribed by the attorney general on
35 an annual basis on or before the fifteenth day of the fifth calendar
36 month after the close of such fiscal year, which shall include a finan-
37 cial report covering such fiscal year in accordance with such require-
38 ments as the attorney general may prescribe. Such financial report shall
39 include a statement of any changes in the information required to be
40 contained in the registration form filed on behalf of such organization.
41 The financial report shall be signed by the president or other author-
42 ized officer and the chief fiscal officer of the organization who shall
43 certify under penalties for perjury that the statements therein are true
44 and correct to the best of their knowledge. A fee of [~~ten~~] twenty-five
45 dollars payable to the attorney general shall accompany such financial
46 report at the time of filing, provided, however, that any such organiza-
47 tion that is registered with the attorney general pursuant to article
48 eight of the estates, powers and trusts law is required to file only one
49 annual financial report which meets the filing requirements of this
50 article and section 8-1.4 of the estates, powers and trusts law.
51 Notwithstanding the requirements of this section, if upon review of an
52 independent certified public accountant's review report filed pursuant
53 to this subdivision, the attorney general determines that a charitable
54 organization should obtain an independent certified public accountant's
55 audit report, such organization shall obtain and file with the attorney
56 general an audit report that meets the requirements of subdivision one

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1 of this section within one hundred twenty days of the attorney general's
2 request for such report.

3 § 3-b. Subdivisions 1 and 2 of section 172-b of the executive law, as
4 amended by chapter 43 of the laws of 2002, are amended to read as
5 follows:

6 1. Every charitable organization registered or required to be regis-
7 tered pursuant to section one hundred seventy-two of this article which
8 shall receive in any fiscal year gross revenue and support in excess of
9 [~~two hundred fifty thousand~~] one million dollars [~~and every charitable~~
10 ~~organization whose fund raising functions are not carried on solely by~~
11 ~~persons who are unpaid for such services~~] shall file with the attorney
12 general an annual written financial report, on forms prescribed by the
13 attorney general, on or before the fifteenth day of the fifth calendar
14 month after the close of such fiscal year. The annual financial report
15 shall be accompanied by an annual financial statement which includes an
16 independent certified public accountant's audit report containing an
17 opinion that the financial statements are presented fairly in all mate-
18 rial respects and in conformity with generally accepted accounting prin-
19 ciples, including compliance with all pronouncements of the financial
20 accounting standards board and the American Institute of Certified
21 Public Accountants that establish accounting principles relevant to
22 not-for-profit organizations. Such financial report shall include a
23 statement of any changes in the information required to be contained in
24 the registration form filed on behalf of such organization. The finan-
25 cial report shall be signed by the president or other authorized officer
26 and the chief fiscal officer of the organization who shall certify under
27 penalties for perjury that the statements therein are true and correct
28 to the best of their knowledge, and shall be accompanied by an opinion
29 signed by an independent public accountant that the financial statement
30 and balance sheet therein present fairly the financial operations and
31 position of the organization. A fee of twenty-five dollars payable to
32 the attorney general shall accompany such financial report at the time
33 of filing, provided however, that any such organization that is regis-
34 tered with the attorney general pursuant to article eight of the
35 estates, powers and trusts law is required to file only one annual
36 financial report which meets the filing requirements of this article and
37 section 8-1.4 of the estates, powers and trusts law.

38 2. Every charitable organization registered or required to be regis-
39 tered pursuant to section one hundred seventy-two of this article which
40 shall receive in gross revenue and support in any fiscal year at least
41 [~~one hundred~~] two hundred fifty thousand dollars but not more than [~~two~~
42 ~~hundred fifty thousand~~] one million dollars shall file an annual finan-
43 cial report. The annual financial report shall be accompanied by an
44 annual financial statement which includes an independent certified
45 public accountant's review report in accordance with "statements on
46 standards for accounting and review services" issued by the American
47 Institute of Certified Public Accountants. The annual financial state-
48 ment shall be prepared in conformity with generally accepted accounting
49 principles, including compliance with all pronouncements of the finan-
50 cial accounting standards board and the American Institute of Certified
51 Public Accountants that establish accounting principles relevant to
52 not-for-profit organizations. Such financial report shall be filed with
53 the attorney general, upon forms prescribed by the attorney general on
54 an annual basis on or before the fifteenth day of the fifth calendar
55 month after the close of such fiscal year, which shall include a finan-
56 cial report covering such fiscal year in accordance with such require-

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1 ments as the attorney general may prescribe. Such financial report shall
2 include a statement of any changes in the information required to be
3 contained in the registration form filed on behalf of such organization.
4 The financial report shall be signed by the president or other author-
5 ized officer and the chief fiscal officer of the organization who shall
6 certify under penalties for perjury that the statements therein are true
7 and correct to the best of their knowledge. A fee of [~~ten~~] twenty-five
8 dollars payable to the attorney general shall accompany such financial
9 report at the time of filing, provided, however, that any such organiza-
10 tion that is registered with the attorney general pursuant to article
11 eight of the estates, powers and trusts law is required to file only one
12 annual financial report which meets the filing requirements of this
13 article and section 8-1.4 of the estates, powers and trusts law.
14 Notwithstanding the requirements of this section, if upon review of an
15 independent certified public accountant's review report filed pursuant
16 to this subdivision, the attorney general determines that a charitable
17 organization should obtain an independent certified public accountant's
18 audit report, such organization shall obtain and file with the attorney
19 general an audit report that meets the requirements of subdivision one
20 of this section within one hundred twenty days of the attorney general's
21 request for such report.

22 § 4. Subdivision 1 of section 177 of the executive law, as amended by
23 chapter 83 of the laws of 1995, is amended to read as follows:

24 1. The attorney general shall make rules and regulations necessary for
25 the administration of this article including, but not limited to regu-
26 lations and waiver procedures that will ensure that charitable organiza-
27 tions do not have to register twice in relation to the solicitation and
28 administration of assets, and rules or regulations allowing or requiring
29 any submission to the attorney general to be effected by electronic
30 means.

31 § 5. Section 579 of the banking law, as amended by chapter 629 of the
32 laws of 2002, is amended to read as follows:

33 § 579. Doing business without license prohibited. Only a [~~type B not-~~
34 ~~for-profit~~] charitable corporation as defined in [~~section two hundred~~
35 ~~one~~] paragraph (a) of section one hundred two (Definitions) of the not-
36 for-profit corporation law of this state, or an entity incorporated in
37 another state and having a similar not-for-profit status, shall engage
38 in the business of budget planning as defined in subdivision one of
39 section four hundred fifty-five of the general business law of this
40 state except as authorized by this article and without first obtaining a
41 license from the superintendent.

42 § 6. Paragraph (c) of subdivision 1 of section 1-a of the benevolent
43 orders law, as added by chapter 703 of the laws of 1970, is amended to
44 read as follows:

45 (c) The following provisions of the not-for-profit corporation law
46 shall not apply to benevolent orders: [~~section one hundred thirteen,~~
47 section two hundred one, article four, paragraphs (a), (b), and (c) of
48 section eight hundred four, section nine hundred seven, section nine
49 hundred eight, section nine hundred nine, [~~section ten hundred eleven,~~
50 section ten hundred twelve, and article fourteen.

51 § 6-a. Section 216 of the education law, as amended by chapter 901 of
52 the laws of 1972, the closing paragraph as added by chapter 316 of the
53 laws of 2005, is amended to read as follows:

54 § 216. Charters. Under such name, with such number of trustees or
55 other managers, and with such powers, privileges and duties, and subject
56 to such limitations and restrictions in all respects as the regents may

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1 prescribe in conformity to law, they may, by an instrument under their
2 seal and recorded in their office, incorporate any university, college,
3 academy, library, museum, or other institution or association for the
4 promotion of science, literature, art, history or other department of
5 knowledge, or of education in any way, associations of teachers,
6 students, graduates of educational institutions, and other associations
7 whose approved purposes are, in whole or in part, of educational or
8 cultural value deemed worthy of recognition and encouragement by the
9 university. No ~~[institution or association which might be incorporated
10 by the regents under this chapter shall, without their consent,]~~ school;
11 college; university or other entity providing post secondary education;
12 library; or museum or historical society shall be incorporated under the
13 business corporation law, the not-for-profit corporation law, or any
14 other general law without the consent of the commissioner or, in the
15 case of a college or university, without the written authorization of
16 the Regents. ~~[An institution or association which might be incorporated
17 by the regents under this chapter may, with the consent of the commis-
18 sioner of education, be formed under the business corporation law or
19 pursuant to the not for profit corporation law if such consent of the
20 commissioner of education is attached to its certificate of incorpo-
21 ration.]~~

22 No individual, association, partnership, company or corporation not
23 authorized by special charter from the legislature of this state or by
24 charter from the regents to operate a museum, or arboretum shall know-
25 ingly use, advertise or transact business under the names "museum," or
26 "arboretum," or any name, title or descriptive material indicating or
27 tending to imply that said individual, association, partnership, company
28 or corporation conducts, carries on, or is such a business when it is
29 not, or that it is authorized to operate as such, unless the right to do
30 so has been granted by the regents or the commissioner in writing. Any
31 violation of this paragraph shall be a misdemeanor. Notwithstanding any
32 other provision of this section, an individual, association, partner-
33 ship, company or corporation doing business under any of such names on
34 the effective date of this paragraph may come into compliance with this
35 paragraph by obtaining consent of the regents or the commissioner within
36 one year of such effective date.

37 § 7. Paragraph c of subdivision 4 of section 216-a of the education
38 law, as added by chapter 901 of the laws of 1972, is amended to read as
39 follows:

40 c. The following provisions of the not-for-profit corporation law
41 shall not apply to education corporations: section one hundred five,
42 ~~[section one hundred thirteen,]~~ section one hundred fourteen, paragraph
43 (a) of section two hundred one, paragraphs (b) and (c) of section two
44 hundred two, section two hundred five, section three hundred one,
45 section three hundred two, section three hundred three, article four
46 except paragraphs (b) through (p) of section four hundred four and
47 section four hundred five, section five hundred nine, ~~[section five
48 hundred eighteen,]~~ section five hundred twenty-one to the extent that it
49 refers to ~~[section five hundred eighteen,]~~ paragraph (d) of section
50 seven hundred six, article eight except section eight hundred four,
51 section nine hundred seven, ~~[section one thousand eleven,]~~ section one
52 thousand twelve and article fourteen.

53 § 8. Subdivision 5 of section 216-a of the education law, as added by
54 chapter 901 of the laws of 1972, is amended to read as follows:

55 5. Every corporation to which the not-for-profit corporation law is
56 made applicable by this section, is a ~~[type B]~~ charitable corporation as

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1 defined in paragraph (a) of section one hundred two (Definitions) of the
2 not-for-profit corporation law under all applicable provisions of that
3 law.

4 § 9. Section 223 of the education law, as amended by chapter 106 of
5 the laws of 1974, is amended to read as follows:

6 § 223. Consolidation or merger of corporations. Any two or more
7 corporations chartered under the powers of the regents or incorporated
8 under a special act of the legislature or under a general law for
9 purposes for which a charter may be granted by the regents may enter
10 into an agreement for the consolidation or merger of such corporations,
11 setting forth the terms and conditions of consolidation or merger, the
12 name of the proposed consolidated or merged corporation, the place or
13 places where the institution or institutions to be maintained is or are
14 to be located, the number of its directors, which may be five or more,
15 the time of the annual election and the names of the persons to be
16 directors until the first or next annual meeting.

17 The agreement must be approved by three-fourths of the trustees or
18 directors of such [~~corporation~~] corporations at a meeting of the trus-
19 tees or directors of each corporation, separately and specially called
20 for that purpose, which approval, duly verified by the chairman and
21 clerk of such meeting, shall be annexed to the petition. On presenta-
22 tion of a petition, together with the certificate of approval and the
23 agreement for consolidation or merger, and on such notice to interested
24 parties as the regents shall prescribe, and after hearing such inter-
25 ested parties as desire to be heard, the regents may make and execute an
26 order for the consolidation or merger of the corporations on such terms
27 and conditions as the regents may prescribe. When such order is made,
28 such corporations shall become one corporation by the name designated in
29 the order, and shall be subject only to such duties and obligations as a
30 corporation formed under this chapter for the same purposes; and all the
31 property belonging to the corporations so consolidated or merged shall
32 be vested in and transferred to the new or surviving corporation, which
33 shall be subject to all the liabilities of the former corporations, to
34 the same extent as if they had been contracted or incurred by it. If
35 any corporation so consolidated or merged was incorporated under a
36 special act of the legislature or under a general law pursuant to which
37 its certificate of incorporation was filed with the department of state,
38 the regents shall deliver a certified copy of the order of consolidation
39 or merger to such department.

40 § 10. Subdivision 4 of section 455 of the general business law, as
41 amended by chapter 456 of the laws of 2006, is amended to read as
42 follows:

43 4. Person or entity as used in this article shall not include a [~~type~~
44 ~~B not-for-profit~~] charitable corporation as defined in [~~section two~~
45 ~~hundred one~~] paragraph (a) of section one hundred two (Definitions) of
46 the not-for-profit corporation law of this state, or an entity incorpo-
47 rated in another state and having a similar not-for-profit status,
48 licensed by the superintendent, to engage in the business of budget
49 planning as defined in this section.

50 § 11. Paragraph (a) of subdivision 1 of section 458-b of the general
51 business law, as added by chapter 386 of the laws of 1986, is amended to
52 read as follows:

53 (a) Any [~~type B not-for-profit~~] charitable corporation as defined in
54 paragraph (a) of section one hundred two (Definitions) of the not-for-
55 profit corporation law licensed pursuant to article twelve-c of the
56 banking law.

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1 § 12. Subsection (a) of section 3435 of the insurance law, as added by
2 chapter 220 of the laws of 1986, is amended to read as follows:

3 (a) This section shall apply to public entities as defined in section
4 one hundred seven of this chapter, organizations described by section
5 501(c)(3) of the United States internal revenue code, [~~Type-B~~] charita-
6 ble corporations as defined in paragraph (a) of section one hundred two
7 (Definitions) of the not-for-profit corporation law and formed pursuant
8 to paragraph [~~(b)~~] (a) of section two hundred one of the not-for-profit
9 corporation law, and organizations described by section two hundred
10 sixteen-a of the education law.

11 § 13. Subsection (a) of section 6703 of the insurance law, as added by
12 chapter 598 of the laws of 2000, is amended to read as follows:

13 (a) A corporation may be organized as a [~~type-B~~] charitable corpo-
14 ration pursuant to paragraph [~~(b)~~] (a) of section two hundred one of the
15 not-for-profit corporation law or as a nonprofit reciprocal insurer
16 under article sixty-one of this chapter to write the kinds of insurance
17 specified in subsection (a) of section one thousand one hundred thirteen
18 of this chapter other than (1) those types of insurance specified in
19 paragraphs one, two, eighteen, twenty-two, twenty-three and twenty-five
20 of such subsection, (2) insurance against legal liability of the
21 insured, and against loss, damage or expense incident to a claim of such
22 liability arising out of death or injury of any person, due to medical
23 or hospital malpractice by any licensed physician or hospital, and (3)
24 insurance subject to section three thousand four hundred twenty-five of
25 this chapter.

26 § 14. The opening paragraph of subsection (b) of section 6704 of the
27 insurance law, as added by chapter 598 of the laws of 2000, is amended
28 to read as follows:

29 The superintendent may pursuant to this article issue a license to a
30 nonprofit property/casualty insurance company that is organized as a
31 [~~type-B~~] charitable corporation [~~pursuant to paragraph (b) of section~~
32 ~~two hundred one~~] as defined in paragraph (a) of section one hundred two
33 (Definitions) of the not-for-profit corporation law if such company:

34 § 15. Subsection (a) of section 6706 of the insurance law, as added by
35 chapter 598 of the laws of 2000, is amended to read as follows:

36 (a) Except as otherwise provided in this article, where inconsistent
37 with this article, or where the context otherwise requires, all of the
38 provisions of this chapter and the rules and regulations of the super-
39 intendent, relating to all insurers and those relating to
40 property/casualty insurance companies transacting the same kind or kinds
41 of insurance shall be applicable to a nonprofit property/casualty insur-
42 ance company organized as a [~~type-B~~] charitable corporation as defined
43 in paragraph (a) of section one hundred two (Definitions) of the not-
44 for-profit corporation law and formed pursuant to paragraph [~~(b)~~] (a) of
45 section two hundred one of the not-for-profit corporation law and
46 licensed pursuant to subsection (b) of section six thousand seven
47 hundred four of this article. Where any of such provisions of law refer
48 to a corporation, company or insurer, such references, when read in
49 connection with and applicable to this article, shall mean such a
50 nonprofit property/casualty insurance company.

51 § 16. Subdivision (b) of section 16.32 of the mental hygiene law, as
52 amended by chapter 669 of the laws of 1995, is amended to read as
53 follows:

54 (b) No loans, other than through the purchase of bonds, debentures, or
55 similar obligations of the type customarily sold in public offerings, or
56 through ordinary deposit of funds in a bank, shall be made by a not-for-

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1 profit corporation which is certified as a provider of services pursuant
2 to this article to its employee who receives an annual salary in excess
3 of thirty thousand dollars, or to any other corporation, firm, associ-
4 ation or other entity in which such employee is a director or officer or
5 employee or holds a direct or indirect substantial financial interest,
6 except a loan by one corporation incorporated as a ~~[type-B]~~ charitable
7 corporation ~~[pursuant to]~~ as defined in paragraph (a) of section one
8 hundred two (Definitions) of the not-for-profit corporation law to
9 another type B corporation, or a loan for a temporary or emergency
10 purpose which will further the health and welfare of the employee so
11 long as the purpose and amount of such loan are disclosed to and
12 approved by the board of directors of such agency. Such disclosure shall
13 be filed with the secretary of the corporation and entered in the
14 minutes of the meeting, and, if approved by such board, such disclosure
15 shall also be forwarded in writing to the commissioner and to the direc-
16 tor of community services of each local governmental unit that has, at
17 the time of such disclosure, a contract with such corporation for the
18 rendition of services pursuant to article forty-one of this chapter. A
19 loan made in violation of this section shall be a violation of the duty
20 to the not-for-profit corporation of the directors or officers authoriz-
21 ing it or participating in it, but the obligation of the borrower with
22 respect to the loan shall not be affected thereby.

23 § 17. Subdivision (b) of section 31.31 of the mental hygiene law, as
24 amended by chapter 669 of the laws of 1995, is amended to read as
25 follows:

26 (b) No loans, other than through the purchase of bonds, debentures, or
27 similar obligations of the type customarily sold in public offerings, or
28 through ordinary deposit of funds in a bank, shall be made by a not-for-
29 profit corporation which is licensed as a provider of services pursuant
30 to this article to its employee who receives an annual salary in excess
31 of thirty thousand dollars, or to any other corporation, firm, associ-
32 ation or other entity in which such employee is a director or officer or
33 employee or holds a direct or indirect substantial financial interest,
34 except a loan by one corporation incorporated as a ~~[type-B]~~ charitable
35 corporation ~~[pursuant to]~~ as defined in paragraph (a) of section one
36 hundred two (Definitions) of the not-for-profit corporation law to
37 another type B corporation, or a loan for a temporary or emergency
38 purpose which will further the health and welfare of the employee so
39 long as the purpose and amount of such loan are disclosed to and
40 approved by the board of directors of such agency. Such disclosure shall
41 be filed with the secretary of the corporation and entered in the
42 minutes of the meeting, and, if approved by such board, such disclosure
43 shall also be forwarded in writing to the commissioner and to the direc-
44 tor of community services of each local governmental unit that has, at
45 the time of such disclosure, a contract with such corporation for the
46 rendition of services pursuant to article forty-one of this chapter. A
47 loan made in violation of this section shall be a violation of the duty
48 to the not-for-profit corporation of the directors or officers authoriz-
49 ing it or participating in it, but the obligation of the borrower with
50 respect to the loan shall not be affected thereby.

51 § 18. Subdivision 1 of section 1825 of the public authorities law, as
52 amended by chapter 1045 of the laws of 1974, is amended to read as
53 follows:

54 1. The corporation shall (a) be incorporated or reincorporated under
55 ~~[article nineteen of the membership corporations law, or under]~~ section
56 fourteen hundred eleven of the not-for-profit corporation law, or (b) be

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1 incorporated under [~~article two of the membership corporations law, or~~
2 ~~under~~] article four of the not-for-profit corporation law, in addition
3 to other purposes, to construct new industrial or manufacturing plants
4 or new research and development buildings and acquire machinery and
5 equipment deemed related thereto or acquire, rehabilitate, and improve
6 for use by others, industrial or manufacturing plants in the area of the
7 state in which an assisted project is to be located, to assist finan-
8 cially in such construction, acquisition, rehabilitation and improvement
9 and to maintain such plants, buildings and equipment for others, and may
10 also be authorized to study and promote, alone or in concert with local
11 officials and interested local groups, the economic growth and business
12 prosperity of the area and the solution of other civic problems of the
13 region which includes such areas[~~, and (c) if incorporated or reincorpo-~~
14 ~~rated under the membership corporations law, have complied with the~~
15 ~~requirements of section one hundred thirteen of the not for profit~~
16 ~~corporation law~~].

17 § 19. Subdivision 2 of section 13-a of the private housing finance
18 law, as added by chapter 547 of the laws of 1971, is amended to read as
19 follows:

20 2. Every corporation to which the not-for-profit corporation law is
21 made applicable by this section is a [~~type-B~~] charitable corporation as
22 defined in paragraph (a) of section one hundred two (Definitions) of the
23 not-for-profit corporation law for all purposes of that law.

24 § 20. Paragraph (f) of subdivision 7 of section 75 of the public lands
25 law, as added by chapter 791 of the laws of 1992, is amended to read as
26 follows:

27 (f) The commissioner, in consultation with the commissioner of envi-
28 ronmental conservation, the secretary of state, the office of parks,
29 recreation and historic preservation and other interested state agencies
30 administering state-owned lands underwater, shall promulgate pursuant to
31 article two of the state administrative procedure act such rules with
32 respect to grants, leases, easements and lesser interests for the use of
33 state-owned land underwater, and the cession of jurisdiction thereof, as
34 in his or her judgment are reasonable and necessary to protect the
35 interests of the people in such lands underwater. Such regulations shall
36 include without being limited to: the fees to be charged, consistent
37 with the provisions of this section, including mitigation of such fees
38 in the event of economic hardship on existing commercial enterprises;
39 fee limitations to administrative expenses for municipal uses which are
40 public, non-commercial and offer services free or for nominal fees, and
41 for uses undertaken and operated for public and non-commercial purposes
42 by not-for-profit corporations characterized as [~~"Type-B"~~] charitable
43 corporations [~~pursuant to paragraph (b) of section two hundred one~~] as
44 defined in paragraph (a) of section one hundred two (Definitions) of the
45 not-for-profit corporation law, and for uses undertaken and operated for
46 public purposes by a corporation formed pursuant to the religious corpo-
47 ration law or by a corporation formed pursuant to a special act of this
48 state and which has as its principal purpose a religious purpose; such
49 further exemptions for projects as the commissioner determines do not
50 represent significant encroachments; limitations on grants, including
51 conversion grants, with respect to underwater lands consistent with the
52 public purposes of this subdivision and limiting such grants to excep-
53 tional circumstances; and factors to be examined in considering an
54 application for a lease, easement or other interest. Those factors shall
55 include without limitation the following: (i) the environmental impact
56 of the project; (ii) the values for natural resource management, recre-

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1 ational uses, and commercial uses of the pertinent underwater land;
2 (iii) the size, character and effects of the project in relation to
3 neighboring uses; (iv) the potential for interference with navigation,
4 public uses of the waterway and rights of other riparian owners; (v) the
5 effect of the project on the natural resource interests of the state in
6 the lands; (vi) the water-dependent nature of the use; (vii) and any
7 adverse economic impact on existing commercial enterprises. The final
8 promulgation of rules establishing fees or fee structures shall be
9 subject to the approval of the director of the budget.

10 § 21. Section 202 of the racing, pari-mutuel wagering and breeding
11 law, as amended by chapter 18 of the laws of 2008, is amended to read as
12 follows:

13 § 202. Restriction upon commencement of business. No business corpo-
14 ration organized under the provisions of this article shall engage in
15 the prosecution or management of its business until the whole of its
16 capital stock shall have been subscribed, nor until it shall have filed
17 in the offices where certificates of incorporation were filed, a further
18 certificate stating that the whole of its capital stock has been in good
19 faith subscribed, executed and acknowledged by its president or vice-
20 president and treasurer or secretary, and verified by them to the effect
21 that the statements contained in it are true.

22 Notwithstanding the foregoing, corporations organized pursuant to
23 section two hundred one of the not-for-profit corporation law as [~~type~~
24 ~~E~~] charitable corporations as defined in paragraph (a) of section one
25 hundred two (Definitions) of the not-for-profit corporation law shall
26 not engage in the prosecution or management of its business until its
27 certificate of incorporation has been accepted for filing by the secre-
28 tary of state and such confirmation of filing has been filed with the
29 board and the franchise oversight board.

30 § 22. Paragraph (c) of subdivision 1 of section 2-b of the religious
31 corporations law, as amended by chapter 490 of the laws of 2010, is
32 amended to read as follows:

33 (c) The following provisions of the not-for-profit corporation law
34 shall not apply to religious corporations: subparagraphs (7) and (8) of
35 paragraph (a) of section one hundred twelve, [~~section one hundred thir-~~
36 ~~teen,~~] section one hundred fourteen, section two hundred one, section
37 three hundred three, section three hundred four, section three hundred
38 five, section three hundred six, article four except section four
39 hundred one, section five hundred fourteen, that portion of section five
40 hundred fifty-five (b) and section five hundred fifty-five (c) which
41 reads "The institution shall notify the donor, if available, and the
42 attorney general of the application, and the attorney general and such
43 donor must be given an opportunity to be heard", section six hundred
44 five, section six hundred seven, section six hundred nine, section eight
45 hundred four, article nine except section nine hundred ten, article ten
46 except as provided in section eleven hundred fifteen, section eleven
47 hundred two, and article fifteen except paragraph (c) of section fifteen
48 hundred seven.

49 § 23. Subdivision 2 of section 2-b of the religious corporations law,
50 as added by chapter 956 of the laws of 1971, is amended to read as
51 follows:

52 2. Every corporation to which the not-for-profit corporation law is
53 made applicable by this section is a [~~type-B~~] charitable corporation as
54 defined in paragraph (a) of section one hundred two (Definitions) of the
55 not-for-profit corporation law for all purposes of that law.

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1 § 24. Section 13 of the religious corporations law, as amended by
2 chapter 705 of the laws of 1970, is amended to read as follows:
3 § 13. Consolidation or merger of incorporated churches. Two or more
4 incorporated churches may enter into an agreement, under their respec-
5 tive corporate seals, for the consolidation or merger of such corpo-
6 rations, setting forth the name of the proposed new corporation or
7 surviving corporation, the denomination, if any, to which it is to
8 belong, and if the churches of such denomination have more than one
9 method of choosing trustees, by which of such methods the trustees are
10 to be chosen, the number of such trustees, the names of the persons to
11 be the first trustees of the new corporation, and the date of its first
12 annual corporate meeting. Such an agreement shall not be valid for
13 United Methodist churches unless proposed by a majority vote of the
14 charge conference of each church and approved by the superintendent or
15 superintendents of the district or districts in which the consolidating
16 churches are located, and by the majority of the members of each of such
17 churches, over the age of twenty-one years, present and voting at a
18 meeting thereof held in the usual place of public worship and called for
19 the purpose of considering such agreement by announcement made at public
20 service in such churches on two Sundays, the first not less than ten
21 days next preceding the date of such meeting. Such agreement shall not
22 be valid unless approved in the case of Protestant Episcopal churches by
23 the bishop and standing committee of the diocese in which such churches
24 are situated and in the case of churches of other denominations by the
25 governing body of the denomination, if any, to which each church
26 belongs, having jurisdiction over such church. Each corporation shall
27 thereupon make a separate petition to the supreme court for an order
28 consolidating or merging the corporations, setting forth the denomi-
29 nation, if any, to which the church belongs, that the consent of the
30 governing body to the consolidation or merger, if any, of that denomi-
31 nation having jurisdiction over such church has been obtained, the
32 agreement therefor, and a statement of all the property and liabilities
33 and the amount and sources of the annual income of such petitioning
34 corporation. In its discretion the court may direct that notice of the
35 hearing of such petition be given to the parties interested therein in
36 such manner and for such time as it may prescribe. After hearing all
37 the parties interested, present and desiring to be heard, the court may
38 make an order for the consolidation or merger of the corporations on the
39 terms of such agreement and such other terms and conditions as it may
40 prescribe, specifying the name of such new or surviving corporation and
41 the [~~first~~] trustees thereof, and the method by which their successors
42 shall be chosen and the date of its first or next annual corporate meet-
43 ing. When such order is made and duly entered, the persons constituting
44 such consolidated or merged corporations shall be or become an incorpo-
45 rated church by, and said petitioning churches shall become consolidated
46 or merged under, the name designated in the order, and the trustees
47 therein named shall be the [~~first~~] trustees thereof, and the future
48 trustees thereof shall be chosen by the method therein designated, and
49 all the estate, rights, powers and property of whatsoever nature belong-
50 ing to either corporation shall without further act or deed be vested in
51 and transferred to the new or surviving corporation as effectually as
52 they were vested in or belonging to the former corporations; and the
53 said new or surviving corporation shall be liable for all the debts and
54 liabilities of the former corporations in the same manner and as effec-
55 tually as if said debts or liabilities had been contracted or incurred
56 by the new or surviving corporation. A certified copy of such order

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1 shall be recorded in the book for recording certificates of incorpo-
2 ration in each county clerk's office in which the certificate of incor-
3 poration of each consolidating or merging church was recorded; or if no
4 such certificate was so recorded, then in the clerk's office of the
5 county in which the principal place of worship or principal office of
6 the new or surviving corporation is, or is intended to be, situated.

7 § 25. Section 15-a of the religious corporations law, as added by
8 chapter 108 of the laws of 1965, subdivisions 2, 3 and 8 as amended by
9 chapter 381 of the laws of 1985, is amended to read as follows:

10 § 15-a. Consolidation of incorporated presbyteries. 1. Two or more
11 incorporated presbyteries may enter into an agreement for the consol-
12 idation or merger of such corporations and such corporations may be
13 consolidated or merged so as to form a single corporation which may be
14 either a new corporation or one of the [~~constituent~~] constituent corpo-
15 rations. Said agreement shall set forth the name of the proposed new
16 corporation or the name of the existing corporation if it is to become
17 the consolidated or merged corporation, the method of choosing trustees,
18 the names of the persons to be the first trustees of the new corporation
19 if the consolidated or merged corporation is to be a new corporation and
20 the date of the first annual corporate meeting.

21 2. Such agreement must be authorized and approved by a majority vote
22 of the members of each contracting presbytery taken at a meeting at
23 which a quorum is present duly called in accordance with the form of
24 government of the Presbyterian Church (U.S.A.) and the notice of such
25 meeting shall state the purpose of the meeting.

26 3. Before such agreement is approved as aforesaid, such consolidation
27 or merger must be directed and approved by the Synod of the Northeast
28 and the General Assembly of the Presbyterian Church (U.S.A.).

29 4. Each presbytery shall thereafter join in a petition to the supreme
30 court for an order consolidating or merging the corporation, setting
31 forth the agreement of the contracting presbyteries, the direction and
32 approval of the bodies as set forth in subdivision three [~~hereof~~] of
33 this section, a statement of all the property and liabilities and the
34 sources of the annual income of each presbytery and a description of any
35 property held by such presbyteries in trust for specific purposes. In
36 its discretion the court may direct that notice of the hearing of such
37 petition be given to the parties interested therein in such manner as it
38 may prescribe.

39 5. After hearing all the parties interested, present and desiring to
40 be heard, the court may make an order for the consolidation or merger of
41 the presbyteries on the terms of such agreement and such other terms and
42 conditions as it may prescribe, specifying the name of the new corpo-
43 ration or the name the continuing corporation will have if one of the
44 [~~constituent~~] constituent corporations is to become the consolidated or
45 merged corporation, the first trustees thereof if a new corporation is
46 to be created and the method by which their successors shall be chosen
47 and the date of the first annual corporate meeting if a new corporation
48 is to be created.

49 6. When such order is made and duly entered, the persons constituting
50 such corporate presbyteries shall become one incorporated consolidated
51 or merged presbytery by, and said petitioning presbyteries shall become
52 consolidated or merged under, the name designated in the order, and the
53 trustees therein named, if it is a new corporation, shall be the first
54 trustees thereof, and if it is a new corporation the trustees thereof
55 shall be chosen by the method therein designated, and all the estate,
56 rights, powers and property of whatsoever nature, belonging to either

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1 corporation shall without further act or deed be vested in and/or trans-
2 ferred to the new corporation as effectually as they were vested in or
3 belonging to the former corporations, and the new or continuing corpo-
4 rations shall be liable for all the debts and liabilities of the former
5 corporations in the same manner and as effectually as if said debts or
6 liabilities had been contracted or incurred by the new corporation.

7 7. The order or a certified copy thereof shall be recorded in the book
8 for recording certificates of incorporation in each county clerk's
9 office in which the certificate of incorporation of each constituent
10 presbytery was recorded.

11 8. Such consolidated or merged presbytery shall have all the powers
12 and responsibilities conferred upon presbyteries by the constitution and
13 form of government of the Presbyterian Church (U.S.A.).

14 § 26. Section 208 of the religious corporations law, as added by chap-
15 ter 117 of the laws of 1927, is amended to read as follows:

16 § 208. Consolidation. Any two or more religious corporations of the
17 Jewish faith, incorporated under or by general or special laws, may
18 enter into an agreement for the consolidation or merger of such corpo-
19 rations, setting forth the terms and conditions of consolidation, the
20 name of the proposed or surviving corporation, the number of its trus-
21 tees, the time of the annual election and the names of the persons to be
22 its trustees until the first or next annual meeting. Each corporation
23 may petition the supreme court for an order consolidating or merging the
24 corporations, setting forth the agreement for consolidation or merger
25 and a statement of its real property and of its liabilities. Before the
26 presentation of the petition to the court the agreement and petition
27 must be approved by two-thirds of the votes cast in person or by proxy
28 at a meeting of the members of each corporation called for the purpose
29 of considering the proposed consolidation or merger in the manner
30 prescribed by section [~~forty three of the membership corporations law~~]
31 six hundred five of the not-for-profit corporation law. An affidavit by
32 the president and the secretary of each corporation stating that such
33 approval has been given shall be annexed to the petition. On presenta-
34 tion to the court of such petition and agreement for consolidation or
35 merger and on such notice as the court may direct, the court after hear-
36 ing all the parties interested desiring to be heard, may make an order
37 approving the consolidation or merger. When such order is made and duly
38 entered and a certified copy thereof filed with the secretary of state
39 and in the offices of the clerks of the counties in which the certif-
40 icates of incorporation of the several constituent corporations were
41 recorded, or if no such certificate was recorded, then in the office of
42 the clerk of the county in which the principal place of worship of the
43 new or surviving corporation is intended to be situated, such corpo-
44 rations shall become one corporation by the name designated in the order
45 and the trustees named in the agreement for consolidation or merger
46 shall be the [~~first~~] trustees of the consolidated corporation.

47 § 27. Section 209 of the religious corporations law, as added by chap-
48 ter 117 of the laws of 1927, is amended to read as follows:

49 § 209. Effect of consolidation. The consolidated or merged corpo-
50 ration shall possess all the powers of the constituent corporations and
51 shall have the power and be subject to the duties and obligations of a
52 congregation of the Jewish faith formed for like purposes under the
53 religious corporations law. All the rights, privileges and interests of
54 each of the constituent corporations, all the property, real, personal
55 and mixed, and all the debts due on whatever account to either of them,
56 and all things in action, belonging to either of them, shall be deemed

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1 to be transferred to and vested in such new corporation without further
2 act or deed; and all claims, demands[~~r~~], property, and every other
3 interest, belonging to the several constituent corporations, shall be as
4 effectually the property of the new corporation as they were of the
5 constituent corporations, and the title to all real property, held or
6 taken by deed or otherwise under the laws of this state, vested in the
7 several constituent corporations shall not be deemed to revert or to be
8 in any way impaired by reason of the consolidation but shall be vested
9 in the new corporation. Any devise, bequest, gift, grant, or declaration
10 of trust, contained in any deed, will, or other instrument, in trust or
11 otherwise, made before or after such consolidation, or merger to or for
12 any of the constituent corporations, shall inure to the benefit of the
13 consolidated or merged corporation. The consolidated corporation shall
14 be deemed to have assumed and shall be liable for all debts and obli-
15 gations of the constituent corporations in the same manner as if such
16 new corporation had itself incurred such debts or obligations.

17 § 28. Subdivision 2 of section 711 of the surrogate's court procedure
18 act is amended to read as follows:

19 2. Where by reason of his having wasted or improperly applied the
20 assets of the estate, or made investments unauthorized by law or other-
21 wise improvidently managed or injured the property committed to his
22 charge, including by failing to comply with paragraph (c) of section
23 8-1.9 of the estates, powers and trusts law, or by reason of other
24 misconduct in the execution of his office or dishonesty, drunkenness,
25 improvidence or want of understanding, he is unfit for the execution of
26 his office.

27 § 29. Subparagraph 6 of paragraph (a) of section 102 of the not-for-
28 profit corporation law is amended, and eleven new subparagraphs 3-a,
29 3-b, 6-a, 9-a, 19, 20, 21, 22, 23, 24 and 25 are added to read as
30 follows:

31 (3-a) "Charitable corporation" means any corporation formed, or for
32 the purposes of this chapter, deemed to be formed, for charitable
33 purposes.

34 (3-b) "Charitable purposes" of a corporation means purposes contained
35 in the certificate of incorporation of the corporation that are charita-
36 ble, educational, religious, scientific, literary, cultural or for the
37 prevention of cruelty to children or animals.

38 (6) "Director" means any member of the governing board of a corpo-
39 ration, whether designated as director, trustee, manager, governor, or
40 by any other title. The term "board" means "board of directors" or any
41 other body constituting a "governing board" as defined in this section.

42 (6-a) "Entire board" means the total number of directors entitled to
43 vote which the corporation would have if there were no vacancies. If
44 the by-laws of the corporation provide that the board shall consist of a
45 fixed number of directors, then the "entire board" shall consist of that
46 number of directors. If the by-laws of any corporation provide that the
47 board may consist of a range between a minimum and maximum number of
48 directors, then the "entire board" shall consist of the number of direc-
49 tors within such range that were elected as of the most recently held
50 election of directors.

51 (9-a) "Non-charitable corporation" means any corporation formed under
52 this chapter, other than a charitable corporation, including but not
53 limited to one formed for any one or more of the following non-pecuniary
54 purposes: civic, patriotic, political, social, fraternal, athletic,
55 agricultural, horticultural, or animal husbandry, or for the purpose of

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1 operating a professional, commercial, industrial, trade or service asso-
2 ciation.

3 (19) An "affiliate" of a corporation means any entity controlled by,
4 in control of, or under common control with such corporation.

5 (20) "Independent auditor" means any certified public accountant
6 performing the audit of the financial statements of a corporation
7 required by subdivision one of section one hundred seventy-two-b of the
8 executive law.

9 (21) "Independent director" means a director who: (i) is not, and has
10 not been within the last three years, an employee of the corporation or
11 an affiliate of the corporation, and does not have a relative who is, or
12 has been within the last three years, a key employee of the corporation
13 or an affiliate of the corporation; (ii) has not received, and does not
14 have a relative who has received, in any of the last three fiscal years,
15 more than ten thousand dollars in direct compensation from the corpo-
16 ration or an affiliate of the corporation (other than reimbursement for
17 expenses reasonably incurred as a director or reasonable compensation
18 for service as a director as permitted by paragraph (a) of section 202
19 (General and special powers)); and (iii) is not a current employee of or
20 does not have a substantial financial interest in, and does not have a
21 relative who is a current officer of or has a substantial financial
22 interest in, any entity that has made payments to, or received payments
23 from, the corporation or an affiliate of the corporation for property or
24 services in an amount which, in any of the last three fiscal years,
25 exceeds the lesser of twenty-five thousand dollars or two percent of
26 such entity's consolidated gross revenues. For purposes of this subpar-
27 agraph, "payment" does not include charitable contributions.

28 (22) "Relative" of an individual means his or her (i) spouse, ances-
29 tors, brothers and sisters (whether whole or half blood), children
30 (whether natural or adopted), grandchildren, great-grandchildren, and
31 spouses of brothers, sisters, children, grandchildren, and great-grand-
32 children; or (ii) domestic partner as defined in section twenty-nine
33 hundred ninety-four-a of the public health law.

34 (23) "Related party" means (i) any director, officer or key employee
35 of the corporation or any affiliate of the corporation; (ii) any rela-
36 tive of any director, officer or key employee of the corporation or any
37 affiliate of the corporation; or (iii) any entity in which any individ-
38 ual described in clauses (i) and (ii) of this subparagraph has a thir-
39 ty-five percent or greater ownership or beneficial interest or, in the
40 case of a partnership or professional corporation, a direct or indirect
41 ownership interest in excess of five percent.

42 (24) "Related party transaction" means any transaction, agreement or
43 any other arrangement in which a related party has a financial interest
44 and in which the corporation or any affiliate of the corporation is a
45 participant.

46 (25) "Key employee" means any person who is in a position to exercise
47 substantial influence over the affairs of the corporation, as referenced
48 in 26 U.S.C. § 4958(f)(1)(A) and further specified in 26 CFR §
49 53.4958-3(c), (d) and (e), or succeeding provisions.

50 § 30. Paragraphs (a), (b) and (c) of section 103 of the not-for-profit
51 corporation law, paragraph (a) as amended by chapter 807 of the laws of
52 1973, paragraph (b) as amended by chapter 847 of the laws of 1970, and
53 paragraph (c) as amended by chapter 961 of the laws of 1972, are amended
54 to read as follows:

55 (a) Except as otherwise provided in this section, this chapter
56 applies to every domestic corporation as herein defined, and to every

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1 foreign corporation as herein defined which is authorized to conduct or
2 which conducts any activities in this state. This chapter also applies
3 to any other domestic corporation or foreign corporation of any [~~type~~
4 ~~or~~] kind to the extent, if any, provided under this chapter or any law
5 governing such corporation and, if no such provision for application is
6 made, to the extent, if any, that the membership corporations law
7 applied to such corporation as of the effective date of this chapter. A
8 corporation formed by a special act of this state which has as its prin-
9 cipal purpose an education purpose and which is a member of the univer-
10 sity of the state of New York, is an "education corporation" under
11 section two hundred sixteen-a of the education law.

12 To the extent that the membership corporations law or the general
13 corporation law applied to it as of the effective date of this chapter,
14 the corresponding provisions of this chapter apply to a corporation
15 heretofore formed by or pursuant to a special act of this state other
16 than a religious corporation or an "education corporation" under clause
17 (b) of subdivision one of section two hundred sixteen-a of the education
18 law, if (1) its principal purpose is a religious, charitable or educa-
19 tion purpose, and (2) it is operated, supervised or controlled by or in
20 connection with a religious organization. [~~Any such corporation may~~
21 ~~elect hereunder at any time after the effective date of this chapter to~~
22 ~~file a certificate of type under section one hundred thirteen (Certif-~~
23 ~~icate of type of not for profit corporation). Upon the filing of such~~
24 ~~certificate by the department of state, this chapter shall apply in all~~
25 ~~respects to such corporation.~~]

26 This chapter also applies to any other corporation of any [~~type or~~]
27 kind, formed [~~not for profit~~] not-for-profit under any other chapter of
28 the laws of this state except a chapter of the consolidated laws, to the
29 extent that provisions of this chapter do not conflict with the
30 provisions of such unconsolidated law. If an applicable provision of
31 such unconsolidated law relates to a matter embraced in this chapter but
32 is not in conflict therewith, both provisions shall apply. Any corpo-
33 ration to which this chapter is made applicable by this paragraph shall
34 be treated as a "corporation" or "domestic corporation" as such terms
35 are used in this chapter, except that the purposes of any such corpo-
36 ration formed or formable under such unconsolidated law shall not there-
37 by be extended. For the purpose of this paragraph, the effective date
38 of this chapter as to corporations to which this chapter is made appli-
39 cable by this paragraph shall be September one, nineteen hundred seven-
40 ty-three.

41 (b) The general corporation law does not apply to a corporation of
42 any [~~type or~~] kind to which this chapter applies. A reference in any
43 statute of this state which makes a provision of the general corporation
44 law applicable to a corporation of any [~~type or~~] kind to which this
45 chapter is applicable or a reference in any statute of this state, other
46 than the membership corporations law, which makes a provision of the
47 membership corporations law applicable to a corporation of any [~~type or~~]
48 kind shall be deemed and construed to refer to and make applicable the
49 corresponding provision, if any, of this chapter.

50 (c) If any provision in articles one to thirteen inclusive of this
51 chapter conflicts with a provision of any subsequent articles or of any
52 special act under which a corporation to which this chapter applies is
53 formed, the provision in such subsequent article or special act
54 prevails. A provision of any such subsequent article or special act
55 relating to a matter referred to in articles one to thirteen inclusive
56 and not in conflict therewith is supplemental and both shall apply.

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1 Whenever the board of a [~~Type-B~~] corporation, formed under a special
2 act, reasonably makes an interpretation as to whether a provision of the
3 special act or this chapter prevails, or both apply, such interpretation
4 shall govern unless and until a court determines otherwise, if such
5 board has acted in good faith for a purpose which it reasonably believes
6 to be in the best interests of the corporation, provided however, that
7 such interpretation shall not bind any governmental body or officer.

8 § 31. Paragraph (a) of section 104-A of the not-for-profit corporation
9 law is REPEALED.

10 § 32. Section 105 of the not-for-profit corporation law, as amended by
11 chapter 172 of the laws of 1999, is amended to read as follows:

12 § 105. Certificates; corrections.

13 (a) Any certificate or other instrument relating to a domestic or
14 foreign corporation submitted to the department of state under this
15 chapter may be corrected with respect to any typographical, or similar
16 non-material error apparent on the face of the certificate or instru-
17 ment, prior to the filing of such certificate or instrument by the
18 department of state. Such correction shall be effected by the department
19 of state upon authorization in writing or by electronic mail by the
20 incorporator, or following incorporation, by any person authorized by
21 the corporation.

22 (b) Any certificate or other instrument relating to a domestic or
23 foreign corporation filed by the department of state under this chapter
24 may be corrected with respect to any [~~informality or~~] typographical or
25 similar non-material error apparent on the face or defect in the
26 execution thereof including the deletion of any matter not permitted to
27 be stated therein. A certificate, entitled "Certificate of correction
28 of..... (correct title of certificate and name of corporation)"
29 shall be signed and delivered to the department of state. It shall set
30 forth the name of the corporation, the date the certificate to be
31 corrected was filed by the department of state, the provision in the
32 certificate as corrected or eliminated and if the execution was defec-
33 tive, the proper execution. The filing of the certificate by the depart-
34 ment of state shall not alter the effective time of the instrument being
35 corrected, which shall remain as its original effective time, and shall
36 not affect any right or liability accrued or incurred before such
37 filing. A corporate name may not be changed or corrected under this
38 section other than to correct any typographical or similar non-material
39 error.

40 § 33. Subparagraphs 7, 8 and 9 of paragraph (a) of section 112 of the
41 not-for-profit corporation law, subparagraphs 7 and 9 as amended by
42 chapter 1058 of the laws of 1971, are amended and a new subparagraph 10
43 is added to read as follows:

44 (7) To enforce any right given under this chapter to members, a
45 director or an officer of a [~~Type-B or Type-C~~] charitable corporation.
46 The attorney-general shall have the same status as such members, direc-
47 tor or officer.

48 (8) To compel the directors and officers, or any of them, of a [~~Type-B~~
49 ~~or Type-C~~] charitable corporation which has been dissolved under section
50 1011 (Dissolution for failure to file certificate of type of Not-for-
51 Profit Corporation Law under section 113) to account for the assets of
52 the dissolved corporation.

53 (9) Upon application, ex parte, for an order to the supreme court at a
54 special term held within the judicial district where the office of the
55 corporation is located, and if the court so orders, to enforce any right
56 given under this chapter to members, a director or an officer of a [~~Type~~

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1 ~~A corporation~~ non-charitable corporation. For such purpose, the attor-
2 ney-general shall have the same status as such members, director or
3 officer.

4 (10) To enjoin, void or rescind any related party transaction, or seek
5 additional damages or remedies pursuant to section 715 (Related party
6 transactions) of this chapter.

7 § 34. Subparagraph 1 of paragraph (c) of section 112 of the not-for-
8 profit corporation law is amended to read as follows:

9 (1) As used in this paragraph the term "resident" shall include indi-
10 viduals, domestic corporations of any [~~type or~~] kind and foreign corpo-
11 rations of any [~~type or~~] kind authorized to do business or carry on
12 activities in the state.

13 § 35. Section 113 of the not-for-profit corporation law is REPEALED.

14 § 36. Section 114 of the not-for-profit corporation law, as added by
15 chapter 847 of the laws of 1970, is amended to read as follows:

16 § 114. Visitation of supreme court.

17 [~~Type B and Type C~~] Charitable corporations, whether formed under
18 general or special laws, with their books and vouchers, shall be subject
19 to the visitation and inspection of a justice of the supreme court, or
20 of any person appointed by the court for that purpose. If it appears by
21 the verified petition of a member, director, officer or creditor of any
22 such corporation, that it, or its directors, officers, members, key
23 employees or agents, have misappropriated any of the funds or property
24 of the corporation, or diverted them from the purpose of its incorpo-
25 ration, or that the corporation has acquired property in excess of the
26 amount which it is authorized by law to hold, or has engaged in any
27 business other than that stated in its certificate of incorporation, the
28 court may order that notice of at least eight days, with a copy of the
29 petition, be served on the corporation, the attorney general and the
30 persons charged with misconduct, requiring them to show cause at a time
31 and place specified, why they should not be required to make and file an
32 inventory and account of the property, effects and liabilities of such
33 corporation with a detailed statement of its transactions during the
34 twelve months next preceding the granting of such order. On the hearing
35 of such application, the court may make an order requiring such invento-
36 ry, account and statement to be filed, and proceed to take and state an
37 account of the property and liabilities of the corporation, or may
38 appoint a referee for that purpose. When such account is taken and
39 stated, after hearing all the parties to the application, the court may
40 enter a final order determining the amount of property so held by the
41 corporation, its annual income, whether any of the property or funds of
42 the corporation have been misappropriated or diverted to any other
43 purpose than that for which such corporation was incorporated, and
44 whether such corporation has been engaged in any activity not covered by
45 its certificate of incorporation. An appeal may be taken from the order
46 by any party aggrieved to the appellate division of the supreme court,
47 and to the court of appeals, as in a civil action. No corporation shall
48 be required to make and file more than one inventory and account in any
49 one year, nor to make a second account and inventory, while proceedings
50 are pending for the statement of an account under this section.

51 § 37. Section 115 of the not-for-profit corporation law, as added by
52 chapter 669 of the laws of 1977, is amended to read as follows:

53 § 115. Power to solicit contributions for charitable purposes.

54 [~~No corporation having the power to solicit contributions for charita-~~
55 ~~ble purposes may solicit contributions for any purpose for which~~
56 ~~approval of such solicitation is required under the provisions of~~

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1 ~~section four hundred four of this chapter unless the certificate specif-~~
2 ~~ically makes provision for such solicitation and the required written~~
3 ~~approval is endorsed on or annexed to such certificate or unless the~~
4 ~~corporation is among those referred to in section one hundred seventy-~~
5 ~~two-a of the executive law. If such approval is not obtained and the~~
6 ~~corporation continues to solicit or to receive contributions for such~~
7 ~~purpose or advertises that it has obtained such approval, the] (a) No~~
8 ~~corporation required to obtain approval or provide notice of formation~~
9 ~~pursuant to section 404 (Approvals, notices and consents) of this chap-~~
10 ~~ter may solicit contributions for any purpose requiring such approval or~~
11 ~~notice unless and until such corporation (1) obtains and submits any~~
12 ~~approval or notice required thereunder, and (2) is in compliance with~~
13 ~~the registration and reporting requirements of article seven-A of the~~
14 ~~executive law and section 8-1.4 of the estates, powers and trusts law.~~

15 ~~(b) The attorney general[, at the request of the officer or body~~
16 ~~authorized to grant such approval, shall] may maintain an action or~~
17 ~~proceeding pursuant to the provisions of subparagraph one of paragraph~~
18 ~~(a) of section one hundred twelve of this [chapter] article against any~~
19 ~~corporation that solicits contributions in violation of paragraph (a) of~~
20 ~~this section.~~ Such an action may also be maintained in relation to a
21 corporation hereinafter incorporated if the name, purposes, objects or
22 the activities of such corporation may, in any manner, lead to the
23 belief that the corporation possesses or may exercise any of such
24 purposes.

25 § 38. Section 201 of the not-for-profit corporation law, paragraph (b)
26 as amended by chapter 847 of the laws of 1970 and paragraph (c) as
27 amended by chapter 1058 of the laws of 1971, is amended to read as
28 follows:

29 § 201. Purposes.

30 (a) A corporation, as defined in [~~subparagraph (5),~~] paragraph (a) of
31 § 102 (Definitions), may be formed under this chapter [~~as provided in~~
32 ~~paragraph (b)] as a charitable corporation or a non-charitable corpo-
33 ration unless it may be formed under any other corporate law of this
34 state, in which event it may not be formed under this chapter unless
35 such other corporate law expressly so provides.~~

36 (b) [~~A corporation, of a type and for a purpose or purposes as~~
37 ~~follows, may be formed under this chapter, provided consents required~~
38 ~~under any other statute of this state have been obtained:~~

39 ~~Type A --] A corporation formed under this chapter on or after July
40 first, two thousand fourteen shall either be a charitable corporation or
41 a non-charitable corporation. Any corporation formed for both charitable
42 purposes and non-charitable purposes shall be deemed a charitable corpo-
43 ration for purposes of this chapter. A type A not-for-profit corporation
44 [~~of this type may be formed for any lawful non-business purpose or~~
45 ~~purposes including, but not limited to, any one or more of the following~~
46 ~~non-pecuniary purposes: civic, patriotic, political, social, fraternal,~~
47 ~~athletic, agricultural, horticultural, animal husbandry, and for a~~
48 ~~professional, commercial, industrial, trade or service association.~~~~

49 ~~Type B -- A not-for-profit corporation of this type may be formed for~~
50 ~~any one or more of the following non-business purposes: charitable,~~
51 ~~educational, religious, scientific, literary, cultural or for the~~
52 ~~prevention of cruelty to children or animals.~~

53 ~~Type C -- A not-for-profit corporation of this type may be formed for~~
54 ~~any lawful business purpose to achieve a lawful public or quasi-public~~
55 ~~objective.~~

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~~Type D -- A not-for-profit corporation of this type may be formed under this chapter when such formation is authorized by any other corporate law of this state for any business or non-business, or pecuniary or non-pecuniary, purpose or purposes specified by such other law, whether such purpose or purposes are also within types A, B, C above or otherwise.~~

~~(c) If a corporation is formed for purposes which are within both type A and type B above, it is a type B corporation. If a corporation has among its purposes any purpose which is within type C, such corporation is a type C corporation. A type D corporation is subject to all provisions of this chapter which are applicable to a type B corporation under this chapter unless provided to the contrary in, and subject to the contrary provisions of, the other corporate law authorizing formation under this chapter of the type D corporation.]~~ formed prior to July first, two thousand fourteen shall be deemed a non-charitable corporation under this chapter. Any submission or filing by such corporation to any person or entity shall be deemed to have been submitted or filed by a non-charitable corporation, and any reference in any such filing or submission referring to the status of such corporation as a type A corporation shall be deemed to refer to a non-charitable corporation.

(c) A type B or C not-for-profit corporation formed prior to July first, two thousand fourteen shall be deemed a charitable corporation for all purposes under this chapter. Any submission or filing by such corporation to any person or entity shall be deemed to have been submitted or filed by a charitable corporation, and any reference in any such filing or submission referring to the status of such corporation as a type B or type C corporation shall be deemed to refer to a charitable corporation.

(d) A type D not-for-profit corporation formed prior to July first, two thousand fourteen for charitable purposes as that term is defined in this chapter shall be deemed a charitable corporation. Any submission or filing by such corporation to any person or entity shall be deemed to have been submitted or filed by a charitable corporation, and any reference in any such filing or submission referring to the status of such corporation as a type D corporation shall be deemed to refer to a charitable corporation. Any other type D not-for-profit corporations formed prior to July first, two thousand fourteen shall be deemed a non-charitable corporation. Any submission or filing by such corporation to any person or entity shall be deemed to have been submitted or filed by a non-charitable corporation, and any reference in any such filing or submission referring to the status of such corporation as a type D corporation shall be deemed to refer to a non-charitable corporation.

§ 39. Section 204 of the not-for-profit corporation law is amended to read as follows:

§ 204. Limitation on activities.

Notwithstanding any other provision of this chapter or any other general law, a corporation of any [~~type or~~] kind to which this chapter applies shall conduct no activities for pecuniary profit or financial gain, whether or not in furtherance of its corporate purposes, except to the extent that such activity supports its other lawful activities then being conducted.

§ 40. Subparagraphs 2 and 3 of paragraph (a) of section 301 of the not-for-profit corporation law, subparagraph 2 as amended by chapter 344 of the laws of 2004, are amended to read as follows:

(2) (A) Shall be such as to distinguish it from the names of corporations of any [~~type or~~] kind, or a fictitious name of an authorized

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1 foreign corporation filed pursuant to article thirteen of this chapter,
2 as such names appear on the index of names of existing domestic and
3 authorized foreign corporations of any [~~type or~~] kind, including ficti-
4 tious names of authorized foreign corporations filed pursuant to article
5 thirteen of this chapter, in the department of state, division of corpo-
6 rations, or a name the right to which is reserved.

7 (B) Shall be such as to distinguish it from (i) the names of domestic
8 limited liability companies, (ii) the names of authorized foreign limit-
9 ed liability companies, (iii) the fictitious names of authorized foreign
10 limited liability companies, (iv) the names of domestic limited partner-
11 ships, (v) the names of authorized foreign limited partnerships, or (vi)
12 the fictitious names of authorized foreign limited partnerships, in each
13 case, as such names appear on the index of names of existing domestic
14 and authorized foreign limited liability companies, including fictitious
15 names of authorized foreign limited liability companies, in the depart-
16 ment of state, or on the index of names of existing domestic or author-
17 ized foreign limited partnerships, including fictitious names of author-
18 ized foreign limited partnerships, in the department of state, or names
19 the rights to which are reserved; provided, however, that no corporation
20 that was formed prior to the effective date of this clause and no
21 foreign corporation that was qualified to conduct activities in this
22 state prior to such effective date shall be required to change the name
23 or fictitious name it had on such effective date solely by reason of
24 such name or fictitious name being indistinguishable from the name or
25 fictitious name of any domestic or authorized foreign limited liability
26 company or limited partnership or from any name the right to which is
27 reserved by or on behalf of any domestic or foreign limited liability
28 company or limited partnership.

29 (3) Shall not contain any word or phrase, or any abbreviation or
30 derivative thereof, the use of which is prohibited or restricted by
31 section 404 (Approvals, notices and consents) or any other statute of
32 this state, unless in the latter case the restrictions have been
33 complied with.

34 § 41. Subparagraph 3 of paragraph (b) of section 302 of the not-for-
35 profit corporation law, as amended by chapter 847 of the laws of 1970,
36 is amended to read as follows:

37 (3) Shall not prevent a foreign corporation from being authorized
38 under a name which is similar to the name of a corporation of any [~~type~~
39 ~~or~~] kind existing or authorized under any statute, if the department of
40 state finds, upon proof by affidavit or otherwise as it may determine,
41 that a difference between such names exists in the terms or abbrevi-
42 ations indicating corporate character or otherwise, that the applicant
43 has conducted activities as a corporation under its said name for not
44 less than ten consecutive years immediately prior to the date of its
45 application, that the activities to be conducted in this state are not
46 the same or similar to the business or activities conducted by the
47 corporation with whose name it may conflict and that the public is not
48 likely to be confused or deceived, and if the applicant shall agree in
49 its application for authority to use with its corporate name, in this
50 state, to be placed immediately under or following such name, the words
51 "a (name of jurisdiction of incorporation) corporation".

52 § 42. Paragraph (c) of section 303 of the not-for-profit corporation
53 law, as amended by chapter 590 of the laws of 1982, is amended to read
54 as follows:

55 (c) Application to reserve a corporate name shall be delivered to the
56 department of state. It shall set forth the name and address of the

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1 applicant, the name to be reserved and a statement of the basis under
2 paragraph (a) or (b) for the application. The secretary of state may
3 require the applicant to set forth in his application the nature of the
4 activities to be conducted by the corporation. If the name is available
5 for corporate use, the department of state shall reserve the name for
6 the use of the applicant for a period of sixty days and issue a certifi-
7 cate of reservation. The prohibitions, restrictions and qualifications
8 set forth in section 301 (Corporate name; general), section 302 (Corpo-
9 rate name; exceptions) and section 404 (Approvals, notices and consents)
10 are not waived by the issuance of a certificate of reservation. The
11 certificate of reservation shall include the name of the applicant, the
12 name reserved and the date of the reservation. The certificate of reser-
13 vation (or in lieu thereof an affidavit by the applicant or by his agent
14 or attorney that the certificate of reservation has been lost or
15 destroyed) shall accompany the certificate of incorporation or the
16 application for authority when either is delivered to the department of
17 state.

18 § 43. Section 304 of the not-for-profit corporation law, as amended by
19 chapter 168 of the laws of 1982, is amended to read as follows:

20 § 304. Statutory designation of secretary of state as agent of domestic
21 corporations [~~formed under article four of this chapter~~] and
22 authorized foreign corporations for service of process.

23 (a) The secretary of state shall be the agent of every domestic corpo-
24 ration [~~formed under article four of this chapter~~] and every authorized
25 foreign corporation upon whom process against the corporation may be
26 served.

27 (b) Any designation by a domestic corporation [~~formed under article~~
28 ~~four of this chapter~~] or foreign corporation of the secretary of state
29 as such agent, which designation is in effect on the effective date of
30 this chapter, shall continue. Every domestic corporation [~~formed under~~
31 ~~article four of this chapter~~] or foreign corporation, existing or
32 authorized on the effective date of this chapter, which has not desig-
33 nated the secretary of state as such agent, shall be deemed to have done
34 so.

35 (c) Any designation by a domestic corporation [~~formed under article~~
36 ~~four of this chapter~~] or foreign corporation of an agent other than the
37 secretary of state which is in effect on the effective date of this
38 chapter shall continue in effect until changed or revoked as provided in
39 this chapter.

40 (d) Any designated post-office address to which the secretary of state
41 shall mail a copy of process served upon him or her as agent of a domes-
42 tic corporation [~~formed under article four of this chapter~~] or foreign
43 corporation, shall continue until the filing of a certificate under this
44 chapter directing the mailing to a different post-office address.

45 § 44. Paragraph (a) of section 305 of the not-for-profit corporation
46 law, as amended by chapter 131 of the laws of 1985, is amended to read
47 as follows:

48 (a) Every domestic corporation or authorized foreign corporation may
49 designate a registered agent in this state upon whom process against
50 such corporation may be served. The agent shall be a natural person who
51 is a resident of or has a business address in this state or a domestic
52 corporation or foreign corporation of any [~~type or~~] kind formed, or
53 authorized to do business in this state, under this chapter or under any
54 other statute of this state.

55 § 45. Paragraphs (b) and (c) of section 306 of the not-for-profit
56 corporation law, paragraph (b) as amended by chapter 168 of the laws of

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1 1982, and paragraph (c) as amended by chapter 93 of the laws of 1984,
2 are amended to read as follows:

3 (b) Service of process on the secretary of state as agent of a domes-
4 tic corporation [~~formed under article four of this chapter~~] or an
5 authorized foreign corporation shall be made by personally delivering to
6 and leaving with [~~him or his~~] the deputy of the secretary of state, or
7 with any person authorized by the secretary of state to receive such
8 service, at the office of the department of state in the city of Albany,
9 duplicate copies of such process together with the statutory fee, which
10 fee shall be a taxable disbursement. Service of process on such corpo-
11 ration shall be complete when the secretary of state is so served. The
12 secretary of state shall promptly send one of such copies by certified
13 mail, return receipt requested, to such corporation, at the post office
14 address, on file in the department of state, specified for the purpose.
15 If a domestic corporation [~~formed under article four of this chapter~~] or
16 an authorized foreign corporation has no such address on file in the
17 department of state, the secretary of state shall so mail such copy to
18 such corporation at the address of its office within this state on file
19 in the department.

20 (c) If an action or special proceeding is instituted in a court of
21 limited jurisdiction, service of process may be made in the manner
22 provided in this section if the office of the domestic corporation
23 [~~formed under article four of this chapter~~] or foreign corporation is
24 within the territorial jurisdiction of the court.

25 § 46. The not-for-profit corporation law is amended by adding a new
26 section 309 to read as follows:

27 § 309. Personal jurisdiction and service of process on non-domiciliary
28 resident director, officer, key employee or agent.

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

35 § 47. Subparagraphs 2 and 4 of paragraph (a) of section 402 of the
36 not-for-profit corporation law, subparagraph 2 as amended by chapter 847
37 of the laws of 1970 and subparagraph 4 as amended by chapter 679 of the
38 laws of 1985, are amended to read as follows:

39 (2) That the corporation is a corporation as defined in subparagraph
40 (a) (5) of section 102 (Definitions)[~~7~~], the purpose or purposes for
41 which it is formed, and [~~the type of~~] whether it is a charitable corpo-
42 ration [~~it shall be~~] or a non-charitable corporation under section 201
43 (Purposes)[~~; and in the case of a Type C corporation, the lawful public~~
44 ~~or quasi-public objective which each business purpose will achieve~~].
45 Any corporation may also set forth any activities that it intends to
46 carry out in furtherance of such purpose or purposes; provided that this
47 subparagraph shall not be interpreted to require that the certificate of
48 incorporation set forth such activities or otherwise state how the
49 corporation's purposes will be achieved.

50 (4) [~~In the case of a Type A, Type B, or Type C corporation, the~~] The
51 names and addresses of the initial directors. [~~In the case of a Type D~~
52 ~~corporation, the names and addresses of the initial directors, if any,~~
53 ~~may but need not be set forth.~~]

54 § 48. The section heading and paragraph (d) of section 404 of the
55 not-for-profit corporation law, the section heading and paragraph (d) as
56 amended by chapter 139 of the laws of 1993, and paragraph (d) as relet-

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1 tered by chapter 431 of the laws of 1993, are amended to read as
2 follows:

3 Approvals, notices and consents.

4 (d) Every corporation whose certificate of incorporation includes
5 among its purposes the operation of a school; a college, university or
6 other entity providing post secondary education; a library; or a museum
7 or historical society shall have endorsed thereon or annexed thereto the
8 approval of the commissioner of education, or in the case of a college
9 or a university, the written authorization of the Regents. Any other
10 corporation the certificate of incorporation of which includes a purpose
11 for which a corporation might be chartered by the regents of the univer-
12 sity of the State of New York shall [~~have endorsed thereon or annexed~~
13 ~~thereto the consent of the commissioner of education.~~] provide a certi-
14 fied copy of the certificate of incorporation to the commissioner of
15 education within thirty business days after the corporation receives
16 confirmation from the department of state that the certificate has been
17 accepted for filing.

18 § 49. Paragraph (w) of section 404 of the not-for-profit corporation
19 law is REPEALED and a new paragraph (w) is added to read as follows:

20 (w) A statement in the certificate of incorporation of a corporation
21 that the corporation's purposes and powers do not include any of those
22 described in paragraphs (a) through (v) of this section shall be suffi-
23 cient to satisfy the approval and notice requirements contained in this
24 section provided such statement is accurate as of the date the certif-
25 icate of incorporation is filed.

26 § 50. Paragraph (d) of section 502 of the not-for-profit corporation
27 law is amended to read as follows:

28 (d) A member's capital contribution shall be evidenced by a capital
29 certificate which shall be non-transferable, except that the certificate
30 of incorporation of a [~~Type A~~] non-charitable corporation may provide
31 that its capital certificates, or some of them, may be transferable to
32 other members with the consent of the corporation upon specified terms
33 and conditions.

34 § 51. Paragraphs (b) and (c) of section 503 of the not-for-profit
35 corporation law, subparagraph 1 of paragraph (b) and paragraph (c) as
36 amended by chapter 847 of the laws of 1970, are amended to read as
37 follows:

38 (b) Each capital certificate shall when issued state upon the face
39 thereof:

40 (1) [~~That the corporation is a Type corporation under section~~
41 ~~113 or section 402 of the New York Not-for-Profit Corporation Law.~~

42 ~~(2)~~] The name of the member to whom issued.

43 [~~(3)~~] (2) The amount of the member's capital contribution evidenced by
44 such certificate.

45 [~~(4)~~] (3) If appropriate, that the corporation is a [~~Type A~~] non-char-
46 itable corporation, and that its certificate of incorporation provides
47 that the capital certificate is transferable to other members with the
48 consent of the corporation.

49 [~~(c)~~] (4) The fact that the corporation is a not-for-profit corpo-
50 ration, and that the capital certificate is non-transferable or is
51 transferable to other members, with the consent of the corporation,
52 shall be noted conspicuously on the face or back of each such certif-
53 icate.

54 § 52. Paragraph (b) of section 505 of the not-for-profit corporation
55 law, subparagraph 1 as amended by chapter 847 of the laws of 1970, is
56 amended to read as follows:

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1 (b) Each subvention certificate shall when issued state upon the face
2 thereof:

3 (1) [~~That the corporation is a Type corporation under section~~
4 ~~113 or section 402 of the New York Not-for-Profit Corporation Law.~~

5 ~~(2)~~] The name of the person or persons to whom issued.

6 [~~(3)~~] (2) The amount of the subvention evidenced by such certificate.

7 [~~(4)~~] (3) The amount of the periodic payment thereon, if any, author-
8 ized by the resolution of the board.

9 [~~(5)~~] (4) If appropriate, that the certificate is redeemable and a
10 summary of the conditions for redemption at the option of the corpo-
11 ration or of the holder.

12 [~~(6)~~] (5) If appropriate, that the certificate is transferable, either
13 at will or subject to specified restrictions.

14 § 53. Section 509 of the not-for-profit corporation law, as amended by
15 chapter 145 of the laws of 1991, is amended to read as follows:

16 § 509. Purchase, sale, mortgage and lease of real property.

17 (a) No corporation shall purchase [of] real property [shall be made by
18 a corporation and no corporation shall sell, mortgage or lease real
19 property, unless authorized by the vote of] unless such purchase is
20 authorized by the vote of a majority of directors of the board or of a
21 majority of a committee authorized by the board, provided that if such
22 property would, upon purchase thereof, constitute all, or substantially
23 all, of the assets of the corporation, then the vote of two-thirds of
24 the entire board[~~, provided that if~~] shall be required, or, if there are
25 twenty-one or more directors, the vote of a majority of the entire board
26 shall be sufficient.

27 (b) No corporation shall sell, mortgage, lease, exchange or otherwise
28 dispose of its real property unless authorized by the vote of a majority
29 of directors of the board or of a majority of a committee authorized by
30 the board; provided that if such property constitutes all, or substan-
31 tially all, of the assets of the corporation, then the vote of two-
32 thirds of the entire board shall be required, or, if there are twenty-
33 one or more directors, the vote of a majority of the entire board shall
34 be sufficient.

35 (c) If a corporation authorizes a committee to act pursuant to para-
36 graphs (a) and (b) of this section, the committee shall promptly report
37 any actions taken to the board, and in no event after the next regularly
38 scheduled meeting of the board.

39 § 54. Paragraph (a) of section 510 of the not-for-profit corporation
40 law, the opening paragraph as amended by chapter 961 of the laws of
41 1972, subparagraph 3 as amended by chapter 847 of the laws of 1970, is
42 amended to read as follows:

43 (a) A sale, lease, exchange or other disposition of all, or substan-
44 tially all, the assets of a corporation may be made upon such terms and
45 conditions and for such consideration, which may consist in whole or in
46 part of cash or other property, real or personal, including shares,
47 bonds or other securities of any other domestic or foreign corporation
48 or corporations of any [~~type or~~] kind, as may be authorized in accord-
49 ance with the following procedure:

50 (1) If there are members entitled to vote thereon, the board shall
51 adopt a resolution recommending such sale, lease, exchange or other
52 disposition. The resolution shall specify the terms and conditions of
53 the proposed transaction, including the consideration to be received by
54 the corporation and the eventual disposition to be made of such consid-
55 eration, together with a statement that the dissolution of the corpo-
56 ration is or is not contemplated thereafter. The resolution shall be

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1 submitted to a vote at a meeting of members entitled to vote thereon,
2 which may be either an annual or a special meeting. Notice of the meet-
3 ing shall be given to each member and each holder of subvention certif-
4 icates or bonds of the corporation, whether or not entitled to vote. At
5 such meeting by two-thirds vote as provided in paragraph (c) of section
6 613 (Vote of members) the members may approve the proposed transaction
7 according to the terms of the resolution of the board, or may approve
8 such sale, lease, exchange or other disposition and may authorize the
9 board to modify the terms and conditions thereof.

10 (2) If there are no members entitled to vote thereon, such sale,
11 lease, exchange or other disposition shall be authorized by the vote of
12 at least two-thirds of the entire board, provided that if there are
13 twenty-one or more directors, the vote of a majority of the entire board
14 shall be sufficient.

15 (3) If the corporation is, or would be if formed under this chapter,
16 classified as a [~~Type B or Type C~~] charitable corporation under section
17 201[7] (Purposes) such sale, lease, exchange or other disposition shall
18 in addition require [~~leave~~] approval of the attorney general or the
19 supreme court in the judicial district or of the county court of the
20 county in which the corporation has its office or principal place of
21 carrying out the [~~purposes~~] purposes for which it was formed in accord-
22 ance with section 511 (Petition for court approval) or section 511-a
23 (Petition for attorney general approval) of this article.

24 § 55. The section heading and paragraph (a) of section 511 of the
25 not-for-profit corporation law, subparagraph 6 of paragraph (a) as
26 amended by chapter 961 of the laws of 1972, are amended to read as
27 follows:

28 Petition for [~~leave of~~] court approval.

29 (a) [~~A corporation required by law to~~] To obtain [~~leave of~~] court
30 approval to sell, lease, exchange or otherwise dispose of all or
31 substantially all its assets, a corporation shall present a verified
32 petition to the supreme court of the judicial district, or the county
33 court of the county, wherein the corporation has its office or principal
34 place of carrying out the purposes for which it was formed. The petition
35 shall set forth:

36 1. The name of the corporation, the law under or by which it was
37 incorporated.

38 2. The names of its directors and principal officers, and their places
39 of residence.

40 3. The activities of the corporation.

41 4. A description, with reasonable certainty, of the assets to be sold,
42 leased, exchanged, or otherwise disposed of, or a statement that it is
43 proposed to sell, lease, exchange or otherwise dispose of all or
44 substantially all the corporate assets more fully described in a sched-
45 ule attached to the petition; and a statement of the fair value of such
46 assets, and the amount of the corporation's debts and liabilities and
47 how secured.

48 5. The consideration to be received by the corporation and the dispo-
49 sition proposed to be made thereof, together with a statement that the
50 dissolution of the corporation is or is not contemplated thereafter.

51 6. That the consideration and the terms of the sale, lease, exchange
52 or other disposition of the assets of the corporation are fair and
53 reasonable to the corporation, and that the purposes of the corporation,
54 or the interests of its members will be promoted thereby, and a concise
55 statement of the reasons therefor.

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1 7. That such sale, lease, exchange or disposition of corporate assets,
2 has been recommended or authorized by vote of the directors in accord-
3 ance with law, at a meeting duly called and held, as shown in a schedule
4 annexed to the petition setting forth a copy of the resolution granting
5 such authority with a statement of the vote thereon.

6 8. Where the consent of members of the corporation is required by law,
7 that such consent has been given, as shown in a schedule annexed to the
8 petition setting forth a copy of such consent, if in writing, or of a
9 resolution giving such consent, adopted at a meeting of members duly
10 called and held, with a statement of the vote thereon.

11 9. A [~~prayer~~] request for [~~leave~~] court approval to sell, lease,
12 exchange or otherwise dispose of all or substantially all the assets of
13 the corporation as set forth in the petition.

14 § 56. The not-for-profit corporation law is amended by adding a new
15 section 511-a to read as follows:

16 § 511-a. Petition for attorney general approval.

17 (a) In lieu of obtaining court approval under section 511 (Petition
18 for court approval) of this article to sell, lease, exchange or other-
19 wise dispose of all or substantially all of its assets, the corporation
20 may alternatively seek approval of the attorney general by verified
21 petition, except in the following circumstances: (1) the corporation is
22 insolvent, or would become insolvent as a result of the transaction, and
23 must proceed on notice to creditors pursuant to paragraph (c) of section
24 511 of this article; or (2) the attorney general, in his or her
25 discretion, concludes that a court should review the petition and make a
26 determination thereon.

27 (b) The verified petition to the attorney general shall set forth (1)
28 all of the information required to be included in a verified petition to
29 obtain court approval pursuant to subparagraphs one through nine of
30 paragraph (a) of section 511 of this article; (2) a statement that the
31 corporation is not insolvent and will not become insolvent as a result
32 of the transaction; and (3) a statement as to whether any persons have
33 raised, or have a reasonable basis to raise, objections to the sale,
34 lease, exchange or other disposition that is the subject of the peti-
35 tion, including a statement setting forth the names and addresses of
36 such persons, the nature of their interest, and a description of their
37 objections. The attorney general, in his or her discretion, may direct
38 the corporation to provide notice of such petition to any interested
39 person, and the corporation shall provide the attorney general with a
40 certification that such notice has been provided.

41 (c) If it shall appear, to the satisfaction of the attorney general
42 that the consideration and the terms of the transaction are fair and
43 reasonable to the corporation and that the purposes of the corporation
44 or the interests of the members will be promoted, the attorney general
45 may authorize the sale, lease, exchange or other disposition of all or
46 substantially all the assets of the corporation, as described in the
47 petition, for such consideration and upon such terms as the attorney
48 general may prescribe. The authorization of the attorney general shall
49 direct the disposition of the consideration to be received thereunder by
50 the corporation.

51 (d) At any time, including if the attorney general does not approve
52 the petition, or if the attorney general concludes that court review is
53 appropriate, the petitioner may seek court approval on notice to the
54 attorney general pursuant to section 511 (Petition for court approval)
55 of this article.

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1 § 57. Paragraph (a) of section 513 of the not-for-profit corporation
2 law, as amended by chapter 690 of the laws of 1978, is amended to read
3 as follows:

4 (a) A corporation which is, or would be if formed under this chapter,
5 [~~classified as~~] a [~~Type-B~~] charitable corporation shall hold full owner-
6 ship rights in any assets consisting of funds or other real or personal
7 property of any kind, that may be given, granted, bequeathed or devised
8 to or otherwise vested in such corporation in trust for, or with a
9 direction to apply the same to, any purpose specified in its certificate
10 of incorporation, and shall not be deemed a trustee of an express trust
11 of such assets. Any other corporation subject to this chapter may simi-
12 larly hold assets so received, unless otherwise provided by law or in
13 the certificate of incorporation.

14 § 58. Paragraph (b) of section 515 of the not-for-profit corporation
15 law is amended to read as follows:

16 (b) A corporation may pay compensation in a reasonable amount to
17 members, directors, or officers, for services rendered, and may make
18 distributions of cash or property to members upon dissolution or final
19 liquidation as permitted by this chapter. No person who may benefit
20 from such compensation may be present at or otherwise participate in any
21 board or committee deliberation or vote concerning such person's compen-
22 sation; provided that nothing in this section shall prohibit the board
23 or authorized committee from requesting that a person who may benefit
24 from such compensation present information as background or answer ques-
25 tions at a committee or board meeting prior to the commencement of
26 deliberations or voting relating thereto.

27 § 59. Section 520 of the not-for-profit corporation law, as amended by
28 chapter 58 of the laws of 1981, is amended to read as follows:

29 § 520. Reports of corporation.

30 Each domestic corporation, and each foreign corporation authorized to
31 conduct activities in this state, shall from time to time file such
32 reports on its activities as may be required by the laws of this state.
33 All registration and reporting requirements pursuant to [~~EPTL~~] article
34 seven-A of the executive law, and section 8-1.4 of the estates, powers
35 and trusts law, or related successor provisions, are, without limitation
36 on the foregoing, expressly included as reports required by the laws of
37 this state to be filed within the meaning of this section. Willful fail-
38 ure of a corporation to file a report as required by law shall consti-
39 tute a breach of the directors' duty to the corporation and shall
40 subject the corporation, at the suit of the attorney-general, to an
41 action or special proceeding for dissolution under article 11 (Judicial
42 dissolution) in the case of a domestic corporation, or under [~~§~~] section
43 1303 (Violations) in the case of a foreign corporation.

44 § 60. Paragraph (f) of section 555 of the not-for-profit corporation
45 law, as added by chapter 490 of the laws of 2010, is amended to read as
46 follows:

47 (f) This [~~section~~] chapter shall not limit the application of the
48 [~~doctrine~~] doctrines of cy pres and deviation.

49 § 61. Paragraph (a) of section 601 of the not-for-profit corporation
50 law, as amended by chapter 1058 of the laws of 1971, is amended to read
51 as follows:

52 (a) A corporation shall have one or more classes of members, or, in
53 the case of a [~~Type-B~~] charitable corporation, may have no members, in
54 which case any such provision for classes of members or for no members
55 shall be set forth in the certificate of incorporation or the by-laws.
56 Corporations, joint-stock associations, unincorporated associations and

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1 partnerships, as well as any other person without limitation, may be
2 members.

3 § 62. Paragraph (a) of section 605 of the not-for-profit corporation
4 law, as amended by chapter 1058 of the laws of 1971, is amended to read
5 as follows:

6 (a) Whenever under the provisions of this chapter members are required
7 or permitted to take any action at a meeting, written notice shall state
8 the place, date and hour of the meeting and, unless it is an annual
9 meeting, indicate that it is being issued by or at the direction of the
10 person or persons calling the meeting. Notice of a special meeting shall
11 also state the purpose or purposes for which the meeting is called. A
12 copy of the notice of any meeting shall be given, personally [~~or~~], by
13 mail, or by facsimile telecommunications or by electronic mail, to each
14 member entitled to vote at such meeting. If the notice is given
15 personally [~~or~~], by first class mail or by facsimile telecommunications
16 or by electronic mail, it shall be given not less than ten nor more than
17 fifty days before the date of the meeting; if mailed by any other class
18 of mail, it shall be given not less than thirty nor more than sixty days
19 before such date. If mailed, such notice is given when deposited in the
20 United States mail, with postage thereon prepaid, directed to the member
21 at his address as it appears on the record of members, or, if he shall
22 have filed with the secretary of the corporation a written request that
23 notices to him be mailed to some other address, then directed to him at
24 such other address. If sent by facsimile telecommunication or mailed
25 electronically, such notice is given when directed to the member's fax
26 number or electronic mail address as it appears on the record of
27 members, or, to such fax number or other electronic mail address as
28 filed with the secretary of the corporation. Notwithstanding the forego-
29 ing, such notice shall not be deemed to have been given electronically
30 (1) if the corporation is unable to deliver two consecutive notices to
31 the member by facsimile telecommunication or electronic mail; or (2) the
32 corporation otherwise becomes aware that notice cannot be delivered to
33 the member by facsimile telecommunication or electronic mail. An affida-
34 vit of the secretary or other person giving the notice or of a transfer
35 agent of the corporation that the notice required by this section has
36 been given shall, in the absence of fraud, be prima facie evidence of
37 the facts therein stated. Whenever a corporation has more than five
38 hundred members, the notice may be served by publication[~~, in lieu of~~
39 ~~mailing,~~] in a newspaper published in the county in the state in which
40 the principal office of the corporation is located, once a week for
41 three successive weeks next preceding the date of the meeting, provided
42 that the corporation shall also prominently post notice of such meeting
43 on the homepage of any website maintained by the corporation continuous-
44 ly from the date of publication through the date of the meeting. A
45 corporation shall send notice of meetings by first class mail to any
46 member who requests in writing that such notices be delivered by such
47 method.

48 § 63. Section 606 of the not-for-profit corporation law is amended to
49 read as follows:

50 § 606. Waivers of notice.

51 Notice of meeting need not be given to any member who submits a
52 [~~signed~~] waiver of notice, in person or by proxy, whether before or
53 after the meeting. Waiver of notice may be written or electronic. If
54 written, the waiver must be executed by the member or the member's
55 authorized officer, director, employee, or agent by signing such waiver
56 or causing his signature to be affixed to such waiver by any reasonable

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1 means, including, but not limited to facsimile signature. If electronic,
2 the transmission of the waiver must be sent by electronic mail and set
3 forth, or be submitted with, information from which it can reasonably be
4 determined that the transmission was authorized by the member. The
5 attendance of any member at a meeting, in person or by proxy, without
6 protesting prior to the conclusion of the meeting the lack of notice of
7 such meeting, shall constitute a waiver of notice by him.

8 § 64. Paragraphs (b) and (c) of section 609 of the not-for-profit
9 corporation law, as added by chapter 186 of the laws of 1999, are
10 amended to read as follows:

11 (b) Without limiting the manner in which a member may authorize another
12 person or persons to act for him as proxy pursuant to paragraph (a)
13 of this section, the following shall constitute a valid means by which a
14 member may grant such authority:

15 (1) A member may execute a writing authorizing another person or
16 persons to act for him as proxy. Execution may be accomplished by the
17 member or the member's authorized officer, director, employee or agent
18 signing such writing or causing his or her signature to be affixed to
19 such writing by any reasonable means including, but not limited to, by
20 facsimile signature.

21 (2) A member may authorize another person or persons to act for the
22 member as proxy by [~~transmitting or authorizing the transmission of a~~
23 ~~telegram, cablegram or other means of~~] providing such authorization by
24 electronic [transmission] mail to the person who will be the holder of
25 the proxy or to a proxy solicitation firm, proxy support service organ-
26 ization or like agent duly authorized by the person [~~who will be the~~
27 ~~holder of the proxy to receive such transmission~~], provided that any
28 such [~~telegram, cablegram or other means of~~] authorization by electronic
29 [~~transmission] mail~~ shall either set forth [~~or be submitted with~~] infor-
30 mation from which it can be reasonably determined that the [~~telegram,~~
31 ~~cablegram or other~~] authorization by electronic [~~transmission] mail~~ was
32 authorized by the member. If it is determined that such [~~telegrams,~~
33 ~~cablegrams or other~~] authorization by electronic [~~transmissions are~~
34 mail is valid, the inspectors or, if there are no inspectors, such other
35 persons making that determination shall specify the nature of the infor-
36 mation upon which they relied.

37 (c) Any copy, facsimile telecommunication or other reliable repro-
38 duction of the writing or [~~transmission] electronic mail~~ created pursuant
39 to paragraph (b) of this section may be substituted or used in lieu of
40 the original writing or transmission for any and all purposes for which
41 the original writing or transmission could be used, provided that such
42 copy, facsimile telecommunication or other reproduction shall be a
43 complete reproduction of the entire original writing or transmission.

44 § 65. Paragraphs (a) and (b) of section 614 of the not-for-profit
45 corporation law are amended to read as follows:

46 (a) Whenever, under this chapter, members are required or permitted to
47 take any action by vote, such action may be taken without a meeting [~~on~~
48 ~~written] upon the consent[~~, setting forth the action so taken, signed~~
49 ~~by] of all of the members entitled to vote thereon, which consent shall
50 set forth the action so taken. Such consent may be written or electron-
51 ic. If written, the consent must be executed by the member or the
52 member's authorized officer, director, employee or agent by signing such
53 consent or causing his signature to be affixed to such waiver by any
54 reasonable means including but not limited to facsimile signature. If
55 electronic, the transmission of the consent must be sent by electronic
56 mail and set forth, or be submitted with, information from which it can~~~~

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1 reasonably be determined that the transmission was authorized by the
2 member. This paragraph shall not be construed to alter or modify any
3 provision in a certificate of incorporation not inconsistent with this
4 chapter under which the written consent of less than all of the members
5 is sufficient for corporate action.

6 (b) Written or electronic consent thus given by all members entitled
7 to vote shall have the same effect as a unanimous vote of members and
8 any certificate with respect to the authorization or taking of any such
9 action which is delivered to the department of state shall recite that
10 the authorization was by [~~unanimous~~] unanimous written consent.

11 § 66. Paragraph (e) of section 621 of the not-for-profit corporation
12 law, as amended by chapter 847 of the laws of 1970, is amended to read
13 as follows:

14 (e) Upon the written request of any person who shall have been a
15 member of record for at least six months immediately preceding his
16 request, or of any person holding, or thereunto authorized in writing by
17 the holders of, at least five percent of any class of the outstanding
18 capital certificates, the corporation shall [~~give or mail~~] provide
19 such member an annual balance sheet and profit and loss statement or a
20 financial statement performing a similar function for the preceding
21 fiscal year, and, if any interim balance sheet or profit and loss or
22 similar financial statement has been distributed to its members or
23 otherwise made available to the public, the most recent such interim
24 balance sheet or profit and loss or similar financial statement. The
25 corporation shall be allowed a reasonable time to prepare such annual
26 balance sheet and profit and loss or similar financial statement.

27 § 67. Paragraph (a) of section 702 of the not-for-profit corporation
28 law is amended to read as follows:

29 (a) The number of directors constituting the entire board shall be not
30 less than three. Subject to such limitation, such number may be fixed by
31 the by-laws or [~~, in the case of a corporation having members,~~] by action
32 of the members or of the board under the specific provisions of a by-law
33 [~~adopted by the members~~] allowing such action, or by any number within a
34 range set forth in the by-laws. If not otherwise fixed under this para-
35 graph, the number shall be three. [~~As used in this article, "entire~~
36 ~~board" means the total number of directors entitled to vote which the~~
37 ~~corporation would have if there were no vacancies.~~]

38 § 68. Paragraphs (b) and (c) of section 708 of the not-for-profit
39 corporation law, paragraph (b) as amended by chapter 92 of the laws of
40 1983 and paragraph (c) as amended by chapter 211 of the laws of 2007,
41 are amended to read as follows:

42 (b) Unless otherwise restricted by the certificate of incorporation or
43 the by-laws, any action required or permitted to be taken by the board
44 or any committee thereof may be taken without a meeting if all members
45 of the board or the committee consent [~~in writing~~] to the adoption of a
46 resolution authorizing the action. Such consent may be written or elec-
47 tronic. If written, the consent must be executed by the director by
48 signing such consent or causing his or her signature to be affixed to
49 such consent by any reasonable means including, but not limited to,
50 facsimile signature. If electronic, the transmission of the consent must
51 be sent by electronic mail and set forth, or be submitted with, informa-
52 tion from which it can reasonably be determined that the transmission
53 was authorized by the director. The resolution and the written consents
54 thereto by the members of the board or committee shall be filed with the
55 minutes of the proceedings of the board or committee.

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1 (c) Unless otherwise restricted by the certificate of incorporation or
2 the by-laws, any one or more members of the board or of any committee
3 thereof [~~may participate in~~] who is not physically present at a meeting
4 of [~~such~~] the board or a committee may participate by means of a confer-
5 ence telephone or similar communications equipment [~~allowing all persons~~
6 ~~participating in the meeting to hear each other at the same time~~] or by
7 electronic video screen communication. Participation by such means
8 shall constitute presence in person at a meeting as long as all persons
9 participating in the meeting can hear each other at the same time and
10 each director can participate in all matters before the board, includ-
11 ing, without limitation, the ability to propose, object to, and vote
12 upon a specific action to be taken by the board or committee.

13 § 69. Paragraph (c) of section 711 of the not-for-profit corporation
14 law, as amended by chapter 847 of the laws of 1970, is amended to read
15 as follows:

16 (c) Notice of a meeting need not be given to any alternate director,
17 nor to any director who submits a [~~signed~~] waiver of notice whether
18 before or after the meeting, or who attends the meeting without protest-
19 ing, prior thereto or at its commencement, the lack of notice to him.
20 Such waiver of notice may be written or electronic. If written, the
21 waiver must be executed by the director signing such waiver or causing
22 his or her signature to be affixed to such waiver by any reasonable
23 means including but not limited to facsimile signature. If electronic,
24 the transmission of the consent must be sent by electronic mail and set
25 forth, or be submitted with, information from which it can reasonably be
26 determined that the transmission was authorized by the director.

27 § 70. Paragraphs (a), (b) and (e) of section 712 of the not-for-profit
28 corporation law, paragraph (e) as amended by chapter 961 of the laws of
29 1972, are amended to read as follows:

30 (a) If the certificate of incorporation or the by-laws so provide, the
31 board, by resolution adopted by a majority of the entire board, may
32 designate from among its members an executive committee and other
33 [~~standing~~] committees, each consisting of three or more directors, and
34 each of which, to the extent provided in the resolution or in the
35 certificate of incorporation or by-laws, shall have all the authority of
36 the board, except that no such committee shall have authority as to the
37 following matters:

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

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

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

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

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

48 (b) The board may designate one or more directors as alternate members
49 of any [~~standing~~] committee, who may replace any absent member or
50 members at any meeting of such committee.

51 (e) Committees, other than [~~standing or special~~] committees of the
52 board, whether created by the board or by the members, shall be commit-
53 tees of the corporation. Such committees of the corporation may be
54 elected or appointed in the same manner as officers of the corporation,
55 but no such committee shall have the authority to bind the board.
56 Provisions of this chapter applicable to officers generally shall apply

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1 to members of such committees. Such committees of the corporation shall
2 be elected or appointed in the manner set forth in the by-laws, or if
3 not set forth in the by-laws, in the same manner as officers of the
4 corporation.

5 § 71. Paragraph (c) of section 712 of the not-for-profit corporation
6 law is REPEALED.

7 § 72. The not-for-profit corporation law is amended by adding a new
8 section 712-a to read as follows:

9 § 712-a. Audit oversight.

10 (a) The board, or a designated audit committee of the board comprised
11 solely of independent directors, of any corporation required to file an
12 independent certified public accountant's audit report with the attorney
13 general pursuant to subdivision one of section one hundred seventy-two-b
14 of the executive law shall oversee the accounting and financial report-
15 ing processes of the corporation and the audit of the corporation's
16 financial statements. The board or designated audit committee shall
17 annually retain or renew the retention of an independent auditor to
18 conduct the audit and, upon completion thereof, review the results of
19 the audit and any related management letter with the independent audi-
20 tor.

21 (b) The board, or a designated audit committee of the board comprised
22 solely of independent directors, of any corporation required to file an
23 independent certified public accountant's audit report with the attorney
24 general pursuant to subdivision one of section one hundred seventy-two-b
25 of the executive law and that in the prior fiscal year had or in the
26 current fiscal year reasonably expects to have annual revenue in excess
27 of one million dollars shall, in addition to those duties set forth in
28 paragraph (a) of this section:

29 (1) review with the independent auditor the scope and planning of the
30 audit prior to the audit's commencement;

31 (2) upon completion of the audit, review and discuss with the inde-
32 pendent auditor: (A) any material risks and weaknesses in internal
33 controls identified by the auditor; (B) any restrictions on the scope of
34 the auditor's activities or access to requested information; (C) any
35 significant disagreements between the auditor and management; and (D)
36 the adequacy of the corporation's accounting and financial reporting
37 processes;

38 (3) annually consider the performance and independence of the inde-
39 pendent auditor; and

40 (4) if the duties required by this section are performed by an audit
41 committee, report on the committee's activities to the board.

42 (c) The board or designated audit committee of the board shall oversee
43 the adoption, implementation of, and compliance with any conflict of
44 interest policy or whistleblower policy adopted by the corporation if
45 this function is not otherwise performed by another committee of the
46 board comprised solely of independent directors.

47 (d) If a corporation controls a group of corporations, the board or
48 designated audit committee of the board of the controlling corporation
49 may perform the duties required by this section for one or more of the
50 controlled corporations.

51 (e) Only independent directors may participate in any board or commit-
52 tee deliberations or voting relating to matters set forth in this
53 section.

54 (f) Any corporation that is a state authority or a local authority as
55 defined in section two of the public authorities law and that has
56 complied substantially with sections twenty-eight hundred two and twen-

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1 ty-eight hundred twenty-four of such law shall be deemed in compliance
2 with this section.

3 § 73. Paragraph (a) of section 713 of the not-for-profit corporation
4 law is amended, and a new paragraph (f) is added to read as follows:

5 (a) The board may elect or appoint a chair or president, or both, one
6 or more vice-presidents, a secretary and a treasurer, and such other
7 officers as it may determine, or as may be provided in the by-laws.
8 These officers may be designated by such alternate titles as may be
9 provided in the certificate of incorporation or the by-laws. Any two or
10 more offices may be held by the same person, except the offices of pres-
11 ident and secretary, or the offices corresponding thereto.

12 (f) No employee of the corporation shall serve as chair of the board
13 or hold any other title with similar responsibilities.

14 § 74. Section 715 of the not-for-profit corporation law, as amended
15 by chapter 847 of the laws of 1970 and paragraph (f) as amended by chap-
16 ter 1057 of the laws of 1971, is amended to read as follows:

17 § 715. [~~Interested directors and officers~~] Related party transactions.

18 (a) [~~No contract or other transaction between a corporation and one or~~
19 ~~more of its directors or officers, or between a corporation and any~~
20 ~~other corporation, firm, association or other entity in which one or~~
21 ~~more of its directors or officers are directors or officers, or have a~~
22 ~~substantial financial interest, shall be either void or voidable for~~
23 ~~this reason alone or by reason alone that such director or directors or~~
24 ~~officer or officers are present at the meeting of the board, or of a~~
25 ~~committee thereof, which authorizes such contract or transaction, or~~
26 ~~that his or their votes are counted for such purpose:~~

27 (1) [~~If the material facts as to such director's or officer's interest~~
28 ~~in such contract or transaction and as to any such common directorship,~~
29 ~~officership or financial interest are disclosed in good faith or known~~
30 ~~to the board or committee, and the board or committee authorizes such~~
31 ~~contract or transaction by a vote sufficient for such purpose without~~
32 ~~counting the vote or votes of such interested director or officer; or~~

33 (2) [~~If the material facts as to such director's or officer's interest~~
34 ~~in such contract or transaction and as to any such common directorship,~~
35 ~~officership or financial interest are disclosed in good faith or known~~
36 ~~to the members entitled to vote thereon, if any, and such contract or~~
37 ~~transaction is authorized by vote of such members.~~

38 (b) [~~If such good faith disclosure of the material facts as to the~~
39 ~~director's or officer's interest in the contract or transaction and as~~
40 ~~to any such common directorship, officership or financial interest, is~~
41 ~~made to the directors or members, or known to the board or committee or~~
42 ~~members authorizing such contract or transaction, as provided in para-~~
43 ~~graph (a), the contract or transaction may not be avoided by the corpo-~~
44 ~~ration for the reasons set forth in paragraph (a). If there was no such~~
45 ~~disclosure or knowledge, or if the vote of such interested director or~~
46 ~~officer was necessary for the authorization of such contract or trans-~~
47 ~~action at a meeting of the board or committee at which it was author-~~
48 ~~ized, the corporation may avoid the contract or transaction unless the~~
49 ~~party or parties thereto shall establish affirmatively that the contract~~
50 ~~or transaction was fair and reasonable as to the corporation at the time~~
51 ~~it was authorized by the board, a committee or the members.~~

52 (c) [~~Common or interested directors may be counted in determining the~~
53 ~~presence of a quorum at a meeting of the board or of a committee which~~
54 ~~authorizes such contract or transaction.~~

55 (d)] No corporation shall enter into any related party transaction
56 unless the transaction is determined by the board to be fair, reasonable

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1 and in the corporation's best interest at the time of such determi-
2 nation. Any director, officer or key employee who has an interest in a
3 related party transaction shall disclose in good faith to the board, or
4 an authorized committee thereof, the material facts concerning such
5 interest.

6 (b) With respect to any related party transaction involving a charita-
7 ble corporation and in which a related party has a substantial financial
8 interest, the board of such corporation, or an authorized committee
9 thereof, shall:

10 (1) Prior to entering into the transaction, consider alternative tran-
11 sactions to the extent available;

12 (2) Approve the transaction by not less than a majority vote of the
13 directors or committee members present at the meeting; and

14 (3) Contemporaneously document in writing the basis for the board or
15 authorized committee's approval, including its consideration of any
16 alternative transactions.

17 (c) The certificate of incorporation, by-laws or any policy adopted by
18 the board may contain additional restrictions on [~~contracts or~~] related
19 party transactions [~~between a corporation and its directors or officers~~
20 ~~or other persons and may~~] and additional procedures necessary for the
21 review and approval of such transactions, or provide that [~~contracts or~~
22 ~~transactions~~] any transaction in violation of such restrictions shall be
23 void or voidable.

24 [~~e~~] (d) Unless otherwise provided in the certificate of incorpo-
25 ration or the by-laws, the board shall have authority to fix the compen-
26 sation of directors for services in any capacity.

27 [~~f~~] (e) The fixing of salaries of officers, if not done in or pursu-
28 ant to the by-laws, shall require the affirmative vote of a majority of
29 the entire board unless a higher proportion is set by the certificate of
30 incorporation or by-laws.

31 (f) The attorney general may bring an action to enjoin, void or
32 rescind any related party transaction or proposed related party trans-
33 action that violates any provision of this chapter or was otherwise not
34 reasonable or in the best interests of the corporation at the time the
35 transaction was approved, or to seek restitution, and the removal of
36 directors or officers, or seek to require any person or entity to:

37 (1) Account for any profits made from such transaction, and pay them
38 to the corporation;

39 (2) Pay the corporation the value of the use of any of its property or
40 other assets used in such transaction;

41 (3) Return or replace any property or other assets lost to the corpo-
42 ration as a result of such transaction, together with any income or
43 appreciation lost to the corporation by reason of such transaction, or
44 account for any proceeds of sale of such property, and pay the proceeds
45 to the corporation together with interest at the legal rate; and

46 (4) Pay, in the case of willful and intentional conduct, an amount up
47 to double the amount of any benefit improperly obtained.

48 (f) The powers of the attorney general provided in this section are in
49 addition to all other powers the attorney general may have under this
50 chapter or any other law.

51 (g) No related party may participate in deliberations or voting relat-
52 ing to matters set forth in this section; provided that nothing in this
53 section shall prohibit the board or authorized committee from requesting
54 that a related party present information concerning a related party
55 transaction at a board or committee meeting prior to the commencement of
56 deliberations or voting relating thereto.

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1 § 75. The not-for-profit corporation law is amended by adding two new
2 sections 715-a and 715-b to read as follows:

3 § 715-a. Conflict of interest policy.

4 (a) Except as provided in paragraph (d) of this section, every corpo-
5 ration shall adopt a conflict of interest policy to ensure that its
6 directors, officers and key employees act in the corporation's best
7 interest and comply with applicable legal requirements, including but
8 not limited to the requirements set forth in section seven hundred
9 fifteen of this article.

10 (b) The conflict of interest policy shall include, at a minimum, the
11 following provisions:

12 (1) a definition of the circumstances that constitute a conflict of
13 interest;

14 (2) procedures for disclosing a conflict of interest to the audit
15 committee or, if there is no audit committee, to the board;

16 (3) a requirement that the person with the conflict of interest not be
17 present at or participate in board or committee deliberation or vote on
18 the matter giving rise to such conflict;

19 (4) a prohibition against any attempt by the person with the conflict
20 to influence improperly the deliberation or voting on the matter giving
21 rise to such conflict;

22 (5) a requirement that the existence and resolution of the conflict be
23 documented in the corporation's records, including in the minutes of any
24 meeting at which the conflict was discussed or voted upon; and

25 (6) procedures for disclosing, addressing, and documenting related
26 party transactions in accordance with section seven hundred fifteen of
27 this article.

28 (c) The conflict of interest policy shall require that prior to the
29 initial election of any director, and annually thereafter, such director
30 shall complete, sign and submit to the secretary of the corporation a
31 written statement identifying, to the best of the director's knowledge,
32 any entity of which such director is an officer, director, trustee,
33 member, owner (either as a sole proprietor or a partner), or employee
34 and with which the corporation has a relationship, and any transaction
35 in which the corporation is a participant and in which the director
36 might have a conflicting interest. The policy shall require that each
37 director annually resubmit such written statement. The secretary' of
38 the corporation shall provide a copy of all completed statements to the
39 chair of the audit committee or, if there is no audit committee, to the
40 chair of the board.

41 (d) A corporation that has adopted and possesses a conflict of inter-
42 est policy pursuant to federal, state or local laws that is substantial-
43 ly consistent with the provisions of paragraph (b) of this section shall
44 be deemed in compliance with provisions of this section. In addition,
45 any corporation that is a state authority or a local authority as
46 defined in section two of the public authorities law, and that has
47 complied substantially with section twenty-eight hundred twenty-four and
48 subdivision three of section twenty-eight hundred twenty-five of such
49 law, shall be deemed in compliance with this section.

50 (e) Nothing in this section shall be interpreted to require a corpo-
51 ration to adopt any specific conflict of interest policy not otherwise
52 required by this section or any other law or rule, or to supersede or
53 limit any requirement or duty governing conflicts of interest required
54 by any other law or rule.

55 § 715-b. Whistleblower policy.

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1 (a) Except as provided in paragraph (c) of this section, every corpo-
2 ration that has twenty or more employees and in the prior fiscal year
3 had annual revenue in excess of one million dollars shall adopt a whist-
4 leblower policy to protect from retaliation persons who report suspected
5 improper conduct. Such policy shall provide that no director, officer,
6 employee or volunteer of a corporation who in good faith reports any
7 action or suspected action taken by or within the corporation that is
8 illegal, fraudulent or in violation of any adopted policy of the corpo-
9 ration shall suffer intimidation, harassment, discrimination or other
10 retaliation or, in the case of employees, adverse employment conse-
11 quence.

12 (b) The whistleblower policy shall include the following provisions:

13 (1) Procedures for the reporting of violations or suspected violations
14 of laws or corporate policies, including procedures for preserving the
15 confidentiality of reported information;

16 (2) A requirement that an employee, officer or director of the corpo-
17 ration be designated to administer the whistleblower policy and to
18 report to the audit committee or other committee of independent direc-
19 tors or, if there are no such committees, to the board; and

20 (3) A requirement that a copy of the policy be distributed to all
21 directors, officers, employees and to volunteers who provide substantial
22 services to the corporation.

23 (c) A corporation that has adopted and possesses a whistleblower poli-
24 cy pursuant to federal, state or local laws that is substantially
25 consistent with the provisions of paragraph (b) of this section shall be
26 deemed in compliance with provisions of this section. In addition, any
27 corporation that is a state authority or local authority as defined in
28 section two of the public authorities law, and that has complied
29 substantially with section twenty-eight hundred twenty-four of such law
30 and is subject to the provisions of section twenty-eight hundred fifty-
31 seven of such law, shall be deemed in compliance with the provisions of
32 this section.

33 (d) Nothing in this section shall be interpreted to relieve any corpo-
34 ration from any additional requirements in relation to internal compli-
35 ance, retaliation, or document retention required by any other law or
36 rule.

37 § 76. Section 716 of the not-for-profit corporation law, as amended by
38 chapter 644 of the laws of 1971, is amended to read as follows:

39 § 716. Loans to directors and officers.

40 No loans, other than through the purchase of bonds, debentures, or
41 similar obligations of the type customarily sold in public offerings, or
42 through ordinary deposit of funds in a bank, shall be made by a corpo-
43 ration to its directors or officers, or to any other corporation, firm,
44 association or other entity in which one or more of its directors or
45 officers are directors or officers or hold a substantial financial
46 interest, except a loan by one [~~type-B~~] charitable corporation to another
47 [~~type-B~~] charitable corporation. A loan made in violation of this
48 section shall be a violation of the duty to the corporation of the
49 directors or officers authorizing it or participating in it, but the
50 obligation of the borrower with respect to the loan shall not be
51 affected thereby.

52 § 77. Section 718 of the not-for-profit corporation law, as amended by
53 chapter 992 of the laws of 1970, is amended to read as follows:

54 § 718. List of directors and officers.

55 (a) If a member or creditor of a corporation, in person or by his
56 attorney or agent, or a representative of the district attorney or of

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1 the secretary of state, the attorney general, or other state official,
2 makes a written demand on a corporation to inspect a current list of its
3 directors and officers [~~and their residence addresses~~], the corporation
4 shall, within two business days after receipt of the demand and for a
5 period of one week thereafter, make the list available for such
6 inspection at its office during usual business hours.

7 (b) Upon refusal by the corporation to make a current list of its
8 directors and officers [~~and their residence addresses~~] available, as
9 provided in paragraph (a) of this section, the person making a demand
10 for such list may apply, ex parte, to the supreme court at a special
11 term held within the judicial district where the office of the corpo-
12 ration is located for an order directing the corporation to make such
13 list available. The court may grant such order or take such other
14 action as it may deem just and proper.

15 § 78. The section heading and paragraph (a) of section 720 of the
16 not-for-profit corporation law, the section heading as amended by chap-
17 ter 1058 of the laws of 1971, are amended to read as follows:

18 Actions [~~on behalf of the corporation~~] against directors, officers and
19 key employees.

20 (a) An action may be brought against one or more directors [~~or~~], offi-
21 cers, or key employees of a corporation to procure a judgment for the
22 following relief:

23 (1) To compel the defendant to account for his official conduct in the
24 following cases:

25 (A) The neglect of, or failure to perform, or other violation of his
26 duties in the management and disposition of corporate assets committed
27 to his charge.

28 (B) The acquisition by himself, transfer to others, loss or waste of
29 corporate assets due to any neglect of, or failure to perform, or other
30 violation of his duties.

31 (2) To set aside an unlawful conveyance, assignment or transfer of
32 corporate assets, where the transferee knew of its unlawfulness.

33 (3) To enjoin a proposed unlawful conveyance, assignment or transfer
34 of corporate assets, where there are reasonable grounds for belief that
35 it will be made.

36 § 79. Paragraphs (a) and (c) of section 722 of the not-for-profit
37 corporation law, as amended by chapter 368 of the laws of 1987, are
38 amended to read as follows:

39 (a) A corporation may indemnify any person, made, or threatened to be
40 made, a party to an action or proceeding other than one by or in the
41 right of the corporation to procure a judgment in its favor, whether
42 civil or criminal, including an action by or in the right of any other
43 corporation of any [~~type or~~] kind, domestic or foreign, or any partner-
44 ship, joint venture, trust, employee benefit plan or other enterprise,
45 which any director or officer of the corporation served in any capacity
46 at the request of the corporation, by reason of the fact that he, his
47 testator or intestate, was a director or officer of the corporation, or
48 served such other corporation, partnership, joint venture, trust,
49 employee benefit plan or other enterprise in any capacity, against judg-
50 ments, fines, amounts paid in settlement and reasonable expenses,
51 including attorneys' fees actually and necessarily incurred as a result
52 of such action or proceeding, or any appeal therein, if such director or
53 officer acted, in good faith, for a purpose which he reasonably believed
54 to be in, or, in the case of service for any other corporation or any
55 partnership, joint venture, trust, employee benefit plan or other enter-
56 prise, not opposed to, the best interests of the corporation and, in

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1 criminal actions or proceedings, in addition, had no reasonable cause to
2 believe that his conduct was unlawful.

3 (c) A corporation may indemnify any person made, or threatened to be
4 made, a party to an action by or in the right of the corporation to
5 procure a judgment in its favor by reason of the fact that he, his
6 testator or intestate, is or was a director or officer of the corpo-
7 ration, or is or was serving at the request of the corporation as a
8 director or officer of any other corporation of any ~~[type or]~~ kind,
9 domestic or foreign, of any partnership, joint venture, trust, employee
10 benefit plan or other enterprise, against amounts paid in settlement and
11 reasonable expenses, including attorneys' fees, actually and necessarily
12 incurred by him in connection with the defense or settlement of such
13 action, or in connection with an appeal therein, if such director or
14 officer acted, in good faith, for a purpose which he reasonably believed
15 to be in, or, in the case of service for any other corporation or any
16 partnership, joint venture, trust, employee benefit plan or other enter-
17 prise, not opposed to, the best interests of the corporation, except
18 that no indemnification under this paragraph shall be made in respect of
19 (1) a threatened action, or a pending action which is settled or other-
20 wise disposed of, or (2) any claim, issue or matter as to which such
21 person shall have been adjudged to be liable to the corporation, unless
22 and only to the extent that the court in which the action was brought,
23 or, if no action was brought, any court of competent jurisdiction,
24 determines upon application that, in view of all the circumstances of
25 the case, the person is fairly and reasonably entitled to indemnity for
26 such portion of the settlement amount and expenses as the court deems
27 proper.

28 § 80. Paragraph (a) of section 724 of the not-for-profit corporation
29 law, as amended by chapter 368 of the laws of 1987, is amended to read
30 as follows:

31 (a) Notwithstanding the failure of a corporation to provide indemnifi-
32 cation, and despite any contrary resolution of the board or of the
33 members in the specific case under section 723 (Payment of indemnifica-
34 tion other than by court award), indemnification shall be awarded by a
35 court to the extent authorized under section 722 (Authorization for
36 indemnification of directors and officers), and paragraph (a) of section
37 723 (Payment of indemnification other than by court award). Application
38 therefor shall be made on notice to the attorney general and may be
39 made, in every case, either:

40 (1) In the civil action or proceeding in which the expenses were
41 incurred or other amounts were paid, or

42 (2) To the supreme court in a separate proceeding, in which case the
43 application shall set forth the disposition of any previous application
44 made to any court for the same or similar relief and also reasonable
45 cause for the failure to make application for such relief in the action
46 or proceeding in which the expenses were incurred or other amounts were
47 paid.

48 § 81. Subparagraph 3 of paragraph (a) of section 803 of the not-for-
49 profit corporation law, as amended by chapter 168 of the laws of 1982,
50 is amended to read as follows:

51 (3) That the corporation is a corporation as defined in subparagraph
52 (a) (5) of section 102 (Definitions) ~~[; the type of corporation it is~~
53 ~~under section 201 (Purposes); and if the corporate purposes are~~
54 ~~enlarged, limited or otherwise changed, the type of corporation it shall~~
55 ~~thereafter be under section 201].~~

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1 § 82. The section heading and paragraph (a) of section 804 of the
2 not-for-profit corporation law, as amended by chapter 139 of the laws of
3 1993, and subparagraph (i) of paragraph (a) as amended by chapter 198 of
4 the laws of 2010, are amended to read as follows:

5 Approvals, notices and effect.

6 (a) (i) A certificate of amendment shall not be filed if the amendment
7 adds, changes or eliminates a purpose, power or provision the inclusion
8 of which in a certificate of incorporation requires consent or approval
9 of a governmental body or officer or any other person or body, or if the
10 amendment changes the name of a corporation whose certificate of incor-
11 poration had such consent or approval endorsed thereon or annexed there-
12 to, unless such consent or approval is no longer required or is endorsed
13 on or annexed to the certificate of amendment. A certificate of amend-
14 ment adding, changing or eliminating a purpose, power or provision the
15 inclusion of which in a certificate of incorporation requires the incor-
16 porator to send such certificate to a governmental body or officer or
17 any other person or body, or if the amendment changes the name of a
18 corporation whose certificate of incorporation was required to be deliv-
19 ered by the incorporator to a governmental body or officer or any other
20 person or body, shall be delivered by the person or entity filing the
21 certificate of amendment within thirty business days after the corpo-
22 ration receives confirmation from the department of state that the
23 certificate has been accepted for filing.

24 (ii) Every certificate of amendment of a charitable corporation [~~clas-~~
25 ~~sified as type B or type C under section 201 (Purposes)~~] which seeks to
26 change or eliminate a purpose or power enumerated in the corporation's
27 certificate of incorporation, or to add a power or purpose not enumer-
28 ated therein, shall have endorsed thereon or annexed thereto the
29 approval of either (A) the attorney general, or (B) a justice of the
30 supreme court of the judicial district in which the office of the corpo-
31 ration is located. [~~Ten days' written notice of the application for such~~
32 ~~approval shall be given to the attorney general~~] At any time, including
33 if the attorney general does not approve a certificate of amendment
34 submitted pursuant to clause (A) of this subparagraph, or if the attor-
35 ney general concludes that court review is appropriate, the corporation
36 may apply for approval of the amendment to a justice of the supreme
37 court of the judicial district in which the office of the corporation is
38 located. Any application for approval of a certificate of amendment by
39 the supreme court pursuant to this paragraph shall be on ten days' writ-
40 ten notice to the attorney general.

41 § 83. Section 907 of the not-for-profit corporation law is amended to
42 read as follows:

43 § 907. Approval by the supreme court or attorney general.

44 [~~(a)~~] Where any constituent corporation or the consolidated corpo-
45 ration is, or would be if formed under this chapter, a [~~Type B or a Type~~
46 ~~e~~] charitable corporation under section 201 (Purposes) of this chapter,
47 no certificate shall be filed pursuant to section 904 (Certificate of
48 merger or consolidation; contents) or section 906 (Merger or consol-
49 idation of domestic and foreign corporations) until (a) the supreme
50 court has granted an order approving the plan of merger or consolidation
51 and authorizing the filing of the certificate [~~has been made by the~~
52 ~~supreme court~~], as provided in [~~this~~] section[. ~~A certified copy of such~~
53 ~~order shall be annexed to the certificate of merger or consolidation.~~
54 ~~Application for the order may be made in the judicial district in which~~
55 ~~the principal office of the surviving or consolidated corporation is to~~
56 ~~be located, or in which the office of one of the domestic constituent~~

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1 ~~corporations is located. The application shall be made by all the~~
2 ~~constituent corporations jointly and shall set forth by affidavit (1)~~
3 ~~the plan of merger or consolidation, (2) the approval required by~~
4 ~~section 903 (Approval of plan) or paragraph (b) of section 906 (Merger~~
5 ~~or consolidation of domestic and foreign corporations) for each constit-~~
6 ~~uent corporation, (3) the objects and purposes of each such corporation~~
7 ~~to be promoted by the consolidation, (4) a statement of all property,~~
8 ~~and the manner in which it is held, and of all liabilities and of the~~
9 ~~amount and sources of the annual income of each such corporation, (5)~~
10 ~~whether any votes against adoption of the resolution approving the plan~~
11 ~~of merger or consolidation were cast at the meeting at which the resol-~~
12 ~~ution as adopted by each constituent corporation, and (6) facts showing~~
13 ~~that the consolidation is authorized by the laws of the jurisdictions~~
14 ~~under which each of the constituent corporations is incorporated] 907-a~~
15 ~~(Application for approval of the supreme court) of this article or (b)~~
16 ~~the attorney general has approved the plan of merger or consolidation~~
17 ~~and authorized the filing of the certificate, as provided in section~~
18 ~~907-b (Application for approval of the attorney general) of this~~
19 ~~article.~~

20 ~~[(b) Upon the filing of the application the court shall fix a time for~~
21 ~~hearing thereof and shall direct that notice thereof be given to such~~
22 ~~persons as may be interested, including the attorney general, any~~
23 ~~governmental body or officer and any other person or body whose consent~~
24 ~~or approval is required by section 909 (Consent to filing), in such form~~
25 ~~and manner as the court may prescribe. If no votes against adoption of~~
26 ~~the resolution approving the plan of merger or consolidation were cast~~
27 ~~at the meeting at which the resolution was adopted by any constituent~~
28 ~~corporation the court may dispense with notice to anyone except the~~
29 ~~attorney general, any governmental body or officer and any other person~~
30 ~~or body whose consent or approval is required by section 909 (Consent to~~
31 ~~filing). Any person interested may appear and show cause why the appli-~~
32 ~~cation should not be granted.~~

33 ~~(c) If the court shall find that any of the assets of any of the~~
34 ~~constituent corporations are held for a purpose specified as Type B in~~
35 ~~paragraph (b) of section 201 or are legally required to be used for a~~
36 ~~particular purpose, but not upon a condition requiring return, transfer~~
37 ~~or conveyance by reason of the merger or consolidation, the court may,~~
38 ~~in its discretion, direct that such assets be transferred or conveyed to~~
39 ~~the surviving or consolidated corporation subject to such purpose or~~
40 ~~use, or that such assets be transferred or conveyed to the surviving or~~
41 ~~consolidated corporation or to one or more other domestic or foreign~~
42 ~~corporations or organizations engaged in substantially similar activ-~~
43 ~~ities, upon an express trust the terms of which shall be approved by the~~
44 ~~court.~~

45 ~~(d) If the court shall find that the interests of non-consenting~~
46 ~~members are or may be substantially prejudiced by the proposed merger or~~
47 ~~consolidation, the court may disapprove the plan or may direct a modifi-~~
48 ~~cation thereof. In the event of a modification, if the court shall find~~
49 ~~that the interests of any members may be substantially prejudiced by the~~
50 ~~proposed merger or consolidation as modified, the court shall direct~~
51 ~~that the modified plan be submitted to vote of the members of the~~
52 ~~constituent corporations, or if the court shall find that there is not~~
53 ~~such substantial prejudice, it shall approve the agreement as so modi-~~
54 ~~fied without further approval by the members. If the court, upon direct-~~
55 ~~ing a modification of the plan of merger or consolidation, shall direct~~
56 ~~that a further approval be obtained from members of the constituent~~

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~~1 corporations or any of them, such further approval shall be obtained in
2 the manner specified in section 903 (Approval of plan) or section 906(b)
3 (Merger or consolidation of domestic and foreign corporations) of this
4 chapter.~~

~~5 (e) If it shall appear, to the satisfaction of the court, that the
6 provisions of this section have been complied with, and that the inter-
7 ests of the constituent corporations and the public interest will not be
8 adversely affected by the merger or consolidation, it shall approve the
9 merger or consolidation upon such terms and conditions as it may
10 prescribe.]~~

11 § 84. The not-for-profit corporation law is amended by adding a new
12 section 907-a to read as follows:

13 § 907-a. Application for approval of the supreme court.

14 (a) Application for an order approving the plan of merger and author-
15 izing the filing of the certificate may be made in the judicial district
16 in which the principal office of the surviving or consolidated corpo-
17 ration is to be located, or in which the office of one of the domestic
18 constituent corporations is located. The application shall be made by
19 all the constituent corporations jointly and shall set forth by affida-
20 vit: (1) the plan of merger or consolidation, (2) the approval required
21 by section 903 (Approval of plan) or paragraph (b) of section 906 (Merg-
22 er or consolidation of domestic and foreign corporations) of this arti-
23 cle for each constituent corporation, (3) the objects and purposes of
24 each such corporation to be promoted by the merger or consolidation, (4)
25 a statement of all property, and the manner in which it is held, and of
26 all liabilities and of the amount and sources of the annual income of
27 each such corporation, (5) whether any votes against adoption of the
28 resolution approving the plan of merger or consolidation were cast at
29 the meeting at which the resolution was adopted by each constituent
30 corporation, and (6) facts showing that the consolidation is authorized
31 by the laws of the jurisdictions under which each of the constituent
32 corporations is incorporated.

33 (b) Upon the filing of the application the court shall fix a time for
34 hearing thereof and shall direct that notice thereof be given to such
35 persons as may be interested, including the attorney general, any
36 governmental body or officer and any other person or body whose consent
37 or approval is required by section 909 (Consent to filing) of this arti-
38 cle, in such form and manner as the court may prescribe. If no votes
39 against adoption of the resolution approving the plan of merger or
40 consolidation were cast at the meeting at which the resolution was
41 adopted by any constituent corporation the court may dispense with
42 notice to anyone except the attorney-general, any governmental body or
43 officer and any other person or body whose consent or approval is
44 required by section 909 (Consent to filing) of this article. Any person
45 interested may appear and show cause why the application should not be
46 granted.

47 (c) If the court shall find that any of the assets of any of the
48 constituent corporations are held for a charitable purpose or are legal-
49 ly required to be used for a particular purpose, but not upon a condi-
50 tion requiring return, transfer or conveyance by reason of the merger or
51 consolidation, the court may, in its discretion, direct that such assets
52 be transferred or conveyed to the surviving or consolidated corporation
53 subject to such purpose or use, or that such assets be transferred or
54 conveyed to the surviving or consolidated corporation or to one or more
55 other domestic or foreign corporations or organizations engaged in

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1 substantially similar activities, upon an express trust the terms of
2 which shall be approved by the court.

3 (d) If the court shall find that the interests of non-consenting
4 members are or may be substantially prejudiced by the proposed merger or
5 consolidation, the court may disapprove the plan or may direct a modifi-
6 cation thereof. In the event of a modification, if the court shall find
7 that the interests of any members may be substantially prejudiced by the
8 proposed merger or consolidation as modified, the court shall direct
9 that the modified plan be submitted to vote of the members of the
10 constituent corporations, or if the court shall find that there is not
11 such substantial prejudice, it shall approve the agreement as so modi-
12 fied without further approval by the members. If the court, upon direct-
13 ing a modification of the plan of merger or consolidation, shall direct
14 that a further approval be obtained from members of the constituent
15 corporations or any of them, such further approval shall be obtained in
16 the manner specified in section 903 (Approval of plan) or paragraph (b)
17 of section 906 (Merger or consolidation of domestic and foreign corpo-
18 rations) of this article.

19 (e) If it shall appear, to the satisfaction of the court, that the
20 provisions of this section have been complied with, and that the inter-
21 ests of the constituent corporations and the public interest will not be
22 adversely affected by the merger or consolidation, it shall approve the
23 merger or consolidation upon such terms and conditions as it may
24 prescribe.

25 (f) A certified copy of such order shall be annexed to the certificate
26 of merger or consolidation.

27 § 85. The not-for-profit corporation law is amended by adding a new
28 section 907-b to read as follows:

29 § 907-b. Application for approval of the attorney general.

30 (a) In lieu of obtaining an order approving the plan of merger or
31 consolidation and authorizing the filing of the certificate, the corpo-
32 ration may alternatively make an application to the attorney general for
33 approval, except where the attorney general, in his or her discretion,
34 concludes that a court should review the application and make a determi-
35 nation thereon.

36 (b) The application to the attorney general shall be made by all the
37 constituent corporations jointly and shall set forth by affidavit: (i)
38 all of the information required to be included in an application to
39 obtain court approval pursuant to section 907-a (Application for
40 approval of the supreme court) of this article, (ii) all consents and
41 approvals required by section 909 (Consent to filing), and (iii) a
42 statement as to whether any persons have raised, or have a reasonable
43 basis to raise, objections to the merger or consolidation that is the
44 subject of the application, including a statement setting forth the
45 names and addresses of such persons, the nature of their interest, and a
46 description of their objections.

47 (c) Upon the filing of the application, the attorney general, in his
48 or her discretion, may direct that the constituent corporations provide
49 notice to such persons as may be interested, including any governmental
50 body or officer and any other person or body that is required either to
51 give consent or be notified under section 404 (Approvals, notices and
52 consents) of this article or 909 (Consent to filing) of this article.
53 The constituent corporations shall provide the attorney general with a
54 certification that such notice has been provided.

55 (d) If any assets of any of the constituent corporations are held for
56 a charitable purpose or are assets received for a specific purpose and

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1 legally required to be used for a particular purpose, but not upon a
2 condition requiring return, transfer or conveyance by reason of the
3 merger or consolidation, the attorney general may, in his or her
4 discretion, direct that such assets be transferred or conveyed to the
5 surviving or consolidated corporation subject to such purpose or use.

6 (e) If the attorney general shall find that the interests of non-con-
7 senting members are or may be substantially prejudiced by the proposed
8 merger or consolidation, the attorney general may disapprove of the
9 application or may condition approval of the application upon modifica-
10 tion of the plan of merger or consolidation in accordance with this
11 chapter and any other law or rule.

12 (f) If it shall appear, to the satisfaction of the attorney general,
13 that the provisions of this section have been complied with, and that
14 the interests of the constituent corporations and the public interest
15 will not be adversely affected by the merger or consolidation, the
16 attorney general shall approve the merger or consolidation upon such
17 terms and conditions as it may prescribe.

18 (g) The approval of the attorney general shall be annexed to the
19 certificate of merger or consolidation.

20 (h) At any time, including if the attorney general does not approve
21 the application, or if the attorney general concludes that court review
22 is appropriate, the constituent corporations may seek court approval on
23 notice to the attorney general pursuant to section 907-a (Application
24 for approval of the supreme court) of this article.

25 § 85-a. Paragraph (f) of section 908 of the not-for-profit corporation
26 law is REPEALED.

27 § 86. Paragraph (a) of section 908 of the not-for-profit corporation
28 law is amended to read as follows:

29 (a) One or more domestic or foreign corporations which is, or would be
30 if formed under this chapter, a non-charitable corporation, or any
31 corporation formed as a type A [~~or type C~~] corporation [~~under section~~
32 ~~201 (Purposes)~~ prior to July first, two thousand fourteen, may be
33 merged or consolidated into a domestic or foreign corporation which is,
34 or would be if formed under the laws of this state, a corporation formed
35 under the business corporation law of this state if such merger or
36 consolidation is not contrary to the law of the state of incorporation
37 of any constituent corporation. With respect to such merger or consol-
38 idation, any reference in paragraph (b) of section 901 (Power of merger
39 or consolidation) of this article or paragraph (b) of section 901 (Power
40 of merger or consolidation) of the business corporation law to a corpo-
41 ration shall, unless the context otherwise requires, include both domes-
42 tic and foreign corporations.

43 § 87. Section 909 of the not-for-profit corporation law, as amended by
44 section 6 of part D of chapter 58 of the laws of 2006, is amended to
45 read as follows:

46 § 909. Consent to filing; notices.

47 (a) If the purposes of any constituent or consolidated corporation
48 would require the approval or consent of any governmental body or offi-
49 cer or any other person or body under section 404 (Approvals, notices
50 and consents) of this chapter no certificate of merger or consolidation
51 shall be filed pursuant to this article unless such approval or consent
52 is endorsed thereon or annexed thereto. A corporation whose statement of
53 purposes specifically includes the establishment or operation of a child
54 day care center, as that term is defined in section three hundred ninety
55 of the social services law, shall provide a certified copy of any
56 certificate of merger or consolidation involving such corporation to the

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1 office of children and family services within thirty days after the
2 filing of such merger or consolidation with the department of state.

3 (b) If the purposes of any constituent or consolidated corporation
4 would require the certificate of incorporation or any other notice to be
5 delivered to any person or entity under section 404 (Approvals, notices
6 and consents) of this chapter, the corporation shall provide to such
7 person or entity a certified copy of the certificate of incorporation
8 within thirty days after the corporation receives confirmation from the
9 department of state that the certificate has been accepted for filing.

10 § 88. Paragraphs (b), (c) and (d) of section 1001 of the not-for-pro-
11 fit corporation law, as amended by chapter 434 of the laws of 2006, are
12 amended to read as follows:

13 (b) If the corporation is a [~~Type B, C or D~~] charitable corporation
14 and has no assets to distribute and no liabilities at the time of
15 dissolution, the plan of dissolution shall include a statement to that
16 effect.

17 (c) If the corporation [~~is a Type B, C or D corporation and~~] has no
18 assets to distribute, other than a reserve not to exceed twenty-five
19 thousand dollars for the purpose of paying ordinary and necessary
20 expenses of winding up its affairs including attorney and accountant
21 fees, and liabilities not in excess of ten thousand dollars at the time
22 of adoption of the plan of dissolution, the plan of dissolution shall
23 include a statement to that effect.

24 (d) If the corporation has assets to distribute or liabilities, the
25 plan of dissolution shall contain:

26 (1) a description with reasonable certainty of the assets of the
27 corporation and their fair value, and the total amount of debts and
28 other liabilities incurred or estimated by the corporation, including
29 the total amount of any accounting and legal fees incurred or estimated,
30 in connection with the dissolution procedure.

31 (2) a statement as to whether any gifts or other assets are legally
32 required to be used for a particular purpose.

33 (3) if there are assets received and held by the corporation either
34 for a charitable purpose [~~specified as Type B in paragraph (b) of~~
35 ~~section 201 (Purposes)~~] or which are legally required to be used for a
36 particular purpose, a statement that the assets owned by the corpo-
37 ration, subject to any unpaid liabilities of the corporation, shall be
38 distributed as required by any gift instrument or to a charitable corpo-
39 ration or organization or organizations exempt from taxation pursuant to
40 federal and state laws and engaged in activities substantially similar
41 to those of the dissolved corporation. Each such recipient organization
42 shall be identified and the governing instrument and amendments thereto
43 of each of the proposed recipient organizations shall be annexed to such
44 statement, along with the most recent financial [~~reports~~] report of each
45 recipient organization [~~for the last three years~~] and a sworn affidavit
46 from a director and officer of each recipient organization stating the
47 purposes of the organization, and that it is currently exempt from
48 federal income taxation.

49 (4) if any of the assets of the corporation are to be distributed to a
50 recipient for a particular legally required purpose, an agreement by the
51 recipient to apply the assets received only for such purpose shall be
52 included.

53 § 89. Paragraphs (a) and (d) of section 1002 of the not-for-profit
54 corporation law, as amended by chapter 434 of the laws of 2006, are
55 amended to read as follows:

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1 (a) Upon adopting a plan of dissolution and distribution of assets,
2 the board shall submit it to a vote of the members, if any, and such
3 plan shall be approved at a meeting of members by two-thirds vote as
4 provided in paragraph (c) of section 613 (Vote of members) of this chap-
5 ter; provided, however, that if the corporation is a [~~Type B, C or D~~]
6 charitable corporation, other than a corporation incorporated pursuant
7 to article 15 (Public cemetery corporations) of this chapter, [~~and has~~
8 ~~no assets to distribute, other than a reserve not to exceed twenty-five~~
9 ~~thousand dollars for the purpose of paying ordinary and necessary~~
10 ~~expenses of winding up its affairs including attorney and accountant~~
11 ~~fees, and liabilities not in excess of ten thousand dollars at the time~~
12 ~~of adoption of the plan of dissolution,~~] the vote required by the corpo-
13 ration's board of directors for adoption of the plan of dissolution of
14 such a corporation or by the corporation's members for the authorization
15 thereof shall be:

16 (1) In the case of a vote by the board of directors: (i) the number of
17 directors required under the certificate of incorporation, by-laws, this
18 chapter and any other applicable law; or

19 (ii) if the number of directors actually holding office as such at the
20 time of the vote to adopt the plan is less than the number required to
21 constitute a quorum of directors under the certificate of incorporation,
22 the by-laws, this chapter or any other applicable law, the remaining
23 directors unanimously;

24 (2) In the case of a vote by the members, (i) the number of members
25 required under the certificate of incorporation, by-laws, this chapter
26 and any other applicable law; or (ii) by the vote of members authorized
27 by an order of the supreme court pursuant to section 608 (Quorum at
28 meeting of members) of this chapter permitting the corporation to
29 dispense with the applicable quorum requirement.

30 Notice of a special or regular meeting of the board of directors or of
31 the members entitled to vote on adoption and authorization or approval
32 of the plan of dissolution shall be sent to all the directors and
33 members of record entitled to vote. Unless otherwise directed by order
34 of the supreme court pursuant to section 608 (Quorum at meeting of
35 members) of this chapter, the notice shall be sent by certified mail,
36 return receipt requested, to the last known address of record of each
37 director and member not fewer than thirty, and not more than sixty days
38 before the date of each meeting provided, however, that if the last
39 known address of record of any director or member is not within the
40 United States, the notice to such director shall be sent by any other
41 reasonable means.

42 (d) (1) The plan of dissolution and distribution of assets shall have
43 annexed thereto the approval of [~~a justice of the supreme court in the~~
44 ~~judicial district in which the office of the corporation is located]~~ the
45 attorney general in the case of a [~~Type B, C or D~~] charitable corpo-
46 ration, and in the case of any [~~other~~] non-charitable corporation which
47 [~~holds assets~~] at the time of dissolution holds assets legally required
48 to be used for a particular purpose[, ~~except that no such approval shall~~
49 ~~be required with respect to the plan of dissolution of a corporation,~~
50 ~~other than a corporation incorporated pursuant to article 15 (Public~~
51 ~~cemetery corporations), which has no assets to distribute at the time of~~
52 ~~dissolution, other than a reserve not to exceed twenty-five thousand~~
53 ~~dollars for the purpose of paying ordinary and necessary expenses of~~
54 ~~winding up its affairs including attorney and accountant fees, and~~
55 ~~liabilities not in excess of ten thousand dollars, and which has~~
56 ~~complied with the requirements of section 1001 (Plan of dissolution and~~

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1 ~~distribution of assets) and this section applicable to such a corpo-~~
2 ~~ration].~~

3 (2) Application to the [~~supreme court for an order~~] attorney general
4 for such approval shall be by verified petition, with the plan of
5 dissolution and distribution of assets and certified copies of the
6 consents prescribed by this section annexed thereto[~~, and upon ten days~~
7 ~~written notice to the attorney general accompanied by copies of such~~
8 ~~petition, plan and consents. In such case where approval of a justice of~~
9 ~~the supreme court is not required for a Type B, C or D corporation, a~~
10 ~~copy of such plan certified under penalties of perjury shall be filed~~
11 ~~with the attorney general within ten days after its authorization].~~

12 (3) The attorney general may approve the petition if the corporation
13 has adopted a plan in accordance with the requirements of section 1001
14 (Plan of dissolution and distribution of assets) of this article, and
15 any other requirements imposed by law or rule. At any time, including if
16 the attorney general does not approve the petition, or the attorney
17 general concludes, in his or her discretion, that court review of the
18 petition is appropriate, the corporation may apply for approval to the
19 supreme court in the judicial district in which the principal office of
20 the corporation is located, or in which the office of one of the domes-
21 tic constituent corporations is located, for an order dissolving the
22 corporation. Application to the supreme court for an order for such
23 approval shall be by verified petition upon ten days written notice to
24 the attorney general, and shall include all information required to be
25 included in the application to the attorney general pursuant to this
26 section.

27 § 90. Paragraphs (a) and (c) of section 1002-a of the not-for-profit
28 corporation law, as amended by chapter 434 of the laws of 2006, are
29 amended to read as follows:

30 (a) Carry out the plan of dissolution and distribution of assets, pay
31 its liabilities and distribute its assets in accordance therewith within
32 two hundred seventy days from the date the plan of dissolution and
33 distribution of assets shall have been (1) authorized as provided in
34 section 1002 (Authorization of plan) of this article, (2) approved by
35 any governmental body or officer whose approval is required pursuant to
36 paragraph (c) of section 1002 (Authorization of plan) of this article,
37 and (3) approved by either the attorney general or a justice of the
38 supreme court[~~, if such approval is required~~] pursuant to paragraph (d)
39 of section 1002 (Authorization of plan) of this article[~~, or filed with~~
40 ~~the attorney general, if such filing is required pursuant to paragraph~~
41 ~~(d) of section 1002 of this article~~]. Evidence of the disposition of its
42 assets and payment of its liabilities pursuant to the plan of dissol-
43 ution and distribution of assets shall be submitted by the corporation
44 to the attorney general and any other governmental body or officer, as
45 required under applicable laws. If the plan of dissolution and distrib-
46 ution of assets cannot be carried out within the prescribed time, the
47 attorney general may upon good cause shown extend such time, or any
48 extended period of time, by not fewer than thirty days nor more than one
49 year;

50 (c) Distribute the assets of the corporation that remain after paying
51 or adequately providing for the payment of its liabilities, in the
52 following manner:

53 (1) assets received and held by the corporation either for a charita-
54 ble purpose [~~specified as Type B in paragraph (b) of section 201~~
55 ~~(Purposes)~~] or which are legally required to be used for a particular
56 purpose, shall be distributed to one or more domestic or foreign corpo-

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1 rations or other organizations engaged in activities substantially simi-
2 lar to those of the dissolved corporation pursuant to the plan of
3 dissolution and distribution or, if applicable, as approved by the
4 attorney general or ordered by the supreme court pursuant to [~~which such~~
5 ~~plan is submitted for approval under~~] section 1002 (Authorization of
6 plan) of this article. Any disposition of assets contained in a will or
7 other instrument, in trust or otherwise, made before or after the
8 dissolution, to or for the benefit of any corporation so dissolved shall
9 inure to or for the benefit of the corporation or organization acquiring
10 such assets of the dissolved corporation as provided in this section,
11 and so far as is necessary for that purpose the corporation or organiza-
12 tion acquiring such disposition shall be deemed a successor to the
13 dissolved corporation with respect to such assets; provided, however,
14 that such disposition shall be devoted by the acquiring corporation or
15 organization to the purposes intended by the testator, donor or grantor.

16 (2) assets other than those described by subparagraph one of this
17 paragraph, if any, shall be distributed in accordance with the specifi-
18 cations of the plan of dissolution and distribution of assets or, to the
19 extent that the certificate of incorporation prescribes the distributive
20 rights of members, or of any class or classes of members, as provided in
21 such certificate;

22 § 91. Paragraphs (a) and (b) of section 1003 of the not-for-profit
23 corporation law, as amended by chapter 434 of the laws of 2006, are
24 amended to read as follows:

25 (a) After the plan of dissolution and distribution of assets has been
26 adopted, authorized, approved and carried out pursuant to the terms of
27 the plan within the time period set forth pursuant to section 1002-a
28 (Carrying out the plan of dissolution and distribution of assets), a
29 certificate of dissolution, entitled "Certificate of dissolution
30 of (name of corporation) under section 1003 of the Not-for-Pro-
31 fit Corporation Law" shall be signed and, if required pursuant to
32 subparagraph two of paragraph (b) of this section, after the attorney
33 general has affixed thereon his or her consent to the dissolution, such
34 certificate of dissolution shall be delivered to the department of
35 state. It shall set forth:

36 (1) The name of the corporation and, if its name has been changed, the
37 name under which it was formed.

38 (2) The date its certificate of incorporation was filed by the depart-
39 ment of state.

40 (3) The name and address of each of its officers and directors.

41 (4) [~~The type of corporation it is at the time of dissolution~~] A
42 statement as to whether the corporation is a charitable corporation or a
43 non-charitable corporation.

44 (5) A statement as to whether or not the corporation holds assets at
45 the time of authorization of its plan of dissolution and distribution of
46 assets as provided in section 1002 of this article (Authorization of
47 plan) which are legally required to be used for a particular purpose.

48 (6) That the corporation elects to dissolve.

49 (7) The manner in which the dissolution was authorized. If the dissol-
50 ution of the corporation is authorized by a vote of the directors and/or
51 members of the corporation that is less than that ordinarily required by
52 the certificate of incorporation, the by-laws, this chapter or any other
53 applicable law, as permitted by paragraph (a) of section 1002 (Authori-
54 zation of plan) of this article, then the certificate of dissolution
55 shall so state.

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1 (8) A statement that prior to delivery of such certificate of dissol-
2 ution to the department of state for filing, the plan of dissolution and
3 distribution of assets has been approved by the attorney general or by a
4 justice of the supreme court, if such approval is required pursuant to
5 section 1002 (Authorization of plan) of this article. A copy of the
6 order shall be attached to the certificate of dissolution. In the case
7 of a corporation, other than a corporation incorporated pursuant to
8 article 15 (Public cemetery corporations), having no assets to distrib-
9 ute, or having no assets to distribute other than a reserve not to
10 exceed twenty-five thousand dollars for the purpose of paying ordinary
11 and necessary expenses of winding up its affairs including attorney and
12 accountant fees, and liabilities not in excess of ten thousand dollars
13 at the time of dissolution, a statement that a copy of the plan of
14 dissolution which contains the statement prescribed by paragraph (b) of
15 section 1001 (Plan of dissolution and distribution of assets) has been
16 duly filed with the attorney general, if required.

17 (b) Such certificate of dissolution shall have [~~indorsed~~] endorsed
18 thereon or annexed thereto the approval of the dissolution:

19 (1) By a governmental body or officer, if such approval is required. A
20 corporation whose statement of purposes specifically includes the estab-
21 lishment or operation of a child day care center, as that term is
22 defined in section three hundred ninety of the social services law,
23 shall provide a certified copy of any certificate of dissolution involv-
24 ing such corporation to the office of children and family services with-
25 in thirty days after the filing of such dissolution with the department
26 of state.

27 (2) By the attorney general in the case of a [~~Type B, C or D~~] charita-
28 ble corporation, or any other corporation that holds assets at the time
29 of dissolution legally required to be used for a particular purpose.

30 § 92. Paragraph (a) of section 1007 of the not-for-profit corporation
31 law, as amended by chapter 434 of the laws of 2006, is amended to read
32 as follows:

33 (a) At any time after the plan of dissolution and distribution of
34 assets shall have been (1) authorized as provided in section 1002 of
35 this article (Authorization of plan), (2) approved by any governmental
36 body or officer whose approval is required pursuant to paragraph (c) of
37 section 1002 of this article, and (3) approved by either by the attorney
38 general or a justice of the supreme court [~~, if such approval is required~~
39 ~~pursuant to paragraph (d) of section 1002 of this article, or filed with~~
40 ~~the attorney general, if such filing is required~~] pursuant to paragraph
41 (d) of section 1002 of this article, and prior to filing the certificate
42 of dissolution, the corporation may give a notice requiring all credi-
43 tors and claimants, including any with unliquidated or contingent claims
44 and any with whom the corporation has unfulfilled contracts, to present
45 their claims in writing and in detail at a specified place and by a
46 specified day, which shall not be less than six months after the first
47 publication of such notice. Such notice shall be published at least once
48 a week for two successive weeks in a newspaper of general circulation in
49 the county in which the office of the corporation was located at the
50 date of authorization of its plan of dissolution and distribution of
51 assets as provided in section 1002 of this article (Authorization of
52 plan). On or before the date of the first publication of such notice,
53 the corporation shall mail a copy thereof, postage prepaid, to each
54 person believed to be a creditor of or claimant against the corporation
55 whose current name and address are known to or can with due diligence be
56 ascertained by the corporation. The giving of such notice shall not

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1 constitute a recognition that any person is a proper creditor or claim-
2 ant, and shall not revive or make valid, or operate as a recognition of
3 the validity of, or a waiver of any defense or counterclaim in respect
4 of any claim against the corporation, its assets, directors, officers or
5 members, which has been barred by any statute of limitations or become
6 invalid by any cause, or in respect of which the corporation, its direc-
7 tors, officers or members, has any defense or counterclaim.

8 § 93. Subparagraph 15 of paragraph (a) of section 1008 of the not-for-
9 profit corporation law, as amended by chapter 434 of the laws of 2006,
10 is amended to read as follows:

11 (15) Where assets were received and held by the corporation either for
12 a charitable purpose [~~specified as Type B in paragraph (b) of section~~
13 ~~201 (Purposes),~~] or [~~were~~] legally required to be used for a particular
14 purpose, the distribution of such assets to one or more domestic or
15 foreign corporations or other organizations engaged in activities
16 substantially similar to those of the dissolved corporation, on notice
17 to the attorney general and to such other persons, and in such manner,
18 as the court may deem proper.

19 § 94. Subparagraph 6 of paragraph (a) of section 1012 of the not-for-
20 profit corporation law, as amended by chapter 726 of the laws of 2005,
21 is amended to read as follows:

22 (6) That [~~, under section 201 (Purposes),~~] it is a [~~Type~~
23 ~~(Insert A, B, C or D) not for profit~~] charitable corporation or a non-
24 charitable corporation, as applicable.

25 § 95. Sections 1203 and 1204 of the not-for-profit corporation law are
26 amended to read as follows:

27 § 1203. Temporary and permanent receiver.

28 (a) At any stage before final judgment or final order in an action or
29 special proceeding brought under this article, the court may appoint one
30 or more receivers of the property of the corporation or of the property
31 in this state of a foreign corporation against which an action has been
32 brought under subparagraph [~~(a)~~] (4) of paragraph (a) of section 1202
33 [~~(Appointment of a receiver of property of a domestic or foreign corpo-~~
34 ~~ration)] of this article. Notice of an application shall be given to
35 the attorney-general, to each governmental body or officer whose consent
36 is required for the dissolution of such corporation, and to such other
37 persons and in such manner as the court directs. The determination by
38 the court of the necessity or advisability of appointing a receiver or
39 an attorney for a receiver, and the allowance of expenses, commissions
40 or compensation to the receiver or [~~his~~] such attorney, shall be subject
41 to review on appeal. This provision shall not affect any other right to
42 review on appeal.~~

43 (b) A receiver appointed by or under a final judgment or order in an
44 action or special proceeding, or a temporary receiver who is continued
45 by the final judgment or order, is a permanent receiver. The court may
46 confer upon a temporary receiver the powers, and subject [~~him~~] the
47 temporary receiver to the duties of a permanent receiver, or so much
48 thereof as it deems proper.

49 § 1204. Oath and security.

50 [~~(a)~~] A receiver, before entering upon his or her duties, shall:
51 [~~(1)~~](a) Take and subscribe an oath that he or she will faithfully,
52 honestly and impartially discharge the trust committed to him or her,
53 and the oath shall be filed with the clerk of the court in which the
54 action or special proceeding is pending.

55 [~~(2)~~] (b) File with the clerk of such court a bond to the people, with
56 at least two sufficient sureties or a bond executed by any fidelity or

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1 surety company authorized by the laws of this state to transact busi-
2 ness, in a penalty fixed by the court appointing him or her, conditioned
3 for the faithful discharge of his or her duties as receiver. The court
4 may at any time direct a receiver to give a new bond with new sureties
5 and with like condition.

6 § 96. Subparagraphs 2 and 3 of paragraph (b) of section 1206 of the
7 not-for-profit corporation law are amended to read as follows:

8 (2) To sell at public or private sale all the property vested in
9 [~~him~~] the permanent receiver, in such manner and on such terms and
10 conditions as the court shall direct, and to make necessary transfers
11 and conveyances thereof.

12 (3) To examine on oath, to be administered by [~~him~~] the permanent
13 receiver, any person concerning any matter pertaining to or affecting
14 the receivership.

15 § 97. Subparagraph 1 of paragraph (a) of section 1207 of the not-for-
16 profit corporation law, clause (C) as amended by chapter 847 of the laws
17 of 1970, is amended to read as follows:

18 (1) To give immediate notice of his or her appointment by publication
19 once a week for two successive weeks in two newspapers of general circu-
20 lation in the county where the office of the corporation is located or,
21 in the case of a foreign corporation against which an action has been
22 brought under subparagraph [~~(a)~~] (4) of paragraph (a) of section 1202
23 (Appointment of receiver of property of a domestic or foreign corpo-
24 ration), in a newspaper of general circulation as directed by the court,
25 requiring:

26 (A) All persons indebted to the corporation to render an account of
27 all debts owing by them to the corporation and to pay the same to the
28 receiver at a specified place and by a specified day.

29 (B) All persons having in their possession any property of the corpo-
30 ration to deliver the same to the receiver at the specified place and by
31 the specified day.

32 (C) All creditors and claimants, including any with unliquidated or
33 contingent claims and any with whom the corporation has unfulfilled
34 contracts, to present their claims to the receiver in writing and in
35 detail at a specified place and by a specified day, which shall not be
36 less than six months after the first publication of such notice. When-
37 ever a receiver is appointed in dissolution proceedings under article 10
38 (Non-judicial dissolution) or article 11 (Judicial dissolution), section
39 1007 (Notice to creditors by corporations intending to dissolve; filing
40 or barring claims) of this chapter shall apply and shall control the
41 giving of notice to creditors and claimants and the filing and barring
42 of claims.

43 § 98. Paragraphs (a) and (e) of section 1209 of the not-for-profit
44 corporation law are amended to read as follows:

45 (a) Whenever a receiver, by verified petition to the supreme court at
46 a special term held in the judicial district in which [~~he~~] the receiver
47 was appointed, shall show that he or she has good reason to believe that
48 any person has in his or her possession or under his or her control, or
49 has wrongfully concealed, withheld or disposed of, any property of the
50 corporation, or that any person can testify concerning such facts, the
51 court, with or without notice, shall make an order requiring such person
52 to appear before the court or a referee, at a time and place designated,
53 and submit to an examination concerning such facts. In such order, or
54 at any time thereafter, in its discretion, the court may enjoin and
55 restrain such person from disposing of any property of the corporation
56 in his or her possession or under his or her control.

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1 (e) The testimony taken under such order shall be signed and sworn to
2 by the person examined, and be filed in the office of the clerk of the
3 county where the action or proceeding is pending. If it shall appear
4 that any person is wrongfully concealing or withholding, or has in his
5 or her possession or under his or her control, any property of the
6 corporation, on notice to [~~him~~] such person, the court may make an order
7 requiring [~~him~~] such person forthwith to deliver it to the receiver,
8 subject to the further order of the court.

9 § 99. Paragraph (a) of section 1211 of the not-for-profit corporation
10 law is amended to read as follows:

11 (a) If there remains property of the corporation after the first
12 distribution, the receiver shall, within one year thereafter, make a
13 final distribution among the creditors entitled thereto. Notice that
14 such distribution will be the final distribution to creditors shall be
15 published once a week for two consecutive weeks in a newspaper of gener-
16 al circulation in the county where the office of the corporation is
17 located and posted prominently and continuously for two consecutive
18 weeks on the homepage of any website maintained by the corporation.

19 § 100. Section 1212 of the not-for-profit corporation law, paragraph
20 (b) as amended by chapter 726 of the laws of 2005, is amended to read as
21 follows:

22 § 1212. Disposition of moneys retained; surplus; unclaimed distrib-
23 utions.

24 (a) When any action pending at the time of final distribution shall be
25 terminated, the receiver shall apply the moneys retained by [~~him~~] the
26 receiver to the payment of the amount recovered, and [~~his~~] the receiv-
27 er's necessary charges and expenses incurred therein.

28 (b) After the final distribution to creditors and after deducting [~~his~~
29 ~~or her~~] the receiver's charges and expenses, the receiver shall distrib-
30 ute any surplus in the manner prescribed in section 1002-a [~~Carrying~~
31 ~~out the plan of dissolution and distribution of assets~~] of this chapter
32 or, if dissolution of the corporation is not involved, in such manner as
33 the court shall order.

34 § 101. Sections 1213, 1214 and 1215 of the not-for-profit corporation
35 law are amended to read as follows:

36 § 1213. Omission or default of receiver.

37 Upon notice to the attorney-general and upon such notice to creditors
38 or others interested as the court shall direct, the court may, in the
39 furtherance of justice, relieve a receiver from any omission or default,
40 on such conditions as may be imposed, and, on compliance therewith,
41 confirm [~~his~~] the receiver's action.

42 § 1214. Application by attorney-general for removal of receiver and to
43 close receivership.

44 (a) Whenever he or she deems it to be to the advantage of the
45 members, creditors or other persons interested in the assets of any
46 corporation for which a receiver has been appointed, the attorney-gener-
47 al may move:

48 (1) For an order removing the receiver and appointing another [~~in his~~
49 ~~stead~~] receiver;

50 (2) To compel the receiver to account;

51 (3) For such other and additional orders as may facilitate the clos-
52 ing of the receivership.

53 § 1215. Resignation by receiver; filling any vacancy.

54 (a) A receiver may petition the [~~court~~] appointing [~~him~~] court for an
55 order to show cause why he or she should not be permitted to resign.

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1 (b) The petition shall be accompanied by a verified account of all
2 the assets of the corporation received by [~~him~~] the receiver, of all
3 payments or other disposition thereof made by [~~him~~] the receiver, of the
4 remaining assets of the corporation in respect to which [~~he~~] the receiv-
5 er was appointed receiver and the situation of the same, and of all his
6 or her transactions as receiver. Thereupon, the court shall grant an
7 order directing notice to be given to the sureties on his or her offi-
8 cial bond and to all persons interested in the property of the corpo-
9 ration to show cause, at a time and place specified, why the receiver
10 should not be permitted to resign. Such notice shall be published once
11 in each week for six successive weeks in one or more newspapers as the
12 court shall direct. If it shall appear that the proceedings of the
13 receiver in the discharge of his or her trust have been fair and honest
14 and that there is no good cause to the contrary, the court shall make an
15 order permitting such receiver to resign. Thereupon [~~he~~] the receiver
16 shall be discharged and his or her powers as receiver shall cease, but
17 he or she shall remain subject to any liability incurred prior to the
18 making of such order. The court, in its discretion, may require the
19 expense of such proceeding to be paid by the receiver presenting the
20 petition.

21 (c) Any vacancy created by resignation, removal, death or otherwise,
22 may be filled by the court, and the property of the receivership shall
23 be delivered to the remaining receivers or, if there are none, to the
24 successor appointed by the court. The court may summarily enforce
25 delivery by order in the action or special proceeding in which the
26 receiver was appointed.

27 § 102. Section 1302 of the not-for-profit corporation law, as amended
28 by chapter 847 of the laws of 1970, is amended to read as follows:

29 § 1302. Application to existing authorized foreign corporations.

30 Every foreign corporation which on the effective date of this chapter
31 is authorized to conduct activities in this state under a certificate of
32 authority heretofore issued to it by the secretary of state shall
33 continue to have such authority. Such foreign corporation, its members,
34 directors, and officers shall have the same rights, franchises, and
35 privileges and shall be subject to the same limitations, restrictions,
36 liabilities, and penalties as a foreign corporation authorized under
37 this chapter, its members, directors, and officers respectively. A
38 foreign corporation may by amendment to its certificate of authority set
39 forth [~~the type of~~] whether it is a charitable corporation [~~it is under~~
40 ~~section 201 (Purposes);~~] or a non-charitable corporation and in the
41 absence of such amendment an authorized foreign corporation shall be a
42 [~~Type B~~] charitable corporation. Reference in this chapter to an appli-
43 cation for authority shall, unless the context otherwise requires,
44 include the statement and designation and any amendment thereof required
45 to be filed by the secretary of state under prior statutes to obtain a
46 certificate of authority.

47 § 103. Subparagraph 4 of paragraph (a) of section 1304 of the not-for-
48 profit corporation law, as amended by chapter 847 of the laws of 1970
49 and as renumbered by chapter 590 of the laws of 1982, is amended to read
50 as follows:

51 (4) That the corporation is a foreign corporation as defined in
52 subparagraph [~~(a)~~] (7) of paragraph (a) of section 102 (Definitions)[~~7~~
53 ~~the type of~~] of this chapter, whether it would be a charitable corpo-
54 ration [~~it shall be under section 201 (Purposes); a statement~~] or non-
55 charitable corporation if formed in this state; a statement of its
56 purposes to be pursued in this state and of the activities which it

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1 proposes to conduct in this state; and a statement that it is authorized
2 to conduct those activities in the jurisdiction of its incorporation[~~7~~
3 ~~and in the case of a Type C corporation, the lawful public or quasi-~~
4 ~~public objective which each business purpose will achieve~~].

5 § 104. Paragraph (c) of section 1304 of the not-for-profit corporation
6 law is amended, and a new paragraph (d) is added to read as follows:

7 (c) If the application for authority sets forth any purpose or activ-
8 ity for which a domestic corporation could be formed only with the
9 consent or approval of any governmental body or officer, or other person
10 or body under section 404 (Approvals, notices and consents) of this
11 chapter, such consent or approval shall be endorsed thereon or annexed
12 thereto.

13 (d) If the application for authority sets forth any purpose or activ-
14 ity requiring a domestic corporation to provide notice of the filing of
15 a certificate of incorporation to any person or entity under section 404
16 (Approvals, notices and consents) of this chapter, then the corporation
17 shall send by certified mail, return receipt requested, a certified copy
18 of the certificate of authority to such person or entity within ten
19 business days after the corporation receives confirmation from the
20 department of state that the certificate has been accepted for filing.

21 § 105. Subparagraph 1 of paragraph (a) of section 1309 of the not-for-
22 profit corporation law, as amended by chapter 186 of the laws of 1983,
23 is amended to read as follows:

24 (1) The name of the foreign corporation as it appears on the index of
25 names of existing domestic and authorized foreign corporations of any
26 [~~type-or~~] kind in the department of state and the fictitious name the
27 corporation has agreed to use in this state pursuant to paragraph (d) of
28 section 1301 of this [~~chapter~~] article.

29 § 106. Subparagraph 1 of paragraph (b) of section 1310 of the not-for-
30 profit corporation law, as amended by chapter 186 of the laws of 1983,
31 is amended to read as follows:

32 (1) The name of the foreign corporation as it appears on the index of
33 names of existing domestic and authorized foreign corporations of any
34 [~~type-or~~] kind in the department of state and the fictitious name the
35 corporation has agreed to use in this state pursuant to paragraph (d) of
36 section 1301 of this [~~chapter~~] article.

37 § 107. Subparagraph 1 of paragraph (a) of section 1311 of the not-for-
38 profit corporation law, as amended by chapter 186 of the laws of 1983,
39 is amended to read as follows:

40 (1) The name of the foreign corporation as it appears on the index of
41 names of existing domestic and authorized foreign corporations of any
42 [~~type-or~~] kind in the department of state and the fictitious name the
43 corporation has agreed to use in this state pursuant to paragraph (d) of
44 section 1301 of this [~~chapter~~] article.

45 § 108. Paragraphs (a) and (b) of section 1315 of the not-for-profit
46 corporation law, subparagraph 5 of paragraph (b) as amended by chapter
47 847 of the laws of 1970, are amended to read as follows:

48 (a) An action or special proceeding against a foreign corporation may
49 be maintained by a resident of this state or by a domestic corporation
50 of any [~~type-or~~] kind for any cause of action.

51 (b) Except as otherwise provided in this article, an action or
52 special proceeding against a foreign corporation may be maintained by
53 another foreign corporation of any [~~type-or~~] kind or by a nonresident in
54 the following cases only:

55 (1) Where the action is brought to recover damages for the breach of
56 a contract made or to be performed within this state, or relating to

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1 property situated within this state at the time of the making of the
2 contract.

3 (2) Where the subject matter of the litigation is situated within
4 this state.

5 (3) Where the cause of action arose within this state, except where
6 the object of the action or special proceeding is to affect the title of
7 real property situated outside this state.

8 (4) Where, in any case not included in the preceding subparagraphs, a
9 non-domiciliary would be subject to the personal jurisdiction of the
10 courts of this state under section ~~[302]~~ three hundred two of the civil
11 practice law and rules.

12 (5) Where the defendant is a foreign corporation conducting activities
13 or authorized to conduct activities in this state.

14 § 109. Paragraph (b) of section 1316 of the not-for-profit corporation
15 law is amended to read as follows:

16 (b) An examination authorized by paragraph (a) may be denied to such
17 member or other person upon his refusal to furnish to the foreign corpo-
18 ration or its transfer agent or registrar an affidavit that such
19 inspection is not desired for a purpose which is in the interests of a
20 business or object other than the activities of the foreign corporation
21 and that such member or other person has not within five years sold or
22 offered for sale any list or record of members of any corporation of any
23 ~~[type or]~~ kind, whether or not formed under the laws of this state, or
24 aided or abetted any person in procuring any such list or record of
25 members for any such purpose.

26 § 110. Paragraph (a) of section 1321 of the not-for-profit corporation
27 law, subparagraphs 1, 2 and 3 as amended by chapter 847 of the laws of
28 1970, is amended to read as follows:

29 (a) Notwithstanding any other provision of this chapter, a foreign
30 corporation conducting activities in this state which is authorized
31 under this article, its directors, officers and members, shall be exempt
32 from the provisions of paragraph (e) of section 1317 (Voting trust
33 records), subparagraph ~~[(a)]~~ (1) of paragraph (a) of section 1318
34 (Liabilities of directors and officers of foreign corporations), and
35 subparagraph ~~[(a)]~~ (2) of paragraph (a) of section 1320 (Applicability
36 of other provisions) of this article if ~~[when]~~ such provision would
37 otherwise apply:

38 (1) The corporation is a ~~[Type A]~~ non-charitable corporation under
39 this chapter; its principal activities are conducted outside this state;
40 the greater part of its property is located outside this state; and less
41 than one third of its members are residents of this state; or

42 (2) The corporation is a ~~[Type B]~~ charitable corporation under this
43 chapter; its principal activities are conducted outside this state; the
44 greater part of its property is located outside this state; and less
45 than ten per cent of its annual revenues is derived from solicitation of
46 funds within this state~~;~~ ~~or~~

47 ~~(3) The corporation is a Type C corporation under this chapter; its~~
48 ~~principal activities are conducted outside this state; the greater part~~
49 ~~of its property is located outside this state; and less than one half of~~
50 ~~its revenues for the preceding three fiscal years, or such portion ther-~~
51 ~~eof as the foreign corporation was in existence, was derived from sourc-~~
52 ~~es within this state].~~

53 § 111. Paragraph (d) of section 1401 of the not-for-profit corporation
54 law, as added by chapter 871 of the laws of 1977, is amended to read as
55 follows:

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1 (d) Type of corporation. A family or private cemetery corporation is a
2 [~~type-B~~] charitable corporation under this chapter.

3 § 112. Paragraph (b) of section 1402 of the not-for-profit corporation
4 law is amended to read as follows:

5 (b) Type of corporation.

6 A fire corporation is a [~~Type-B~~] charitable corporation under this
7 chapter.

8 § 113. Paragraph (c) of section 1403 of the not-for-profit corporation
9 law is amended to read as follows:

10 (c) Type of corporation.

11 A corporation for the prevention of cruelty is a [~~Type-B~~] charitable
12 corporation under this chapter.

13 § 114. Paragraph (b) of section 1404 of the not-for-profit corporation
14 law, as amended by chapter 1058 of the laws of 1971, is amended to read
15 as follows:

16 (b) Type of corporation.

17 A christian association is a [~~Type-B~~] charitable corporation under
18 this chapter.

19 § 115. Paragraph (b) of section 1405 of the not-for-profit corporation
20 law is amended to read as follows:

21 (b) Type of corporation.

22 A soldiers' monument corporation is a [~~Type-B~~] charitable corporation.

23 § 116. Paragraph (b) of section 1406 of the not-for-profit corporation
24 law is amended to read as follows:

25 (b) Type of corporation.

26 A medical society is a [~~Type-A~~] non-charitable corporation under this
27 chapter.

28 § 117. Paragraph (b) of section 1407 of the not-for-profit corporation
29 law is amended to read as follows:

30 (b) Type of corporation.

31 An alumni corporation is a [~~Type-A~~] non-charitable corporation.

32 § 118. Paragraph (b) of section 1408 of the not-for-profit corporation
33 law is amended to read as follows:

34 (b) Type of corporation.

35 An historical society is a [~~Type-B~~] charitable corporation under this
36 chapter.

37 § 119. Paragraph (b) of section 1409 of the not-for-profit corporation
38 law, as amended by chapter 1058 of the laws of 1971, is amended to read
39 as follows:

40 (b) Type of corporation. An agricultural or horticultural corporation
41 is a [~~Type-A~~] non-charitable corporation under this chapter, except that
42 any such corporation which has received moneys from the state or has
43 acted as agent for the state under paragraph (c) of this section, or has
44 acquired or does acquire real property by condemnation is or becomes a
45 [~~Type-B~~] charitable corporation under this chapter. [~~If such corporation~~
46 ~~has not already filed as a Type B corporation it shall, upon such~~
47 ~~receipt of moneys or acting as such agent or such acquisition of real~~
48 ~~property by condemnation, amend its certificate to that effect.]~~

49 § 120. Paragraph (b) of section 1410 of the not-for-profit corporation
50 law is amended to read as follows:

51 (b) Type of corporation.

52 A board of trade or a chamber of commerce is a [~~Type-A~~] non-charitable
53 corporation under this chapter.

54 § 121. Paragraph (b) of section 1411 of the not-for-profit corporation
55 law is amended to read as follows:

56 (b) Type of corporation.

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1 A local development corporation is a [~~Type-C~~] charitable corporation
2 under this chapter.

3 § 122. Paragraph (d) of section 1412 of the not-for-profit corporation
4 law, as added by chapter 555 of the laws of 1993, is amended to read as
5 follows:

6 (d) Type. A university faculty practice corporation is a [~~Type-B~~]
7 charitable corporation under this chapter.

8 § 123. Paragraph (c) of section 1505 of the not-for-profit corporation
9 law, as added by chapter 871 of the laws of 1977, is amended to read as
10 follows:

11 (c) Type of corporation. A cemetery corporation is a [~~Type-B~~] chari-
12 table corporation under this chapter.

13 § 124. Paragraph (b) of section 1602 of the not-for-profit corporation
14 law, as added by chapter 257 of the laws of 2011, is amended to read as
15 follows:

16 (b) "land bank" shall mean a land bank established as a [~~type-C~~] char-
17 itable not-for-profit corporation under this chapter and in accordance
18 with the provisions of this article and pursuant to this article;

19 § 125. Paragraph (f) of section 1603 of the not-for-profit corporation
20 law, as added by chapter 257 of the laws of 2011, is amended to read as
21 follows:

22 (f) Each land bank created pursuant to this act shall be a [~~type-C~~
23 ~~not-for-profit~~] charitable corporation, and shall have permanent and
24 perpetual duration until terminated and dissolved in accordance with the
25 provisions of section sixteen hundred thirteen of this article.

26 § 126. The opening paragraph of paragraph (a) of section 1607 of the
27 not-for-profit corporation law, as added by chapter 257 of the laws of
28 2011, is amended to read as follows:

29 A land bank shall constitute a [~~type-C~~] charitable not-for-profit
30 corporation under New York law, which powers shall include all powers
31 necessary to carry out and effectuate the purposes and provisions of
32 this article, including the following powers in addition to those herein
33 otherwise granted:

34 § 127. Paragraph (e) of section 1611 of the not-for-profit corporation
35 law, as added by chapter 257 of the laws of 2011, is amended to read as
36 follows:

37 (e) Bonds issued by the land bank shall be issued, sold, and delivered
38 in accordance with the terms and provisions of a resolution adopted by
39 the board. The board may sell such bonds in such manner, either at
40 public or at private sale, and for such price as it may determine to be
41 in the best interests of the land bank. The resolution issuing bonds
42 shall be published in a newspaper of general circulation within the
43 jurisdiction of the land bank and posted prominently and continuously on
44 the homepage of any website maintained by the land bank.

45 § 128. Section 1613 of the not-for-profit corporation law, as added by
46 chapter 257 of the laws of 2011, is amended to read as follows:

47 § 1613. Dissolution of land bank.

48 A land bank may be dissolved as a [~~type-C~~] charitable not-for-profit
49 corporation sixty calendar days after an affirmative resolution approved
50 by two-thirds of the membership of the board of directors. Sixty calen-
51 dar days advance written notice of consideration of a resolution of
52 dissolution shall be given to the foreclosing governmental unit or units
53 that created the land bank, shall be published in a local newspaper of
54 general circulation, and posted prominently and continuously on the
55 homepage of any website maintained by the land bank, and shall be sent
56 certified mail to the trustee of any outstanding bonds of the land bank.

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1 Upon dissolution of the land bank all real property, personal property
2 and other assets of the land bank shall become the assets of the fore-
3 closing governmental unit or units that created the land bank. In the
4 event that two or more foreclosing governmental units create a land bank
5 in accordance with section sixteen hundred three of this article, the
6 withdrawal of one or more foreclosing governmental units shall not
7 result in the dissolution of the land bank unless the intergovernmental
8 agreement so provides, and there is no foreclosing governmental unit
9 that desires to continue the existence of the land bank.

10 § 129. Paragraph (h) of section 8-1.4 of the estates, powers and
11 trusts law, as amended by chapter 43 of the laws of 2002, is amended to
12 read as follows:

13 (h) The attorney general shall make rules and regulations necessary
14 for the administration of this section, including rules and regulations
15 as to the time for filing reports, the contents thereof, and [~~the~~] any
16 manner of executing and filing them, including but not limited to allow-
17 ing or requiring any submission to the attorney general to be effected
18 by electronic means and electronic signatures. He or she may classify
19 trusts, estates, corporations and other trustees as to purpose, nature
20 of assets, duration, amount of assets, amounts to be devoted to charita-
21 ble purposes, or otherwise, and may establish different rules for
22 different classes as to time and nature of the reports required, to the
23 ends that he or she shall receive current financial reports as to all
24 such trusts, estates, corporations or other trustees which will enable
25 him or her to ascertain whether they are being properly administered.
26 The attorney general may suspend the filing of financial reports as to a
27 particular trustee for a reasonable, specifically designated time upon
28 written application of the trustee, signed under penalties for perjury,
29 and filed with the attorney general and after the attorney general has
30 filed in the register of trustees a written statement that the interests
31 of the beneficiaries will not be prejudiced thereby and that periodic
32 reports during the term of such suspension are not required for proper
33 supervision by his or her office. The filing of the financial reports
34 required by this section, or the exemption from such filing or the
35 suspension therefrom, shall not have the effect of absolving trustees
36 from any responsibility for accounting for property or income held by
37 them for charitable purposes. A copy of an account or other financial
38 report filed by a trustee in any court in this state, if the account or
39 other financial report substantially complies with the rules and regu-
40 lations of the attorney general, may be filed as a financial report
41 under this section.

42 § 130. The estates, powers and trusts law is amended by adding a new
43 section 8-1.9 to read as follows:

44 § 8-1.9 Trust governance

45 (a) For purposes of this section:

46 (1) A "trust" means a trust created solely for charitable purposes, or
47 a trust that continues solely for such purposes after all non-charitable
48 interests have terminated.

49 (2) "Charitable purpose" means any religious, charitable, educational
50 or benevolent purpose.

51 (3) "Key employee" means any person who is in a position to exercise
52 substantial influence over the affairs of the corporation as referenced
53 in 26 U.S.C. section 4958(f)(1)(A) and further specified in 26 C.F.R.
54 section 53.4958-3(c), (d) and (e), or succeeding provisions.

55 (4) An "affiliate" of a trust means any entity controlled by, in
56 control of, or under common control with such trust.

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1 (5) "Relative" of an individual means his or her (i) spouse, ances-
2 tors, brothers and sisters (whether whole or half blood), children
3 (whether natural or adopted), grandchildren, great-grandchildren, and
4 spouses of brothers, sisters, children, grandchildren, and great-grand-
5 children; and (ii) his or her domestic partner as defined in section
6 twenty-nine hundred ninety-four-a of the public health law.

7 (6) "Related party" means (i) any trustee or key employee of the trust
8 or any affiliate of the trust; (ii) any relative of any trustee or key
9 employee of the trust or any affiliate of the trust; or (iii) an entity
10 in which any individual described in clauses (i) and (ii) of this
11 subparagraph has a thirty-five percent or greater ownership or benefi-
12 cial interest or, in the case of a partnership or professional corpo-
13 ration, a direct ownership interest in excess of five 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 key employee of the trust or an affiliate
18 of the trust; (ii) has not received, and does not have a relative who
19 has received, in any of the last three fiscal years, more than ten thou-
20 sand dollars in direct compensation from the trust or an affiliate of
21 the trust (other than reimbursement for expenses or the payment of trus-
22 tee commissions as permitted by law and the governing instrument); and
23 (iii) is not a current employee of or does not have a substantial finan-
24 cial interest in, and does not have a relative who is a current officer
25 of or have a substantial financial interest in, any entity that has made
26 payments to, or received payments from, the trust or an affiliate of the
27 trust for property or services in an amount which, in any of the last
28 three fiscal years, exceeds the lesser of twenty-five thousand dollars
29 or two percent of such entity's consolidated gross revenues. For
30 purposes of this subparagraph, "payment" does not include charitable
31 contributions.

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

35 (9) "Independent auditor" means any certified public accountant
36 performing the audit of the financial statements of a trust required by
37 subdivision one of section one hundred seventy-two-b of the executive
38 law.

39 (b)(1) The trustees or a designated audit committee consisting of one
40 or more independent trustees of any trust required to file an independ-
41 ent certified public accountant's audit report with the attorney general
42 pursuant to subdivision one of section one hundred seventy-two-b of the
43 executive law shall oversee the accounting and financial reporting proc-
44 esses of the trust and the audit of the trust's financial statements.
45 The trustees or designated audit committee shall annually retain or
46 renew the retention of an independent auditor to conduct the audit and,
47 upon completion thereof, review the results of the audit and any related
48 management letter with the independent auditor.

49 (2) The trustees or a designated audit committee consisting of one or
50 more independent trustees of any trust required to file an independent
51 certified public accountant's audit report with the attorney general
52 pursuant to subdivision one of section one hundred seventy-two-b of the
53 executive law and that in the prior fiscal year had or in the current
54 fiscal year reasonably expects to have annual revenue in excess of one
55 million dollars shall, in addition to those duties set forth in subpara-
56 graph one of this paragraph:

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- 1 (A) review with the independent auditor the scope and planning of the
2 audit prior to the audit's commencement;
- 3 (B) upon completion of the audit, review and discuss with the inde-
4 pendent auditor: (i) any material risks and weaknesses in internal
5 controls identified by the auditor; (ii) any restrictions on the scope
6 of the auditor's activities or access to requested information; (iii)
7 any significant disagreements between the auditor and management; and
8 (iv) the adequacy of the trust's accounting and financial reporting
9 processes;
- 10 (C) annually consider the performance and independence of the inde-
11 pendent auditor; and
- 12 (D) if the duties required by this section are performed by an audit
13 committee, report on the committee's activities to the trustees.
- 14 (3) The trustees or designated audit committee shall oversee the
15 adoption, implementation of, and compliance with any conflict of inter-
16 est policy or whistleblower policy adopted by the trust if this function
17 is not otherwise performed by another committee comprised solely of
18 independent trustees.
- 19 (4) If a trust is under the control of another trust or a corporation,
20 the trustees or designated audit committee of the controlling trust, or
21 the board or designated audit committee of the board of the controlling
22 corporation, may perform the duties required by this paragraph.
- 23 (5) Only independent trustees may participate in deliberations or
24 voting relating to matters set forth in this paragraph.
- 25 (c)(1) Notwithstanding any provision of the trust instrument to the
26 contrary, no trust shall enter into any related party transaction unless
27 the transaction is determined by the trustees to be fair, reasonable and
28 in the trust's best interest at the time of such determination. Any
29 trustee, officer or key employee who has an interest in a related party
30 transaction shall disclose in good faith to the trustees, or an author-
31 ized committee thereof, the material facts concerning such interest.
- 32 (2) With respect to any related party transaction in which a related
33 party has a substantial financial interest, the trustees, or an author-
34 ized committee thereof, shall:
- 35 (A) Prior to entering into the transaction, consider alternative tran-
36 sactions to the extent available;
- 37 (B) Approve the transaction by not less than a majority vote of the
38 trustees or committee members present at the meeting; and
- 39 (C) Contemporaneously document in writing the basis for the trustees'
40 or authorized committee's approval, including consideration of any
41 alternative transactions.
- 42 (3) The trust instrument, by-laws or any policy adopted by the trus-
43 tees may contain additional restrictions on related party transactions
44 and additional procedures necessary for the review and approval of such
45 transactions, or provide that any transaction in violation of such
46 restrictions shall be void or voidable.
- 47 (4) The attorney general may bring an action to enjoin, void or
48 rescind any related party transaction or proposed related party trans-
49 action that violates any provision of this article or was otherwise not
50 reasonable or in the best interests of the trust at the time the trans-
51 action was approved, or to seek restitution, and the removal of trustees
52 or officers, or seek to require any person or entity to:
- 53 (A) Account for any profits made from such transaction, and pay them
54 to the trust;
- 55 (B) Pay the trust the value of the use of any of its property or other
56 assets used in such transaction;

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1 (C) Return or replace any property or other assets lost to the trust
2 as a result of such transaction, together with any income or appreci-
3 ation lost to the trust by reason of such transaction, or account for
4 any proceeds of sale of such property, and pay the proceeds to the trust
5 together with interest at the legal rate; and

6 (D) Pay, in the case of willful and intentional conduct, an amount up
7 to double the amount of any benefit improperly obtained.

8 (5) The powers of the attorney general provided in this section are in
9 addition to all other powers the attorney general may have under this
10 chapter or any other law.

11 (6) No related party may participate in deliberations or voting relat-
12 ing to matters set forth in this paragraph; provided that nothing in
13 this section shall prohibit the trustees or designated audit committee
14 from requesting that a related party present information concerning a
15 related party transaction at a trustees or committee meeting prior to
16 the commencement of deliberations or voting relating to the related
17 party transaction.

18 (d)(1) Except as provided in subparagraph four of this paragraph,
19 every trust shall adopt a conflict of interest policy to ensure that its
20 trustees, officers and key employees act in the best interest of the
21 trust and its beneficiaries and comply with applicable legal require-
22 ments, including but not limited to the requirements set forth in this
23 paragraph.

24 (2) The conflict of interest policy shall include, at a minimum, the
25 following provisions:

26 (A) a definition of the circumstances that constitute a conflict of
27 interest;

28 (B) procedures for disclosing a conflict of interest to the audit
29 committee or, if there is no audit committee, to the trustees;

30 (C) a requirement that the person with the conflict of interest not be
31 present at or participate in any deliberation or vote on the matter
32 giving rise to such conflict;

33 (D) a prohibition against any attempt by the person with the conflict
34 to influence the deliberation or voting on the matter giving rise to
35 such conflict;

36 (E) a requirement that the existence and resolution of the conflict be
37 documented in the trust's records, including in the minutes of any meet-
38 ing at which the conflict was discussed or voted upon; and

39 (F) procedures for disclosing, addressing, and documenting related
40 party transactions in accordance with this paragraph.

41 (3) The conflict of interest policy shall require that prior to a
42 trustee's initial appointment, and annually thereafter, such trustee
43 shall complete, sign and file with the records of the trust a written
44 statement identifying any entity of which he or she is an officer,
45 director, trustee, member, owner (either as a sole proprietor or a part-
46 ner), or employee and with which the trust has a relationship, and any
47 transaction in which the trust is a participant and in which the trustee
48 might have a conflicting interest. The policy shall require that each
49 trustee annually resubmit such written statement. The trustees shall
50 provide a copy of all completed statements to the chair of the audit
51 committee, if there is an audit committee.

52 (4) A trust that has adopted and possesses a conflict of interest
53 policy pursuant to federal, state or local laws that is substantially
54 consistent with the provisions of subparagraph two of this paragraph
55 shall be deemed in compliance with provisions of this paragraph.

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1 (5) Nothing in this paragraph shall be interpreted to require a trust
2 to adopt any specific conflict of interest policy not otherwise required
3 by this paragraph or any other law or rule, or to supersede or limit any
4 requirement or duty governing conflicts of interest required by any
5 other law or rule.

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

16 (2) The whistleblower policy shall include the following provisions:

17 (A) Procedures for the reporting of violations or suspected violations
18 of laws or trust policies, including procedures for preserving the
19 confidentiality of reported information;

20 (B) A requirement that a trustee, officer or employee of the trust be
21 designated to administer, the whistleblower policy and to report to the
22 audit committee or other committee of independent trustees, or to the
23 trustees; and

24 (C) A requirement that a copy of the policy be distributed to all
25 trustees, officers, employees and volunteers, with instructions on how
26 to comply with the procedures set forth in the policy.

27 (3) A trust that has adopted and possesses a whistleblower policy
28 pursuant to federal, state or local laws that is substantially consist-
29 ent with the provisions of subparagraph two of this paragraph shall be
30 deemed in compliance with the provisions of this paragraph.

31 (4) Nothing in this paragraph shall be interpreted to relieve any
32 trust from any additional requirements in relation to internal compli-
33 ance, retaliation, or document retention required by any other law or
34 rule.

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

41 § 132. This act shall take effect July 1, 2014, provided, however,
42 that the amendments to section 172-b of the executive law made by
43 section three of this act shall expire and be deemed repealed June 30,
44 2017; provided further that the amendments to section 172-b of the exec-
45 utive law made by section three-a of this act shall take effect July 1,
46 2017 and shall expire and be deemed repealed June 30, 2021; provided
47 further that the amendments to section 172-b of the executive law made
48 by section three-b of this act shall take effect July 1, 2021; provided
49 further that section seventy-three of this act shall take effect January
50 1, 2015; provided further that section seventy-two of this act and para-
51 graph (b) of section 8-1.9 of the estates, powers and trusts law as
52 added by section one hundred thirty of this act shall not be applica-
53 ble until January 1, 2015 for any corporation or trust that had annual
54 revenues of less than 10,000,000 dollars in the last fiscal year ending
55 prior to January 1, 2014.