

HOUSE No. 325

The Commonwealth of Massachusetts

In the Year Two Thousand 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 appearing in the 2006
2 Official Edition, is hereby amended by striking out, following the words: “association or
3 instrument of trust” in line 12, the following word “and”

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 out the last paragraph and inserting in place thereof 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 more
33 than one million but not more than ten million; (f) one thousand dollars, if more that ten million
34 but not more than one hundred million; (g) two thousand dollars, if more than one hundred
35 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 in place thereof 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 appearing in the 2006
63 official edition, is hereby repealed.

64 SECTION 5. Chapter 68 of the General Laws is hereby amended by striking out section
65 23, as so appearing, and inserting in place thereof the following section:

66 Section 23. Solicitation disclosures

67 Section 23. All solicitations by professional solicitors and all solicitations by commercial
68 co-venturers shall contain, at the time of solicitation, the following disclosures: (1) the name,
69 address and telephone number of the charitable organization and a description of how the
70 contributions raised by the solicitation will be utilized for charitable purposes, or if there is no
71 charitable organization, the name, address and telephone number of the professional solicitor or
72 commercial co-venturer and a description of how the contributions raised by the solicitation will
73 be utilized for charitable purposes; (2) the statement that the solicitation is being conducted by a
74 “paid fund-raiser”; and (3) such other disclosures as required by relevant rules and regulations
75 promulgated under section twenty-nine. If the solicitation is for advertising, the disclosure shall
76 also include the geographic distribution and the circulation of the publication in which the
77 advertising will appear.

78 SECTION 6. Section 24 of chapter 68 of the General Laws, as so appearing, is hereby
79 amended by striking out, in lines 9-11, the words “(a) professional solicitor, three hundred
80 dollars; (b) professional fund-raising counsel, two hundred dollars; (c) commercial co-venturer,

81 fifty dollars.” and inserting in place thereof the following words: “(i) professional solicitor, one
82 thousand dollars; (ii) professional fund-raising counsel, four hundred dollars; (iii) commercial
83 co-venturer, two hundred dollars.”

84 SECTION 7. Section 24 of chapter 68 of the General Laws, as so appearing, is hereby
85 amended by striking out the word “ten”, in line 17, and inserting in place thereof the following
86 word: “twenty five”

87 SECTION 8. Section 24 of chapter 68 of the General Laws, as so appearing, is hereby
88 amended by inserting after the words “exceed the sum of said bond.” in line 27, the following
89 words: “ A professional solicitor shall conduct solicitations only by or through persons who are
90 covered (i) by a consolidated bond under which such professional solicitor is the principal
91 obligor, or (ii) by a bond under which such person is both the principal obligor and
92 independently registered with the division as a professional solicitor under clause (a) above.”

93 SECTION 9. Section 32 of chapter 68 of the General Laws, as so appearing, is hereby
94 amended by inserting after subsection (e) the following subsection:

95 (f) In addition to any remedies or actions authorized or permitted pursuant to subsections
96 (a) through (e) of this section, if any charitable organization, professional fundraising counsel,
97 commercial co-venturer or professional solicitor violates one or more applicable provisions of
98 sections 19 through 35 of chapter 68, the director shall notify the delinquent charitable
99 organization, professional fundraising counsel, commercial co-venturer, professional solicitor, or
100 any responsible officer or agent of any of the foregoing by mailing a notice thereof to its last
101 known address or that of any such responsible officer or agent. Such notice mailed by the
102 division shall be deemed a sufficient notice, and a certificate of the person mailing such notice

103 that it has been mailed in accordance with this section shall be deemed prima facie evidence
104 thereof and shall be admissible in any court of the commonwealth as to the facts contained
105 therein. If the charitable organization, professional fundraising counsel, commercial co-venturer
106 or professional solicitor fails to correct any such violation within thirty days of the day such
107 notice is mailed, the director may assess a civil penalty against the charitable organization,
108 professional fundraising counsel, commercial co-venturer or professional solicitor and may
109 further assess a separate civil penalty against any responsible officer or agent receiving such
110 notice who fails, without good cause, to cause the violation to be corrected. Such civil penalty
111 shall be in the amount of fifty dollars per day for each day subsequent to the end of such thirty
112 day period until such violation is cured; provided, however, that the maximum penalty shall be
113 no greater than ten thousand dollars. Any charitable organization, professional fundraising
114 counsel, commercial co-venturer, professional solicitor, or responsible officer or agent aggrieved
115 by the imposition of a civil penalty pursuant to this section may bring a civil action in the nature
116 of certiorari pursuant to section 4 of chapter 249; provided, however, that such action shall be
117 commenced within 60 days of the date of the notice of the civil penalty. If any charitable
118 organization, professional fundraising counsel, commercial co-venturer, professional solicitor, or
119 responsible officer or agent shall fail to pay any civil penalty provided herein within 21 days of
120 the date of imposition of such penalty, excluding any time during which judicial review pursuant
121 to section 4 of chapter 249 remains pending, the division may initiate a civil action in the
122 superior court to enforce such penalty or to obtain any other relief so required.

123 SECTION 10. Section 11A of chapter 180 of the General Laws, as appearing in the 2006
124 Official Edition, is hereby amended by striking the first paragraph and inserting in place thereof
125 the following:

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

130 (a) Petition for Dissolution. A petition for dissolution shall be authorized by vote of a
131 majority of the corporation's board of directors entitled to vote thereon, provided, however, that
132 if the corporation has one or more classes of members, the corporation may in its articles of
133 corporation, in a bylaw adopted by the incorporators pursuant to section three or in a bylaw
134 adopted by the members, assign the power of authorization to the members acting by majority
135 vote of the members entitled to vote thereon or provide that the exercise of such power shall be
136 subject to approval by the members.

137 (b) No Net Assets. If the corporation has no remaining assets, the petition for dissolution
138 shall be submitted to the division of public charities of the office of the attorney general setting
139 forth in substance the grounds of the application for dissolution together such forms, affidavits
140 and information as the division may from time to time prescribe. If the division is satisfied that
141 such corporation has or will become inactive and that its dissolution would be in the public
142 interest, the division may approve the dissolution of the corporation.

143 (c) Net Assets. If the corporation has remaining assets, the petition for its dissolution
144 shall be filed in the supreme judicial court setting forth in substance the grounds of the
145 application for dissolution and requesting the court to authorize the administration of its funds
146 for such similar public charitable purposes as the court may determine. The supreme judicial
147 court may by rule or order provide that such petition and court authorization are not required for

148 dissolutions approved by the division upon receipt of such forms, affidavits and information as
149 the division may require if the corporation has net assets no greater than such amount as the
150 court may provide in said rule or order or in such other situations as the court may so provide.