

**SENATE . . . . . No. 1674**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act relative to tort liability for certain charitable organizations..

*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. Chapter 231 of the General Laws is hereby amended by striking out section,  
2 85K, as appearing in the 2004 Official Edition, and inserting in place thereof the following new  
3 section:-

4 Section 85K. It shall not constitute a defense to any cause of action based on tort  
5 brought against a corporation, trustees of a trust, or members of an association that said  
6 corporation, trust, or association is or at the time the cause of action arose was a charity;  
7 provided, that if the tort was committed in the course of any activity carried on to accomplish  
8 directly the charitable purpose of such corporation, trust, or association, liability in any such  
9 cause of action shall not exceed the sum of twenty thousand dollars exclusive of interest and  
10 costs. Notwithstanding any other provision of this section, a charitable corporation, trust, or  
11 association shall be considered to have conclusively waived any limitation of liability for any tort  
12 to the extent that such charitable corporation, trust or association has insurance covering the  
13 liability for such charitable organization for any tort. The amount of damages in any such case  
14 shall not exceed the aggregate of twenty thousand dollars plus the limits of coverage available

15 under any insurance policy, and the courts shall abate any verdict in any such action to the extent  
16 that it exceeds such aggregate amount.

17           Notwithstanding any limitations existing under Massachusetts law, the liability of  
18 charitable corporations, trustees of charitable trust, or members of charitable associations shall be  
19 unlimited and not be subject to the limitations set forth in this section or any provision under  
20 Massachusetts law if the tort was committed 1) in the course of activities primarily commercial  
21 in character even though carried on to obtain revenue to be used for charitable purposes, or 2) in  
22 the course of criminal conduct or in the course of activities designed, intended, or which had the  
23 effect, to conceal criminal conduct.

24           The provisions of this section shall be effective immediately and shall be applicable  
25 to (a) all tortious conduct whether occurring prior or subsequent to the effective date of this  
26 section, and (b) all pending actions for which final judgment has not entered.