

SENATE, No. 2117

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 of
3 trust,”

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

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

9 “If any public charity fails to comply with the requirements of this section, the director shall
10 notify the delinquent public charity, or any responsible officer or agent of such public charity, by mailing
11 a notice thereof by United States certified or registered mail, or by any other courier or service found by
12 the director to be sufficiently reliable to generate written documentation of mailing, to its last known
13 address or that of any such responsible officer or agent. Such notice mailed by the director shall be

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

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

39 authority to cause the public charity to comply with the registration requirements of this section. Prior to
40 any such assessment, the director shall provide such responsible officer or agent with notice of the
41 director's intention to find such person to be a responsible officer or agent and to assess such person the
42 penalties provided for hereunder. Notice shall be mailed via United States certified or registered mail, or
43 by any other courier or service found by the director to be sufficiently reliable to generate written
44 documentation of mailing, to the last known address of such person as set forth in any filing made by the
45 public charity or shown in its records, or as otherwise determined by the director. Such notice shall be
46 deemed a sufficient notice of the division's intention to assess such penalties and a certificate of the
47 person mailing such notice that it has been mailed in accordance with this section, together with a Post
48 Office, courier or service receipt of such mailing, shall be deemed prima facie evidence thereof and shall
49 be admissible in any court of the commonwealth as to the facts contained therein. Refusal of delivery of
50 such mailing shall not be a defense to the receipt of such notice. Such person may, within sixty days from
51 the date of such notice, request an opportunity to be heard by the division to present reasons why he or
52 she should not be determined to be a responsible officer or agent within the meaning of this section.
53 Upon a finding by the division that such person is a responsible officer or agent and has failed, without
54 good cause, to cause the public charity to meet the registration requirements of this section, any civil
55 penalty that may be assessed against the public charity may be assessed against such person and such
56 person shall not be entitled to indemnification or reimbursement by or from the public charity for such
57 civil penalty. A person aggrieved by the imposition of a civil penalty pursuant to this section may bring a
58 civil action in the nature of certiorari pursuant to section 4 of chapter 249; provided, however, that such
59 action shall be commenced within sixty days of the date of the notice of the civil penalty. If any person
60 shall fail to pay any civil penalty provided herein, the attorney general may initiate a civil action in the
61 superior court to enforce such penalty or to obtain any other relief so required. Such action by the
62 attorney general may be initiated, if no action is commenced under section 4 of chapter 249, upon the
63 expiration of the sixty day period to bring such action or, if an action is commenced under section 4 of
64 chapter 249, the issuance of a final judicial determination thereon.

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

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

72 “If any public charity fails to file a written report for any year, the director shall notify the
73 delinquent public charity, or any responsible officer or agent of such public charity, by mailing a notice
74 thereof to by United States certified or registered mail or by any other courier or service found by the
75 director to be sufficiently reliable to generate written documentation of mailing, to its last known address
76 or that of any such responsible officer or agent. Such notice mailed by the director shall be deemed a
77 sufficient notice, and a certificate of the person mailing such notice that it has been mailed in accordance
78 with this section, together with a Post Office, courier or service receipt of such mailing, shall be deemed
79 prima facie evidence thereof and shall be admissible in any court of the commonwealth as to the facts
80 contained therein. Refusal of delivery of such mailing shall not be a defense to the receipt of such notice.
81 If a complete report is not filed within thirty days of the day such notice is mailed, the director may assess
82 a civil penalty against the public charity unless such failure to file is for good cause. Notice of the
83 assessment of such penalty shall be mailed to the public charity or responsible officer or agent in the
84 manner provided above for the initial notice. Such civil penalties shall each be in an amount of up to fifty
85 dollars per day for each day subsequent to end of such thirty day period until a complete report is filed;
86 provided, however, that the maximum penalties assessed with respect to any report shall be no greater
87 than ten thousand dollars. Any public charity aggrieved by the imposition of a civil penalty pursuant to
88 this section may bring a civil action in the nature of certiorari pursuant to section 4 of chapter 249;
89 provided, however, that such action shall be commenced within sixty days of the date of the notice of the

90 civil penalty. If any public charity shall fail to pay any civil penalty provided herein the attorney general
91 may initiate a civil action in the superior court to enforce such penalty or to obtain any other relief so
92 required. Such action by the attorney general may be initiated, if no action is commenced under section 4
93 of chapter 249, upon the expiration of the sixty day period to bring such action or, if an action is
94 commenced under section 4 of chapter 249, the issuance of a final judicial determination thereon,”

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

115 determined to be a responsible officer or agent within the meaning of this section. Upon a finding by the
116 division that such person is a responsible officer or agent and has failed, without good cause, to cause the
117 public charity to meet the filing requirements of this section, any civil penalty that may be assessed
118 against the public charity may be assessed against such person and such person shall not be entitled to
119 indemnification or reimbursement by or from the public charity for such civil penalty. A person
120 aggrieved by the imposition of a civil penalty pursuant to this section may bring a civil action in the
121 nature of certiorari pursuant to section 4 of chapter 249; provided, however, that such action shall be
122 commenced within sixty days of the date of the notice of the civil penalty. If any person shall fail to pay
123 any civil penalty provided herein, the attorney general may initiate a civil action in the superior court to
124 enforce such penalty or to obtain any other relief so required. Such action by the attorney general may be
125 initiated, if no action is commenced under section 4 of chapter 249, upon the expiration of the sixty day
126 period to bring such action or, if an action is commenced under section 4 of chapter 249, the issuance of a
127 final judicial determination thereon.”

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

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

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

135 “Section 23. All solicitations by professional solicitors and all solicitations by commercial co-venturers
136 shall contain, at the time of solicitation, the following disclosures: (1) the name, address and telephone
137 number of the charitable organization and a description of how the contributions raised by the solicitation
138 will be utilized for charitable purposes, or if there is no charitable organization, the name, address and

139 telephone number of the professional solicitor or commercial co-venturer and a description of how the
140 contributions raised by the solicitation will be utilized for charitable purposes; (2) the statement that the
141 solicitation is being conducted by a “paid fund-raiser”; and (3) such other disclosures as required by
142 relevant rules and regulations promulgated under section twenty-nine. If the solicitation is for advertising,
143 the disclosure shall also include the geographic distribution and the circulation of the publication in which
144 the advertising will appear.”

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

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

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

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

160 “(f) In addition to any remedies or actions authorized or permitted pursuant to subsections (a)
161 through (e) of this section, if any charitable organization, professional fundraising counsel, commercial
162 co-venturer or professional solicitor violates one or more applicable provisions of sections 19, 22 or 24 of

163 chapter 68, the director shall notify the delinquent charitable organization, professional fundraising
164 counsel, commercial co-venturer, professional solicitor, or any responsible officer or agent of any of the
165 foregoing by mailing a notice thereof by United States certified or registered mail or by any other courier
166 or service found by the director to be sufficiently reliable to generate written documentation of delivery,
167 to its last known address or that of any such responsible officer or agent. Such notice mailed by the
168 division shall be deemed a sufficient notice, and a certificate of the person mailing such notice that it has
169 been mailed in accordance with this section, together with a Post Office, courier or service receipt of such
170 mailing, shall be deemed prima facie evidence thereof and shall be admissible in any court of the
171 commonwealth as to the facts contained therein. Refusal of delivery of such mailing shall not be a defense
172 to the receipt of such notice. If the charitable organization, professional fundraising counsel, commercial
173 co-venturer or professional solicitor fails to correct any such violation within thirty days of the day such
174 notice is mailed, the director may assess a civil penalty against the charitable organization, professional
175 fundraising counsel, commercial co-venturer or professional solicitor unless such failure is for good
176 cause. Notice of the assessment of such penalty shall be mailed to the charitable organization,
177 professional fundraising counsel, commercial co-venturer, professional solicitor or responsible officer or
178 agent in the manner provided above for the initial notice. For charitable organizations such civil penalty
179 shall be in an amount of up to fifty dollars per day for each day subsequent to the end of such thirty day
180 period until such violation is cured; provided, however, that the maximum penalty shall be no greater than
181 ten thousand dollars. For a professional fund raising counsel, commercial co-venturer or professional
182 solicitor such civil penalty shall be in an amount of up to five hundred dollars per day for each day
183 subsequent to the end of such thirty day period until such violation is cured; provided, however, that the
184 maximum penalty shall be no greater than twenty five thousand dollars. Any charitable organization,
185 professional fundraising counsel, commercial co-venturer or professional solicitor aggrieved by the
186 imposition of a civil penalty pursuant to this section may bring a civil action in the nature of certiorari
187 pursuant to section 4 of chapter 249; provided, however, that such action shall be commenced within sixty
188 days of the date of the notice of the civil penalty. If any charitable organization, professional fundraising

189 counsel, commercial co-venturer, professional solicitor or responsible officer or agent shall fail to pay any
190 civil penalty provided herein, the attorney general may initiate a civil action in the superior court to
191 enforce such penalty or to obtain any other relief so required. Such action by the attorney general may be
192 initiated, if no action is commenced under section 4 of chapter 249, upon the expiration of the sixty day
193 period to bring such action or, if an action is commenced under section 4 of chapter 249, the issuance of a
194 final judicial determination thereon.”

195 Any such penalty that may be imposed on the charitable organization, professional fundraising
196 counsel, commercial co-venturer or professional solicitor may be assessed against a responsible officer or
197 agent of the charitable organization, professional fundraising counsel, commercial co-venturer or
198 professional solicitor, upon a finding by the director that such responsible officer or agent has the
199 authority to cause the charitable organization, professional fundraising counsel, commercial co-venturer
200 or professional solicitor to comply with the requirements of this chapter but has neglected or refused to do
201 so after notice and demand. The president and treasurer of the charitable organization, professional
202 fundraising counsel, commercial co-venturer or professional solicitor, and any person authorized in its by-
203 laws, operating agreement, articles of organization, charter, organizational documents or by resolution of
204 its board of trustees or directors to sign documents or filings on behalf of the charitable organization,
205 professional fundraising counsel, commercial co-venturer or professional solicitor, shall be rebuttably
206 presumed to have the authority to cause the charitable organization, professional fundraising counsel,
207 commercial co-venturer or professional solicitor to comply with the requirements of this chapter. Prior to
208 any such assessment, the director shall provide such responsible officer or agent with notice of the
209 director’s intention to find such person to be a responsible officer or agent and to assess such person the
210 penalties provided for hereunder. Notice shall be delivered via United States certified or registered mail
211 or by any other courier or service found by the director to be sufficiently reliable to generate written
212 documentation of mailing, to the last known address of such person as set forth in any filing made by the
213 public charity or shown in its records or as otherwise determined by the director. Such notice shall be

214 deemed a sufficient notice of the division's intentions to assess such penalties and a certificate of the
215 person mailing such notice that it has been mailed in accordance with this section, together with a Post
216 Office, courier or service receipt of such mailing, shall be deemed prima facie evidence thereof and shall
217 be admissible in any court of the commonwealth as to the facts contained therein. Refusal of delivery of
218 such mailing shall not be a defense to the receipt of such notice. Such person may, within sixty days from
219 the date of such notice, request an opportunity to be heard by the division to present reasons why he or
220 she should not be determined to be a responsible officer or agent within the meaning of this section.
221 Upon a finding by the division that such person is a responsible officer or agent and has failed, without
222 good cause, to cause the charitable organization, professional fundraising counsel, commercial co-
223 venturer or professional solicitor to comply with the requirements of this chapter, any civil penalty that
224 may be assessed against the charitable organization, professional fundraising counsel, commercial co-
225 venturer or professional solicitor may be assessed against such person. In the case of a charitable
226 organization, such person shall not be entitled to indemnification or reimbursement by or from the
227 charitable organization for such civil penalty. A person aggrieved by the imposition of a civil penalty
228 pursuant to this section may bring a civil action in the nature of certiorari pursuant to section 4 of chapter
229 249; provided, however, that such action shall be commenced within sixty days of the date of the notice
230 of the civil penalty. If any person shall fail to pay any civil penalty provided herein, the attorney general
231 may initiate a civil action in the superior court to enforce such penalty or to obtain any other relief so
232 required. Such action by the attorney general may be initiated, if no action is commenced under section 4
233 of chapter 249, upon the expiration of the sixty day period to bring such action or, if an action is
234 commenced under section 4 of chapter 249, the issuance of a final judicial determination thereon,

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

237 A charitable corporation constituting a public charity organized under the provisions of general or
238 special law, which desires to voluntarily windup and close its affairs, may authorize its dissolution in

239 accordance with the provisions of this section. The provisions of this section shall constitute the sole
240 method for the voluntary dissolution of any such charitable corporation.

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

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

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

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