

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

**Martha M. Walz**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act to update public charities law.**

\_\_\_\_\_

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Linda Dorcena Forry	12th Suffolk
Martha M. Walz	8th Suffolk
Martha Coakley	

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

4

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

8

9 Provided, further, that Section 8E of chapter 12, as so appearing, is hereby amended by striking out the  
10 last paragraph and inserting in place thereof the following:

11

12 If any public charity fails to comply with the requirements of this section, the director shall notify the  
13 delinquent public charity, or any responsible officer or agent of such public charity, by mailing a notice  
14 thereof to its last known address or that of any such responsible officer or agent. Such notice mailed by  
15 the director shall be deemed a sufficient notice, and a certificate of the person mailing such notice that it  
16 has been mailed in accordance with this section shall be deemed prima facie evidence thereof and shall be  
17 admissible in any court of the commonwealth as to the facts contained therein. If a complete registration  
18 is not filed within thirty days of the day such notice is mailed, the director may assess a civil penalty  
19 against the public charity and may further assess a separate civil penalty against any responsible officer or  
20 agent receiving such notice who fails, without good cause, to cause the filing of a complete registration.  
21 Such civil penalties shall each be in the amount of fifty dollars per day for each day subsequent to the end

22 of such thirty day period until such report is filed; provided, however, that the maximum penalty for  
23 failure to register shall be no greater than ten thousand dollars. Any public charity, or the responsible  
24 officer or agent of 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 60 days of the date of the notice of the civil penalty.  
27 If any public charity, or the responsible officer or agent of a public charity shall fail to pay any civil  
28 penalty provided herein within 21 days of the date of imposition of such penalty, excluding any time  
29 during which judicial review pursuant to section 4 of chapter 249 remains pending, the division may  
30 initiate a civil action in the superior court to enforce such penalty or to obtain any other relief so required.

31

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

37

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

40 If any public charity fails to file a written report for any year, the director shall notify the delinquent  
41 public charity, or the responsible officer or agent of such public charity, by mailing a notice thereof to its  
42 last known address or that of any responsible officer or agent. Such notice mailed by the director shall be  
43 deemed a sufficient notice, and a certificate of the person mailing such notice that it has been mailed in  
44 accordance with this section shall be deemed prima facie evidence thereof and shall be admissible in any  
45 court of the commonwealth as to the facts contained therein. If a complete report is not filed within thirty  
46 days of the day such notice is mailed, the director may assess a civil penalty against the public charity and  
47 may further assess a separate civil penalty against any responsible officer or agent receiving such notice  
48 who fails, without good cause, to cause the filing of a complete report. Such civil penalties shall each be  
49 in the amount of fifty dollars per day for each day subsequent to end of such thirty day period until a  
50 complete report is filed; provided, however, that the maximum penalties assessed with respect to any  
51 report shall be no greater than ten thousand dollars. Any public charity, or the responsible officer or agent  
52 of a public charity, aggrieved by the imposition of a civil penalty pursuant to this section may bring a civil  
53 action in the nature of certiorari pursuant to section 4 of chapter 249; provided, however, that such action  
54 shall be commenced within 60 days of the date of the assessment of the civil penalty. If any public  
55 charity, or the responsible officer or agent of a public charity shall fail to pay any civil penalty provided  
56 herein within 21 days of the date of imposition of such penalty, excluding any time during which judicial  
57 review pursuant to section 4 of chapter 249 remains pending, the attorney general may initiate a civil  
58 action in the superior 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, executes or files a  
60 report false in any material representation shall be punished by a fine of not more than five thousand  
61 dollars or by imprisonment for not more than one year or both.

62

63 **SECTION 4.** Section 21 of chapter 68 of the General Laws, as appearing in the 2006 official edition, is  
64 hereby repealed.

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

68

69 **Section 23.** Solicitation disclosures

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

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

86

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

89

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

96

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

99

100 (f) In addition to any remedies or actions authorized or permitted pursuant to subsections (a) through (e)  
101 of this section, if any charitable organization, professional fundraising counsel, commercial co-venturer or  
102 professional solicitor violates one or more applicable provisions of sections 19 through 35 of chapter 68,  
103 the director shall notify the delinquent charitable organization, professional fundraising counsel,  
104 commercial co-venturer, professional solicitor, or any responsible officer or agent of any of the foregoing  
105 by mailing a notice thereof to its last known address or that of any such responsible officer or agent. Such  
106 notice mailed by the division shall be deemed a sufficient notice, and a certificate of the person mailing  
107 such notice that it has been mailed in accordance with this section shall be deemed prima facie evidence  
108 thereof and shall be admissible in any court of the commonwealth as to the facts contained therein. If the  
109 charitable organization, professional fundraising counsel, commercial co-venturer or professional solicitor  
110 fails to correct any such violation within thirty days of the day such notice is mailed, the director may  
111 assess a civil penalty against the charitable organization, professional fundraising counsel, commercial  
112 co-venturer or professional solicitor and may further assess a separate civil penalty against any  
113 responsible officer or agent receiving such notice who fails, without good cause, to cause the violation to  
114 be corrected. Such civil penalty shall be in the amount of fifty dollars per day for each day subsequent to  
115 the end of such thirty day period until such violation is cured; provided, however, that the maximum  
116 penalty shall be no greater than ten thousand dollars. Any charitable organization, professional  
117 fundraising counsel, commercial co-venturer, professional solicitor, or responsible officer or agent  
118 aggrieved by the imposition of a civil penalty pursuant to this section may bring a civil action in the  
119 nature of certiorari pursuant to section 4 of chapter 249; provided, however, that such action shall be  
120 commenced within 60 days of the date of the notice of the civil penalty. If any charitable organization,  
121 professional fundraising counsel, commercial co-venturer, professional solicitor, or responsible officer or  
122 agent shall fail to pay any civil penalty provided herein within 21 days of the date of imposition of such  
123 penalty, excluding any time during which judicial review pursuant to section 4 of chapter 249 remains  
124 pending, the division may initiate a civil action in the superior court to enforce such penalty or to obtain  
125 any other relief so required.

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

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

134

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

141

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

148

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