

SENATE No. 2117

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 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 by United States certified or registered mail, or by any other
12 courier or service found by the director to be sufficiently reliable to generate written
13 documentation of mailing, to its last known address or that of any such responsible officer or

14 agent. Such notice mailed by the director shall be deemed a sufficient notice, and a certificate of
15 the person mailing such notice that it has been mailed in accordance with this section, together
16 with a Post Office, courier or service receipt of such mailing, shall be deemed prima facie
17 evidence thereof and shall be admissible in any court of the commonwealth as to the facts
18 contained therein. Refusal of delivery shall not be a defense to the receipt of such notice. If a
19 complete registration is not filed within thirty days of the day such notice is mailed, the director
20 may assess a civil penalty against the public charity unless such failure to register is for good
21 cause. Notice of the assessment of such penalty shall be mailed to the public charity or
22 responsible officer or agent in the manner provided above for the initial notice. Such civil
23 penalties shall each be in an amount of up to fifty dollars per day for each day subsequent to the
24 end of such thirty day period until a complete registration is filed; provided, however, that the
25 maximum penalty for failure to register shall be no greater than ten thousand dollars. A public
26 charity aggrieved by the imposition of a civil penalty pursuant to this section may bring a civil
27 action in the nature of certiorari pursuant to section 4 of chapter 249; provided, however, that
28 such action shall be commenced within sixty days of the date of the notice of the civil penalty. If
29 any public charity shall fail to pay any civil penalty provided herein, the attorney general may
30 initiate a civil action in the superior court to enforce such penalty or to obtain any other relief so
31 required. Such action by the attorney general may be initiated, if no action is commenced under
32 section 4 of chapter 249, upon the expiration of the sixty day period to bring such action or, if an
33 action is commenced under section 4 of chapter 249, the issuance of a final judicial
34 determination thereon,

35 Any such penalty that may be imposed on the public charity as above provided may be
36 assessed against a responsible officer or agent of the public charity, upon a finding by the

37 director that such responsible officer or agent has the authority to cause the public charity to
38 comply with the registration requirements of this section but has neglected or refused to do so
39 after notice and demand. The president and treasurer of the public charity, and any person
40 authorized in its by-laws, operating agreement, articles of organization, charter, organizational
41 documents or by resolution of its board of trustees or directors to sign documents or filings on
42 behalf of the public charity, shall be rebuttably presumed to have the authority to cause the
43 public charity to comply with the registration requirements of this section. Prior to any such
44 assessment, the director shall provide such responsible officer or agent with notice of the
45 director's intention to find such person to be a responsible officer or agent and to assess such
46 person the penalties provided for hereunder. Notice shall be mailed via United States certified or
47 registered mail, or by any other courier or service found by the director to be sufficiently reliable
48 to generate written documentation of mailing, to the last known address of such person as set
49 forth in any filing made by the public charity or shown in its records, or as otherwise determined
50 by the director. Such notice shall be deemed a sufficient notice of the division's intention to
51 assess such penalties and a certificate of the person mailing such notice that it has been mailed in
52 accordance with this section, together with a Post Office, courier or service receipt of such
53 mailing, shall be deemed prima facie evidence thereof and shall be admissible in any court of the
54 commonwealth as to the facts contained therein. Refusal of delivery of such mailing shall not be
55 a defense to the receipt of such notice. Such person may, within sixty days from the date of such
56 notice, request an opportunity to be heard by the division to present reasons why he or she should
57 not be determined to be a responsible officer or agent within the meaning of this section. Upon a
58 finding by the division that such person is a responsible officer or agent and has failed, without
59 good cause, to cause the public charity to meet the registration requirements of this section, any

60 civil penalty that may be assessed against the public charity may be assessed against such person
61 and such person shall not be entitled to indemnification or reimbursement by or from the public
62 charity for such civil penalty. A person aggrieved by the imposition of a civil penalty pursuant
63 to this section may bring a civil action in the nature of certiorari pursuant to section 4 of chapter
64 249; provided, however, that such action shall be commenced within sixty days of the date of the
65 notice of the civil penalty. If any person shall fail to pay any civil penalty provided herein, the
66 attorney general may initiate a civil action in the superior court to enforce such penalty or to
67 obtain any other relief so required. Such action by the attorney general may be initiated, if no
68 action is commenced under section 4 of chapter 249, upon the expiration of the sixty day period
69 to bring such action or, if an action is commenced under section 4 of chapter 249, the issuance of
70 a final judicial determination thereon.

71 SECTION 2. Section 8F of chapter 12 of the General Laws, as so appearing, is hereby
72 amended by inserting after the words “if more than five hundred thousand dollars” in lines 43-
73 44, the following words:- “but not more than one million dollars; (e) five hundred dollars, if
74 more than one million but not more than ten million; (f) one thousand dollars, if more that ten
75 million but not more than one hundred million; (g) two thousand dollars, if more than one
76 hundred million.”

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

79 “If any public charity fails to file a written report for any year, the director shall notify the
80 delinquent public charity, or any responsible officer or agent of such public charity, by mailing a
81 notice thereof to by United States certified or registered mail or by any other courier or service

82 found by the director to be sufficiently reliable to generate written documentation of mailing, to
83 its last known address or that of any such responsible officer or agent. Such notice mailed by the
84 director shall be deemed a sufficient notice, and a certificate of the person mailing such notice
85 that it has been mailed in accordance with this section, together with a Post Office, courier or
86 service receipt of such mailing, shall be deemed prima facie evidence thereof and shall be
87 admissible in any court of the commonwealth as to the facts contained therein. Refusal of
88 delivery of such mailing shall not be a defense to the receipt of such notice. If a complete report
89 is not filed within thirty days of the day such notice is mailed, the director may assess a civil
90 penalty against the public charity unless such failure to file is for good cause. Notice of the
91 assessment of such penalty shall be mailed to the public charity or responsible officer or agent in
92 the manner provided above for the initial notice. Such civil penalties shall each be in an amount
93 of up to fifty dollars per day for each day subsequent to end of such thirty day period until a
94 complete report is filed; provided, however, that the maximum penalties assessed with respect to
95 any report shall be no greater than ten thousand dollars. Any public charity aggrieved by the
96 imposition of a civil penalty pursuant to this section may bring a civil action in the nature of
97 certiorari pursuant to section 4 of chapter 249; provided, however, that such action shall be
98 commenced within sixty days of the date of the notice of the civil penalty. If any public charity
99 shall fail to pay any civil penalty provided herein the attorney general may initiate a civil action
100 in the superior court to enforce such penalty or to obtain any other relief so required. Such
101 action by the attorney general may be initiated, if no action is commenced under section 4 of
102 chapter 249, upon the expiration of the sixty day period to bring such action or, if an action is
103 commenced under section 4 of chapter 249, the issuance of a final judicial determination
104 thereon,”

105 Any such penalty that may be imposed on the public charity as above provided may be
106 assessed against a responsible officer or agent of the public charity upon a finding by the director
107 that such responsible officer or agent has the authority to cause the public charity to comply with
108 the requirements of this section but has neglected or refused to do so after notice and demand.
109 The president and treasurer of the public charity, and any person authorized in its by-laws,
110 operating agreement, articles of organization, charter, organizational documents or by resolution
111 of its board of trustees or directors to sign documents or filings on behalf of the public charity,
112 shall be rebuttably presumed to have the authority to cause the public charity to comply with the
113 requirements of this section. Prior to any such assessment, the director shall provide such
114 responsible officer or agent with notice of the director's intention to find such person to be a
115 responsible officer or agent and to assess such person the penalties provided for hereunder.
116 Notice shall be delivered via United States certified or registered mail or by any other courier or
117 service found by the director to be sufficiently reliable to generate written documentation of
118 mailing, to the last known address of such person as set forth in any filing made by the public
119 charity or shown in its records, or as otherwise determined by the director. Such notice shall be
120 deemed a sufficient notice of the division's intention to assess such penalties and a certificate of
121 the person mailing such notice that it has been mailed in accordance with this section, together
122 with a Post Office, service or courier receipt of such mailing, shall be deemed prima facie
123 evidence thereof and shall be admissible in any court of the commonwealth as to the facts
124 contained therein. Refusal of delivery of such mailing shall not be a defense to the receipt of
125 such notice. Such person may, within sixty days from the date of such notice, request an
126 opportunity to be heard by the division to present reasons why he or she should not be
127 determined to be a responsible officer or agent within the meaning of this section. Upon a

128 finding by the division that such person is a responsible officer or agent and has failed, without
129 good cause, to cause the public charity to meet the filing requirements of this section, any civil
130 penalty that may be assessed against the public charity may be assessed against such person and
131 such person shall not be entitled to indemnification or reimbursement by or from the public
132 charity for such civil penalty. A person aggrieved by the imposition of a civil penalty pursuant
133 to this section may bring a civil action in the nature of certiorari pursuant to section 4 of chapter
134 249; provided, however, that such action shall be commenced within sixty days of the date of the
135 notice of the civil penalty. If any person shall fail to pay any civil penalty provided herein, the
136 attorney general may initiate a civil action in the superior court to enforce such penalty or to
137 obtain any other relief so required. Such action by the attorney general may be initiated, if no
138 action is commenced under section 4 of chapter 249, upon the expiration of the sixty day period
139 to bring such action or, if an action is commenced under section 4 of chapter 249, the issuance of
140 a final judicial determination thereon.”

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

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

146 SECTION 5. Section 23 of chapter 68 of the General Laws is hereby amended by
147 striking out section 23, as so appearing, and inserting in place thereof the following section:

148 “Section 23. All solicitations by professional solicitors and all solicitations by
149 commercial co-venturers shall contain, at the time of solicitation, the following disclosures: (1)

150 the name, address and telephone number of the charitable organization and a description of how
151 the contributions raised by the solicitation will be utilized for charitable purposes, or if there is
152 no charitable organization, the name, address and telephone number of the professional solicitor
153 or commercial co-venturer and a description of how the contributions raised by the solicitation
154 will be utilized for charitable purposes; (2) the statement that the solicitation is being conducted
155 by a “paid fund-raiser”; and (3) such other disclosures as required by relevant rules and
156 regulations promulgated under section twenty-nine. If the solicitation is for advertising, the
157 disclosure shall also include the geographic distribution and the circulation of the publication in
158 which the advertising will appear.”

159 SECTION 6. Section 24 of chapter 68 of the General Laws, as so appearing, is hereby
160 amended by striking the words “(a) professional solicitor, three hundred dollars; (b) professional
161 fund-raising counsel, two hundred dollars; (c) commercial co-venturer, fifty dollars.”, in lines 9-
162 11, and inserting the following words:-(i) professional solicitor, one thousand dollars; (ii)
163 professional fund-raising counsel, four hundred dollars; (iii) commercial co-venturer, two
164 hundred dollars.”

165 SECTION 7. Section 24 of chapter 68 of the General Laws, as so appearing, is hereby
166 amended by striking the word “ten”, in line 17, and inserting the following word:-“twenty five.”

167 SECTION 8. Section 24 of chapter 68 of the General Laws, as so appearing, is hereby
168 amended by inserting after the words “exceed the sum of said bond.”, in line 27, the following
169 words:-“ A professional solicitor shall conduct solicitations only by or through persons who are
170 covered (i) by a consolidated bond under which such professional solicitor is the principal

171 obligor, or (ii) by a bond under which such person is both the principal obligor and
172 independently registered with the division as a professional solicitor under clause (a) above.”

173 SECTION 9. Section 32 of chapter 68 of the General Laws, as so appearing, is hereby
174 amended by adding after subsection (e) the following subsection: -

175 “(f) In addition to any remedies or actions authorized or permitted pursuant to
176 subsections (a) through (e) of this section, if any charitable organization, professional fundraising
177 counsel, commercial co-venturer or professional solicitor violates one or more applicable
178 provisions of sections 19, 22 or 24 of chapter 68, the director shall notify the delinquent
179 charitable organization, professional fundraising counsel, commercial co-venturer, professional
180 solicitor, or any responsible officer or agent of any of the foregoing by mailing a notice thereof
181 by United States certified or registered mail or by any other courier or service found by the
182 director to be sufficiently reliable to generate written documentation of delivery, to its last
183 known address or that of any such responsible officer or agent. Such notice mailed by the
184 division shall be deemed a sufficient notice, and a certificate of the person mailing such notice
185 that it has been mailed in accordance with this section, together with a Post Office, courier or
186 service receipt of such mailing, shall be deemed prima facie evidence thereof and shall be
187 admissible in any court of the commonwealth as to the facts contained therein. Refusal of
188 delivery of such mailing shall not be a defense to the receipt of such notice. If the charitable
189 organization, professional fundraising counsel, commercial co-venturer or professional solicitor
190 fails to correct any such violation within thirty days of the day such notice is mailed, the director
191 may assess a civil penalty against the charitable organization, professional fundraising counsel,
192 commercial co-venturer or professional solicitor unless such failure is for good cause. Notice of
193 the assessment of such penalty shall be mailed to the charitable organization, professional

194 fundraising counsel, commercial co-venturer, professional solicitor or responsible officer or
195 agent in the manner provided above for the initial notice. For charitable organizations such civil
196 penalty shall be in an amount of up to fifty dollars per day for each day subsequent to the end of
197 such thirty day period until such violation is cured; provided, however, that the maximum
198 penalty shall be no greater than ten thousand dollars. For a professional fund raising counsel,
199 commercial co-venturer or professional solicitor such civil penalty shall be in an amount of up to
200 five hundred dollars per day for each day subsequent to the end of such thirty day period until
201 such violation is cured; provided, however, that the maximum penalty shall be no greater than
202 twenty five thousand dollars. Any charitable organization, professional fundraising counsel,
203 commercial co-venturer or professional solicitor aggrieved by the imposition of a civil penalty
204 pursuant to this section may bring a civil action in the nature of certiorari pursuant to section 4 of
205 chapter 249; provided, however, that such action shall be commenced within sixty days of the
206 date of the notice of the civil penalty. If any charitable organization, professional fundraising
207 counsel, commercial co-venturer, professional solicitor or responsible officer or agent shall fail
208 to pay any civil penalty provided herein, the attorney general may initiate a civil action in the
209 superior court to enforce such penalty or to obtain any other relief so required. Such action by the
210 attorney general may be initiated, if no action is commenced under section 4 of chapter 249,
211 upon the expiration of the sixty day period to bring such action or, if an action is commenced
212 under section 4 of chapter 249, the issuance of a final judicial determination thereon.”

213 Any such penalty that may be imposed on the charitable organization, professional
214 fundraising counsel, commercial co-venturer or professional solicitor may be assessed against a
215 responsible officer or agent of the charitable organization, professional fundraising counsel,
216 commercial co-venturer or professional solicitor, upon a finding by the director that such

217 responsible officer or agent has the authority to cause the charitable organization, professional
218 fundraising counsel, commercial co-venturer or professional solicitor to comply with the
219 requirements of this chapter but has neglected or refused to do so after notice and demand. The
220 president and treasurer of the charitable organization, professional fundraising counsel,
221 commercial co-venturer or professional solicitor, and any person authorized in its by-laws,
222 operating agreement, articles of organization, charter, organizational documents or by resolution
223 of its board of trustees or directors to sign documents or filings on behalf of the charitable
224 organization, professional fundraising counsel, commercial co-venturer or professional solicitor,
225 shall be rebuttably presumed to have the authority to cause the charitable organization,
226 professional fundraising counsel, commercial co-venturer or professional solicitor to comply
227 with the requirements of this chapter. Prior to any such assessment, the director shall provide
228 such responsible officer or agent with notice of the director's intention to find such person to be
229 a responsible officer or agent and to assess such person the penalties provided for hereunder.
230 Notice shall be delivered via United States certified or registered mail or by any other courier or
231 service found by the director to be sufficiently reliable to generate written documentation of
232 mailing, to the last known address of such person as set forth in any filing made by the public
233 charity or shown in its records or as otherwise determined by the director. Such notice shall be
234 deemed a sufficient notice of the division's intentions to assess such penalties and a certificate of
235 the person mailing such notice that it has been mailed in accordance with this section, together
236 with a Post Office, courier or service receipt of such mailing, shall be deemed prima facie
237 evidence thereof and shall be admissible in any court of the commonwealth as to the facts
238 contained therein. Refusal of delivery of such mailing shall not be a defense to the receipt of
239 such notice. Such person may, within sixty days from the date of such notice, request an

240 opportunity to be heard by the division to present reasons why he or she should not be
241 determined to be a responsible officer or agent within the meaning of this section. Upon a
242 finding by the division that such person is a responsible officer or agent and has failed, without
243 good cause, to cause the charitable organization, professional fundraising counsel, commercial
244 co-venturer or professional solicitor to comply with the requirements of this chapter, any civil
245 penalty that may be assessed against the charitable organization, professional fundraising
246 counsel, commercial co-venturer or professional solicitor may be assessed against such person.
247 In the case of a charitable organization, such person shall not be entitled to indemnification or
248 reimbursement by or from the charitable organization for such civil penalty. A person aggrieved
249 by the imposition of a civil penalty pursuant to this section may bring a civil action in the nature
250 of certiorari pursuant to section 4 of chapter 249; provided, however, that such action shall be
251 commenced within sixty days of the date of the notice of the civil penalty. If any person shall
252 fail to pay any civil penalty provided herein, the attorney general may initiate a civil action in the
253 superior court to enforce such penalty or to obtain any other relief so required. Such action by
254 the attorney general may be initiated, if no action is commenced under section 4 of chapter 249,
255 upon the expiration of the sixty day period to bring such action or, if an action is commenced
256 under section 4 of chapter 249, the issuance of a final judicial determination thereon,

257 SECTION 10. Section 11A of chapter 180 of the General Laws, as so appearing, is
258 hereby amended by striking the first paragraph and inserting the following:-

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

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

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

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

284 SECTION 11. Sections 1, 3, 5, 6, 7, 8 and 9 shall be effective January 1, 2010. All other
285 sections shall be effective upon passage, provided, however, that the fee changes set forth in
286 Section 2 shall be effective only for reporting years ending on or after July 1, 2009.