

HOUSE No. 4726

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act FURTHER REGULATING PUBLIC CHARITIES..

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

1 The penalty that may be imposed on the public charity as provided in this section may be
2 assessed against a responsible officer or agent of the public charity, upon a finding by the
3 director that the responsible officer or agent has the authority to cause the public charity to
4 comply with the registration requirements of this section but has neglected or refused to do so
5 after notice and demand. The president and treasurer of the public charity, and any person
6 authorized in its by-laws, operating agreement, articles of organization, charter, organizational
7 documents or by resolution of its board of trustees or directors to sign documents or filings on
8 behalf of the public charity, shall be rebuttably presumed to have the authority to cause the
9 public charity to comply with the registration requirements of this section.

10 (f) Before the assessment, the director shall provide the responsible officer or agent with
11 notice of the director's intention to find that person to be a responsible officer or agent and to
12 assess that person the penalties provided for in this section. Notice shall be mailed by United
13 States certified or registered mail, or by any other courier or service found by the director to be
14 sufficiently reliable to generate written documentation of mailing, to the last known address of

the person as set forth in any filing made by the public charity or shown in its records, or as otherwise determined by the director. The notice shall be considered a sufficient notice of the division's intention to assess the penalties and a certificate of the person mailing the notice that it has been mailed in accordance with this section, together with a post office, courier or service receipt of such mailing, shall be considered prima facie evidence thereof and shall be admissible in any court of the commonwealth as to the facts contained therein. Refusal of delivery of the mailing shall not be a defense to the receipt of the notice.

(g) The person may, within 60 days from the date of the notice, request an opportunity to be heard by the division to present reasons why he should not be determined to be a responsible officer or agent within the meaning of this section. Upon a finding by the division that the person is a responsible officer or agent and has failed, without good cause, to cause the public charity to comply with the registration requirements of this section, a civil penalty that may be assessed against the public charity may, in the alternative, be assessed against that person and that person shall not be entitled to indemnification or reimbursement by or from the public charity for the civil penalty.

(h) A person aggrieved by the imposition of a civil penalty under this section may bring a civil action in the nature of certiorari under section 4 of chapter 249; provided, however, that the action shall be commenced within 60 days of the date of the notice of the civil penalty. If a person fails to pay the civil penalty provided herein, the attorney general may initiate a civil action in the superior court to enforce such penalty or to obtain any other relief so required. The action by the attorney general may be initiated, if no action is commenced under section 4 of chapter 249, upon the expiration of the 60 day period to bring such action or, if an action is

commenced under said section 4 of said chapter 249, the issuance of a final judicial determination thereon.

SECTION 2. The second sentence of the third paragraph of section 8F of chapter 12, as so appearing, is hereby amended by adding at the end thereof, the following words:- but not more than \$1,000,000; (e) \$500, if more than \$1,000,000 but not more than 10,000,000; (f) \$1,000, if more than \$10,000,000 but not more than \$100,000,000; (g) \$2,000, if more than \$100,000,000.

SECTION 3. Said section 8F of said chapter 12, as so appearing, is hereby further amended by striking out the last paragraph and inserting in place thereof the following 8 paragraphs:-

If a public charity fails to file a written report for any year, the director shall notify the delinquent public charity, or the responsible officer or agent of the public charity, by mailing a notice thereof by United States certified or registered mail, or by any other courier or service found by the director to be sufficiently reliable to generate written documentation of mailing, to its last known address or that of the responsible officer or agent. The notice mailed by the director shall be considered a sufficient notice, and a certificate of the person mailing the notice that it has been mailed in accordance with this section, together with a post office, courier or service receipt of the mailing, shall be considered prima facie evidence thereof and shall be admissible in any court of the commonwealth as to the facts contained therein. Refusal of delivery of the mailing shall not be a defense to the receipt of the notice.

If a complete report is not filed within 30 days of the day such notice is mailed, the director may assess a civil penalty against the public charity unless the failure to file is for good

cause. Notice of the assessment of the penalty shall be mailed to the public charity or responsible officer or agent in the manner provided above for the initial notice. The civil penalty shall be in an amount of up to \$50 per day for each day subsequent to the end of the 30 day period until a complete report is filed; provided, however, that the maximum aggregate penalty assessed with respect to any report shall not be greater than \$10,000.

A public charity aggrieved by the imposition of a civil penalty under this section may bring a civil action in the nature of certiorari under section 4 of chapter 249; provided, however, that the action shall be commenced within 60 days of the date of the notice of the civil penalty. If a public charity fails to pay any civil penalty provided herein, the attorney general may initiate a civil action in the superior court to enforce the penalty or to obtain any other relief so required. The action by the attorney general may be initiated, if no action is commenced under section 4 of chapter 249, upon the expiration of the 60 day period to bring such action or, if an action is commenced under said section 4 of said chapter 249, the issuance of a final judicial determination thereon.

The penalty that may be imposed on the public charity as provided herein may be assessed against a responsible officer or agent of the public charity upon a finding by the director that the responsible officer or agent has the authority to cause the public charity to comply with the requirements of this section but has neglected or refused to do so after notice and demand. The president and treasurer of the public charity, and any person authorized in its by-laws, operating agreement, articles of organization, charter, organizational documents or by resolution of its board of trustees or directors to sign documents or filings on behalf of the public charity, shall be rebuttably presumed to have the authority to cause the public charity to comply with the requirements of this section.

82 Before the assessment, the director shall provide the responsible officer or agent with
83 notice of the director's intention to find the person to be a responsible officer or agent and to
84 assess that person the penalties provided for hereunder. Notice shall be delivered by United
85 States certified or registered mail or by any other courier or service found by the director to be
86 sufficiently reliable to generate written documentation of mailing, to the last known address of
87 the person as set forth in any filing made by the public charity or shown in its records, or as
88 otherwise determined by the director. The notice shall be considered a sufficient notice of the
89 division's intention to assess the penalties and a certificate of the person mailing the notice that it
90 has been mailed in accordance with this section, together with a post office, service or courier
91 receipt of the mailing, shall be considered prima facie evidence thereof and shall be admissible in
92 any court of the commonwealth as to the facts contained therein. Refusal of delivery of that
93 mailing shall not be a defense to the receipt of the notice.

94 The person may, within 60 days from the date of the notice, request an opportunity to be
95 heard by the division to present reasons why he should not be determined to be a responsible
96 officer or agent within the meaning of this section. Upon a finding by the division that the
97 person is a responsible officer or agent and has failed, without good cause, to cause the public
98 charity to comply with the filing requirements of this section, a civil penalty that may be
99 assessed against the public charity may, in the alternative, be assessed against that person and
100 that person shall not be entitled to indemnification or reimbursement by or from the public
101 charity for the civil penalty.

102 A person aggrieved by the imposition of a civil penalty under this section may bring a
103 civil action in the nature of certiorari under section 4 of chapter 249; provided, however, that the
104 action shall be commenced within 60 days of the date of the notice of the civil penalty. If a

person fails to pay the civil penalty provided herein, the attorney general may initiate a civil action in the superior court to enforce the penalty or to obtain any other relief so required. The action by the attorney general may be initiated, if no action is commenced under section 4 of chapter 249, upon the expiration of the 60 day period to bring the action or, if an action is commenced under said section 4 of said chapter 249, the issuance of a final judicial determination thereon.

A public charity, or an officer or agent of a public charity, who willfully makes, executes or files a report false in any material representation shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

SECTION 4. Chapter 68 of the General Laws is hereby amended by striking out section 21.

SECTION 5. Said chapter 68 is hereby further amended by striking out section 23, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 23. Solicitations by professional solicitors and solicitations by commercial co-venturers shall contain, at the time of solicitation, the following disclosures: (1) the name, address and telephone number of the charitable organization and a description of how the contributions raised by the solicitation will be utilized for charitable purposes, or if there is no charitable organization, the name, address and telephone number of the professional solicitor or commercial co-venturer and a description of how the contributions raised by the solicitation will be utilized for charitable purposes; (2) a statement that the solicitation is being conducted by a paid fundraiser; and (3) such other disclosures as required by relevant rules and regulations promulgated under section 29. If the solicitation is for advertising, the disclosure shall also

127 include the geographic distribution and the circulation of the publication in which the advertising
128 will appear.

129 SECTION 6. Section 24 of said chapter 68, as so appearing, is hereby amended by
130 striking out, in lines 9 to 11, inclusive, the words “(a) professional solicitor, three hundred
131 dollars; (b) professional fund-raising counsel, two hundred dollars; (c) commercial co-venturer,
132 fifty dollars”, and inserting in place thereof the following words:- (i) professional solicitor,
133 \$1,000; (ii) professional fundraising counsel, \$400; (iii) commercial co-venturer, \$200.

134 SECTION 7. Said section 24 of said chapter 68, as so appearing, is hereby further
135 amended by striking out, in lines 17 to 18, the words “ten thousand dollars”, and inserting in
136 place thereof, the following figure:-\$25,000.

137 SECTION 8. Said section 24 of said chapter 68, as so appearing, is hereby further
138 amended by inserting after the word “bond.”, in line 27, the following sentence:- A professional
139 solicitor shall conduct solicitations only by or through persons who are covered (i) by a
140 consolidated bond under which the professional solicitor is the principal obligor, or (ii) by a bond
141 under which the person is both the principal obligor and independently registered with the
142 division as a professional solicitor under subsection (a).

143 SECTION 9. Section 32 of said chapter 68, as so appearing, is hereby amended by
144 adding the following subsection: -

145 (f) In addition to any remedies or actions authorized or permitted under subsections (a) to
146 (e), inclusive, if any charitable organization, professional fundraising counsel, commercial co-
147 venturer or professional solicitor violates one or more applicable provisions of sections 19, 22 or
148 24, the director shall notify the delinquent charitable organization, professional fundraising

counsel, commercial co-venturer, professional solicitor, or any responsible officer or agent of any of the foregoing by mailing a notice thereof by United States certified or registered mail or by any other courier or service found by the director to be sufficiently reliable to generate written documentation of delivery, to its last known address or that of the responsible officer or agent. The notice mailed by the division shall be considered a sufficient notice, and a certificate of the person mailing the notice that it has been mailed in accordance with this section, together with a post office, courier or service receipt of the mailing, shall be considered prima facie evidence thereof and shall be admissible in any court of the commonwealth as to the facts contained therein. Refusal of delivery of the mailing shall not be a defense to the receipt of the notice.

(g) If the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor fails to correct the violation within 30 days of the day the notice is mailed, the director may assess a civil penalty against the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor unless the failure is for good cause. Notice of the assessment of the penalty shall be mailed to the charitable organization, professional fundraising counsel, commercial co-venturer, professional solicitor or responsible officer or agent in the manner provided above for the initial notice. For charitable organizations the civil penalty shall be in an amount of up to \$50 per day for each day subsequent to the end of the 30 day period until the violation is cured; provided, however, that the maximum aggregate penalty shall not be greater than \$10,000. For a professional fundraising counsel, commercial co-venturer or professional solicitor, the civil penalty shall be in an amount of up to \$500 per day for each day subsequent to the end of the 30 day period until the violation is cured; provided, however, that the maximum aggregate penalty shall not be greater than \$25,000.

(h) A charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor aggrieved by the imposition of a civil penalty pursuant to this section may bring a civil action in the nature of certiorari under section 4 of chapter 249; provided, however, that the action shall be commenced within 60 days of the date of the notice of the civil penalty. If a charitable organization, professional fundraising counsel, commercial co-venturer, professional solicitor or responsible officer or agent fails to pay any civil penalty provided herein, the attorney general may initiate a civil action in the superior court to enforce the penalty or to obtain any other relief so required. The action by the attorney general may be initiated, if no action is commenced under section 4 of chapter 249, upon the expiration of the 60 day period to bring the action or, if an action is commenced under said section 4 of said chapter 249, the issuance of a final judicial determination thereon.

(i) The penalty that may be imposed on the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor may be assessed against a responsible officer or agent of the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor, upon a finding by the director that the responsible officer or agent has the authority to cause the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor to comply with the requirements of this chapter, but has neglected or refused to do so after notice and demand. The president and treasurer of the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor, and any person authorized in its by-laws, operating agreement, articles of organization, charter, organizational documents or by resolution of its board of trustees or directors to sign documents or filings on behalf of the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor,

shall be rebuttably presumed to have the authority to cause the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor to comply with the requirements of this chapter.

Before the assessment, the director shall provide the responsible officer or agent with notice of the director's intention to find the person to be a responsible officer or agent and to assess that person the penalties provided for hereunder. Notice shall be delivered by United States certified or registered mail or by any other courier or service found by the director to be sufficiently reliable to generate written documentation of mailing, to the last known address of the person as set forth in any filing made by the public charity or shown in its records or as otherwise determined by the director. The notice shall be considered a sufficient notice of the division's intention to assess the penalties and a certificate of the person mailing the notice that it has been mailed in accordance with this section, together with a post office, courier or service receipt of the mailing, shall be considered prima facie evidence thereof and shall be admissible in any court of the commonwealth as to the facts contained therein. Refusal of delivery of the mailing shall not be a defense to the receipt of the notice.

(i) The person may, within 60 days from the date of the notice, request an opportunity to be heard by the division to present reasons why he should not be determined to be a responsible officer or agent within the meaning of this section. Upon a finding by the division that the person is a responsible officer or agent and has failed, without good cause, to cause the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor to comply with the requirements of this chapter, any civil penalty that may be assessed against the charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor may, in the alternative, be assessed against that person. In the case of a

charitable organization, the person shall not be entitled to indemnification or reimbursement by or from the charitable organization for the civil penalty.

(k) A person aggrieved by the imposition of a civil penalty under this section may bring a civil action in the nature of certiorari under section 4 of chapter 249; provided, however, that the action shall be commenced within 60 days of the date of the notice of the civil penalty. If a person fails to pay the civil penalty provided herein, the attorney general may initiate a civil action in the superior court to enforce the penalty or to obtain any other relief so required. The action by the attorney general may be initiated, if no action is commenced under section 4 of chapter 249, upon the expiration of the 60 day period to bring such action or, if an action is commenced under said section 4 of said chapter 249, the issuance of a final judicial determination thereon.

SECTION 10. Chapter 180 of the General Laws is hereby amended by striking out section 11A, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 11A. (a) A charitable corporation constituting a public charity organized under any general or special law, which desires to voluntarily windup and close its affairs, may authorize its dissolution in accordance with this section. This section shall constitute the sole method for the voluntary dissolution of a charitable corporation.

(b) A petition for dissolution shall be authorized by vote of a majority of the corporation's board of directors entitled to vote thereon; provided, however, that if the corporation has 1 or more classes of members, the corporation may, in its articles of incorporation, in a by-law adopted by the incorporators under section 3 or in a by-law adopted by

the members, assign the power of authorization to the members acting by majority vote of the members entitled to vote thereon or provide that the exercise of the power shall be subject to approval by the members.

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

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

SECTION 11. Sections 1, 3, 6, 7 and 9 shall take effect on January 1, 2011.

SECTION 12. Section 2 shall apply only to fiscal years ending on or after December 31, 2010.”; and by inserting the following emergency preamble:

260 Whereas, The deferred operation of this act would tend to defeat its purpose, which
261 is to update forthwith the public charities law, therefore it is hereby declared to be an emergency
262 law, necessary for the immediate preservation of the public convenience;

263 and by striking out the title and inserting in place thereof the following title: “An act
264 further regulating public charities.”.