

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

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Steven A. Tolman**

*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:

Steven A. Tolman

Attorney General Martha Coakley

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

# 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 amended  
2 by striking the word “and”, in line 12, following the words: - “association or instrument of trust,”

3

4           Provided, further, that Section 8E of chapter 12, as so appearing, is hereby amended by inserting after  
5 the 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

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

10

11           “If any public charity fails to comply with the requirements of this section, the director shall  
12 notify the delinquent public charity, or any responsible officer or agent of such public charity, by mailing

13 a notice thereof to its last known address or that of any such responsible officer or agent. Such notice  
14 mailed by the director shall be deemed a sufficient notice, and a certificate of the person mailing such  
15 notice that it has been mailed in accordance with this section shall be deemed prima facie evidence  
16 thereof and shall be admissible in any court of the commonwealth as to the facts contained therein. If a  
17 complete registration is not filed within thirty days of the day such notice is mailed, the director may  
18 assess a civil penalty against the public charity and may further assess a separate civil penalty against  
19 any responsible officer or agent receiving such notice who fails, without good cause, to cause the filing  
20 of a complete registration. Such civil penalties shall each be in the amount of fifty dollars per day for  
21 each day subsequent to the end of such thirty day period until such report is filed; provided, however,  
22 that the maximum penalty for failure to register shall be no greater than ten thousand dollars. Any  
23 public charity, or the responsible officer or agent of a public charity, aggrieved by the imposition of a  
24 civil penalty pursuant to this section may bring a civil action in the nature of certiorari pursuant to  
25 section 4 of chapter 249; provided, however, that such action shall be commenced within 60 days of the  
26 date of the notice of the civil penalty. If any public charity, or the responsible officer or agent of a public  
27 charity shall fail to pay any civil penalty provided herein within 21 days of the date of imposition of such  
28 penalty, excluding any time during which judicial review pursuant to section 4 of chapter 249 remains  
29 pending, the division may initiate a civil action in the superior court to enforce such penalty or to obtain  
30 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  
34 words:- “but not more than one million dollars; (e) five hundred dollars, if more than one million but not

35 more than ten million; (f) one thousand dollars, if more that ten million but not more than one hundred  
36 million; (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 the following:

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

58 pending, the attorney general may initiate a civil action in the superior court to enforce such penalty or  
59 to obtain any other relief so required.”

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

63

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

66

67 **SECTION 5.** Section 24 of chapter 68 of the General Laws, as so appearing, is hereby amended by  
68 striking the words “(a) professional solicitor, three hundred dollars; (b) professional fund-raising  
69 counsel, two hundred dollars; (c) commercial co-venturer, fifty dollars.”, in lines 9-11, and inserting the  
70 following words:-“(i) professional solicitor, one thousand dollars; (ii) professional fund-raising counsel,  
71 four hundred dollars; (iii) commercial co-venturer, two hundred dollars.”

72

73 **SECTION 6.** Section 24 of chapter 68 of the General Laws, as so appearing, is hereby amended by  
74 striking the word “ten”, in line 17, and inserting the following word:-“twenty five”

75

76 **SECTION 7.** Section 24 of chapter 68 of the General Laws, as so appearing, is hereby amended by  
77 inserting after the words “exceed the sum of said bond.”, in line 27, the following words:-“ A  
78 professional solicitor shall conduct solicitations only by or through persons who are covered (i) by a

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

82

83 **SECTION 8.** Section 32 of chapter 68 of the General Laws, as so appearing, is hereby amended by adding  
84 after subsection (e) the following subsection: -

85

86 (f) In addition to any remedies or actions authorized or permitted pursuant to subsections (a)  
87 through (e) of this section, if any charitable organization, professional fundraising counsel, commercial  
88 co-venturer or professional solicitor violates one or more applicable provisions of sections 19 through  
89 35 of chapter 68, the director shall notify the delinquent charitable organization, professional  
90 fundraising counsel, commercial co-venturer, professional solicitor, or any responsible officer or agent  
91 of any of the foregoing by mailing a notice thereof to its last known address or that of any such  
92 responsible officer or agent. Such notice mailed by the division shall be deemed a sufficient notice, and  
93 a certificate of the person mailing such notice that it has been mailed in accordance with this section  
94 shall be deemed prima facie evidence thereof and shall be admissible in any court of the commonwealth  
95 as to the facts contained therein. If the charitable organization, professional fundraising counsel,  
96 commercial co-venturer or professional solicitor fails to correct any such violation within thirty days of  
97 the day such notice is mailed, the director may assess a civil penalty against the charitable organization,  
98 professional fundraising counsel, commercial co-venturer or professional solicitor and may further  
99 assess a separate civil penalty against any responsible officer or agent receiving such notice who fails,  
100 without good cause, to cause the violation to be corrected. Such civil penalty shall be in the amount of  
101 fifty dollars per day for each day subsequent to the end of such thirty day period until such violation is

102 cured; provided, however, that the maximum penalty shall be no greater than ten thousand dollars. Any  
103 charitable organization, professional fundraising counsel, commercial co-venturer, professional solicitor,  
104 or responsible officer or agent aggrieved by the imposition of a civil penalty pursuant to this section may  
105 bring a civil action in the nature of certiorari pursuant to section 4 of chapter 249; provided, however,  
106 that such action shall be commenced within 60 days of the date of the notice of the civil penalty. If any  
107 charitable organization, professional fundraising counsel, commercial co-venturer, professional solicitor,  
108 or responsible officer or agent shall fail to pay any civil penalty provided herein within 21 days of the  
109 date of imposition of such penalty, excluding any time during which judicial review pursuant to section 4  
110 of chapter 249 remains pending, the division may initiate a civil action in the superior court to enforce  
111 such penalty or to obtain any other relief so required.

112

113 **SECTION 9.** Section 11A of chapter 180 of the General Laws, as so appearing, is hereby amended by  
114 striking the first paragraph and inserting the following:-

115

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

120

121 “(a) Petition for Dissolution. A petition for dissolution shall be authorized by vote of a majority  
122 of the corporation’s board of directors entitled to vote thereon, provided, however, that if the  
123 corporation has one or more classes of members, the corporation may in its articles of corporation, in a

124 bylaw adopted by the incorporators pursuant to section three or in a bylaw adopted by the members,  
125 assign the power of authorization to the members acting by majority vote of the members entitled to  
126 vote thereon or provide that the exercise of such power shall be subject to approval by the members.

127

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

134

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