

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Creem

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 relative to tort liability for certain charitable organizations.

PETITION OF:

NAME:

Ms. Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00894 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 brought
5 against a corporation, trustees of a trust, or members of an association that said corporation, trust,
6 or association is or at the time the cause of action arose was a charity; provided, that if the tort
7 was committed in the course of any activity carried on to accomplish directly the charitable
8 purpose of such corporation, trust, or association, liability in any such cause of action shall not
9 exceed the sum of twenty thousand dollars exclusive of interest and costs. Notwithstanding any
10 other provision of this section, a charitable corporation, trust, or association shall be considered
11 to have conclusively waived any limitation of liability for any tort to the extent that such

12 charitable corporation, trust or association has insurance covering the liability for such charitable
13 organization for any tort. The amount of damages in any such case shall not exceed the
14 aggregate of twenty thousand dollars plus the limits of coverage available under any insurance
15 policy, and the courts shall abate any verdict in any such action to the extent that it exceeds such
16 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 to (a)
25 all tortious conduct whether occurring prior or subsequent to the effective date of this section,
26 and (b) all pending actions for which final judgment has not entered.