

SENATE No. 1844

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to update public charities law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Steven A. Tolman	Second Suffolk and Middlesex
Attorney General Martha Coakley	
Martha M. Walz	8th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO UPDATE PUBLIC CHARITIES LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 **SECTION 1.** Section 8E of chapter 12 of the General Laws, as so appearing, is hereby
2 amended by striking the word “and”, in line 12, following the words: - “association or instrument
3 of trust,”

4 Provided, further, that Section 8E of chapter 12, as so appearing, is hereby amended by
5 inserting after the words “a true copy of its constitution and by-laws,”, in line 12, the following
6 words:- “and a one time initial registration fee of \$100,”

7 Provided, further, that Section 8E of chapter 12, as so appearing, is hereby amended by
8 striking the last paragraph and inserting the following: -

9 “If any public charity fails to comply with the requirements of this section, the director
10 shall notify the delinquent public charity, or any responsible officer or agent of such public
11 charity, by mailing a notice thereof to its last known address or that of any such responsible
12 officer or agent. Such notice mailed by the director shall be deemed a sufficient notice, and a
13 certificate of the person mailing such notice that it has been mailed in accordance with this
14 section shall be deemed prima facie evidence thereof and shall be admissible in any court of the

15 commonwealth as to the facts contained therein. If a complete registration is not filed within
16 thirty days of the day such notice is mailed, the director may assess a civil penalty against the
17 public charity and may further assess a separate civil penalty against any responsible officer or
18 agent receiving such notice who fails, without good cause, to cause the filing of a complete
19 registration. Such civil penalties shall each be in the amount of fifty dollars per day for each day
20 subsequent to the end of such thirty day period until such report is filed; provided, however, that
21 the maximum penalty for failure to register shall be no greater than ten thousand dollars. Any
22 public charity, or the responsible officer or agent of a public charity, aggrieved by the imposition
23 of a civil penalty pursuant to this section may bring a civil action in the nature of certiorari
24 pursuant to section 4 of chapter 249; provided, however, that such action shall be commenced
25 within 60 days of the date of the notice of the civil penalty. If any public charity, or the
26 responsible officer or agent of a public charity shall fail to pay any civil penalty provided herein
27 within 21 days of the date of imposition of such penalty, excluding any time during which
28 judicial review pursuant to section 4 of chapter 249 remains pending, the division may initiate a
29 civil action in the superior court to enforce such penalty or to obtain any other relief so required.”

30 **SECTION 2.** Section 8F of chapter 12 of the General Laws, as so appearing, is hereby
31 amended by inserting after the words “if more than five hundred thousand dollars” in lines 43-
32 44, the following words:- “but not more than one million dollars; (e) five hundred dollars, if
33 more than one million but not more than ten million; (f) one thousand dollars, if more that ten
34 million but not more than one hundred million; (g) two thousand dollars, if more than one
35 hundred million.”

36 **SECTION 3.** Section 8F of chapter 12 of the General Laws, as so appearing, is hereby
37 amended by striking the last paragraph and inserting the following:

38 “If any public charity fails to file a written report for any year, the director shall notify the
39 delinquent public charity, or the responsible officer or agent of such public charity, by mailing a
40 notice thereof to its last known address or that of any responsible officer or agent. Such notice
41 mailed by the director shall be deemed a sufficient notice, and a certificate of the person mailing
42 such notice that it has been mailed in accordance with this section shall be deemed prima facie
43 evidence thereof and shall be admissible in any court of the commonwealth as to the facts
44 contained therein. If a complete report is not filed within thirty days of the day such notice is
45 mailed, the director may assess a civil penalty against the public charity and may further assess a
46 separate civil penalty against any responsible officer or agent receiving such notice who fails,
47 without good cause, to cause the filing of a complete report. Such civil penalties shall each be in
48 the amount of fifty dollars per day for each day subsequent to end of such thirty day period until
49 a complete report is filed; provided, however, that the maximum penalties assessed with respect
50 to any report shall be no greater than ten thousand dollars. Any public charity, or the responsible
51 officer or agent of a public charity, aggrieved by the imposition of a civil penalty pursuant to this
52 section may bring a civil action in the nature of certiorari pursuant to section 4 of chapter 249;
53 provided, however, that such action shall be commenced within 60 days of the date of the
54 assessment of the civil penalty. If any public charity, or the responsible officer or agent of a
55 public charity shall fail to pay any civil penalty provided herein within 21 days of the date of
56 imposition of such penalty, excluding any time during which judicial review pursuant to section
57 4 of chapter 249 remains pending, the attorney general may initiate a civil action in the superior
58 court to enforce such penalty or to obtain any other relief so required.”

59 “Any public charity, or any officer or agent of a public charity, who willfully makes,
60 executes or files a report false in any material representation shall be punished by a fine of not
61 more than five thousand dollars or by imprisonment for not more than one year or both.”

62 **SECTION 4.** Section 21 of chapter 68 of the General Laws, as so appearing, is hereby
63 deleted in its entirety.

64 **SECTION 5.** Section 24 of chapter 68 of the General Laws, as so appearing, is hereby
65 amended by striking the words “(a) professional solicitor, three hundred dollars; (b) professional
66 fund-raising counsel, two hundred dollars; (c) commercial co-venturer, fifty dollars.”, in lines 9-
67 11, and inserting the following words:-“(i) professional solicitor, one thousand dollars; (ii)
68 professional fund-raising counsel, four hundred dollars; (iii) commercial co-venturer, two
69 hundred dollars.”

70 **SECTION 6.** Section 24 of chapter 68 of the General Laws, as so appearing, is hereby
71 amended by striking the word “ten”, in line 17, and inserting the following word:-“twenty five”

72 **SECTION 7.** Section 24 of chapter 68 of the General Laws, as so appearing, is hereby
73 amended by inserting after the words “exceed the sum of said bond.”, in line 27, the following
74 words:-“ A professional solicitor shall conduct solicitations only by or through persons who are
75 covered (i) by a consolidated bond under which such professional solicitor is the principal
76 obligor, or (ii) by a bond under which such person is both the principal obligor and
77 independently registered with the division as a professional solicitor under clause (a) above.”

78 **SECTION 8.** Section 32 of chapter 68 of the General Laws, as so appearing, is hereby
79 amended by adding after subsection (e) the following subsection: -

80 (f) In addition to any remedies or actions authorized or permitted pursuant to subsections
81 (a) through (e) of this section, if any charitable organization, professional fundraising counsel,
82 commercial co-venturer or professional solicitor violates one or more applicable provisions of
83 sections 19 through 35 of chapter 68, the director shall notify the delinquent charitable
84 organization, professional fundraising counsel, commercial co-venturer, professional solicitor, or
85 any responsible officer or agent of any of the foregoing by mailing a notice thereof to its last
86 known address or that of any such responsible officer or agent. Such notice mailed by the
87 division shall be deemed a sufficient notice, and a certificate of the person mailing such notice
88 that it has been mailed in accordance with this section shall be deemed prima facie evidence
89 thereof and shall be admissible in any court of the commonwealth as to the facts contained
90 therein. If the charitable organization, professional fundraising counsel, commercial co-venturer
91 or professional solicitor fails to correct any such violation within thirty days of the day such
92 notice is mailed, the director may assess a civil penalty against the charitable organization,
93 professional fundraising counsel, commercial co-venturer or professional solicitor and may
94 further assess a separate civil penalty against any responsible officer or agent receiving such
95 notice who fails, without good cause, to cause the violation to be corrected. Such civil penalty
96 shall be in the amount of fifty dollars per day for each day subsequent to the end of such thirty
97 day period until such violation is cured; provided, however, that the maximum penalty shall be
98 no greater than ten thousand dollars. Any charitable organization, professional fundraising
99 counsel, commercial co-venturer, professional solicitor, or responsible officer or agent aggrieved
100 by the imposition of a civil penalty pursuant to this section may bring a civil action in the nature
101 of certiorari pursuant to section 4 of chapter 249; provided, however, that such action shall be
102 commenced within 60 days of the date of the notice of the civil penalty. If any charitable

103 organization, professional fundraising counsel, commercial co-venturer, professional solicitor, or
104 responsible officer or agent shall fail to pay any civil penalty provided herein within 21 days of
105 the date of imposition of such penalty, excluding any time during which judicial review pursuant
106 to section 4 of chapter 249 remains pending, the division may initiate a civil action in the
107 superior court to enforce such penalty or to obtain any other relief so required.

108 **SECTION 9.** Section 11A of chapter 180 of the General Laws, as so appearing, is
109 hereby amended by striking the first paragraph and inserting the following:-

110 A charitable corporation constituting a public charity organized under the provisions of
111 general or special law, which desires to voluntarily windup and close its affairs, may authorize
112 its dissolution in accordance with the provisions of this section. The provisions of this section
113 shall constitute the sole method for the voluntary dissolution of any such charitable corporation.

114 “(a) Petition for Dissolution. A petition for dissolution shall be authorized by vote of a
115 majority of the corporation’s board of directors entitled to vote thereon, provided, however, that
116 if the corporation has one or more classes of members, the corporation may in its articles of
117 corporation, in a bylaw adopted by the incorporators pursuant to section three or in a bylaw
118 adopted by the members, assign the power of authorization to the members acting by majority
119 vote of the members entitled to vote thereon or provide that the exercise of such power shall be
120 subject to approval by the members.

121 (b) No Net Assets. If the corporation has no remaining assets, the petition for dissolution
122 shall be submitted to the division of public charities of the office of the attorney general setting
123 forth in substance the grounds of the application for dissolution together such forms, affidavits
124 and information as the division may from time to time prescribe. If the division is satisfied that

125 such corporation has or will become inactive and that its dissolution would be in the public
126 interest, the division may approve the dissolution of the corporation.

127 (c) Net Assets. If the corporation has remaining assets, the petition for its dissolution
128 shall be filed in the supreme judicial court setting forth in substance the grounds of the
129 application for dissolution and requesting the court to authorize the administration of its funds
130 for such similar public charitable purposes as the court may determine. The supreme judicial
131 court may by rule or order provide that such petition and court authorization are not required for
132 dissolutions approved by the division upon receipt of such forms, affidavits and information as
133 the division may require if the corporation has net assets no greater than such amount as the
134 court may provide in said rule or order or in such other situations as the court may so provide.”