

By Mr. Durand, petition (accompanied by bill, Senate, No. 40) of Robert A. Durand for legislation to further regulate the solicitation of charitable funds. Commerce and Labor.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT FURTHER REGULATING THE SOLICITATION OF CHARITABLE FUNDS.

*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 8H of chapter 12 of the General Laws,  
2 as appearing in the 1988 Official Edition, is hereby amended by  
3 striking out, in line 5, the words: — upon application to and with  
4 the approval of a judge of the trial court.

1 SECTION 2. Said section 8H of said chapter 12, as so  
2 appearing, is hereby further amended by inserting after the word  
3 “same”, in line 53, the words: — ; provided, however, that such  
4 material or information may be disclosed by the attorney general  
5 in court pleadings or in other papers filed in court.

1 SECTION 3. Clause (7) of said section 8H of said chapter 12,  
2 as so appearing, is hereby amended by striking out the words “or  
3 modify or set aside the notice provided for in this section” and  
4 inserting in place thereof the words: — , modify or set aside the  
5 notice provided for in this section, or grant a protective order in  
6 accordance with the standards set forth in Rule 26(c) of the  
7 Massachusetts Rules of Civil Procedure.

1 SECTION 4. Section 18 of chapter 68 of the General Laws is  
2 hereby further amended by striking out the definition of  
3 “Commercial co-venturer”, as so appearing, and inserting in place  
4 thereof the following definition:

5 “Commercial co-venturer”, any person who is not regularly or  
6 primarily engaged in the raising of funds or any other thing of  
7 value for charitable organizations or purposes and who for profit  
8 or other commercial consideration, conducts, produces,  
9 promotes, underwrites, arranges or sponsors a performance,  
10 event, or sale to the public of a good or service which is advertised  
11 in conjunction with the name of any charitable organization, or  
12 as benefiting to any extent any charitable purpose. Any such  
13 person who will benefit in good will only shall not be deemed a  
14 commercial co-venturer if the collection and distribution of the  
15 proceeds of the performance, event or sale are supervised and  
16 controlled by the benefiting charitable organization. A person  
17 who is retained for profit or other financial consideration by the  
18 charitable organization in connection with the solicitation of the  
19 contributions shall be deemed a professional solicitor;.

1 SECTION 5. Said section 18 of said chapter 68, as so  
2 appearing, is hereby further amended by striking out, in line 49,  
3 the words “actually solicits no contributions and”.

1 SECTION 6. Said section 18 of said chapter 68, as so  
2 appearing, is hereby further amended by striking out, in lines 55  
3 to 56, the words “who is retained for a financial or other  
4 consideration by a charitable organization to solicit” and inserting  
5 in place thereof the words: — who for profit or other financial  
6 consideration solicits.

1 SECTION 7. Section 19 of said chapter 68, as so appearing,  
2 is hereby amended by striking out, in lines 9, 10, 11 and 12, the  
3 words “; provided, that the provisions of this chapter have been  
4 complied with, the director of the division shall issue a certificate  
5 of registration to a charitable organization within ten days of  
6 receipt of the registration statement”.

1 SECTION 8. Said section 19 of said chapter 68, as so  
2 appearing, is hereby further amended by striking out, in lines 13  
3 and 14, the words “without a valid certificate of registration”  
4 and inserting in place thereof the words: — until its registration  
5 is current and complete.

1 SECTION 9. Section 20 of said chapter 68, as so appearing,  
2 is hereby amended by striking out, in line 2, the words “or to have  
3 a certificate of registration”.

1 SECTION 10. Section twenty-one of said chapter sixty-eight  
2 is hereby repealed.

1 SECTION 11. Section 22 of said chapter 68, as appearing in  
2 the 1988 Official Edition, is hereby amended by striking out, in  
3 lines 3 and 4, the words “have a certificate of registration” and  
4 inserting in place thereof the words: — file a registration  
5 statement.

1 SECTION 12. Clause (b) of section 22 of said chapter 68, as  
2 so appearing, is hereby amended by striking out subclause (2) and  
3 inserting in place thereof the following two subclauses: —

4 (2) a statement of the minimum dollar amount or minimum  
5 percentage of gross receipts from fund-raising which the  
6 charitable organization will receive after all expenses relating to  
7 the solicitation, including expenses of the solicitation to be paid  
8 by the charitable organization, such as the cost of merchandise  
9 or services sold or events staged, are paid; and (3) if the services  
10 to be performed under the contract include the oral solicitation  
11 of funds from the public, a statement that the oral presentation  
12 to be used in such solicitation has been reduced to a writing which  
13 has been reviewed and approved by a responsible officer of the  
14 charitable organization and that if the oral presentation  
15 subsequently is changed in a material way, the change shall be  
16 so reviewed and approved prior to its use.

1 SECTION 13. Said chapter 68 is hereby further amended by  
2 striking out section 23, as so appearing, and inserting in place  
3 thereof the following section: —

4 Section 23. (a) All solicitations by professional solicitors shall  
5 contain at the time of solicitation, the following disclosures: (1)  
6 the name and address of the charitable organization and a  
7 description of how the contributions raised by the solicitation will  
8 be utilized for charitable purposes, or if there is no charitable  
9 organization, the name, address and telephone number of the

10 professional solicitor and a description of how the contributions  
11 raised by the solicitation will be utilized for charitable purposes;  
12 (2) that the solicitation is being conducted by a professional  
13 solicitor; (3) such other disclosures as required by relevant rules  
14 and regulations promulgated under section twenty-nine. If the  
15 solicitation is for advertising, the disclosure shall also include the  
16 geographic distribution and the circulation of the publication in  
17 which the advertising will appear. (b) All solicitations by  
18 commercial co-venturers shall disclose, at the time of solicitation,  
19 the following: (1) how the contributions raised by the solicitation  
20 will be utilized for charitable purposes; (2) the amount or  
21 percentage per ticket or per unit of goods or services purchased  
22 which will be distributed to the charitable organization or will  
23 benefit the purpose stated in the solicitation; (3) such other  
24 disclosures as required by relevant rules and regulations  
25 promulgated under section twenty-nine. If the solicitation is for  
26 advertising, the disclosure shall also include the geographic  
27 distribution and the circulation of the publication in which the  
28 advertising will appear.

1 SECTION 14. Section 24 of said chapter 68, as so appearing,  
2 is hereby amended by striking out, in line 3, the words “have a  
3 certificate of registration” and inserting in place thereof the  
4 words: — file a registration statement.

1 SECTION 15. Subsection (f) of section 30 of said chapter 68,  
2 as so appearing, is hereby amended by inserting after the word  
3 “same”, in line 56, the words: — ; provided, however, that such  
4 material or information may be disclosed by the attorney general  
5 in court pleadings or other papers filed in court.

1 SECTION 16. Subsection (g) of said section 30 of said chapter  
2 68, as so appearing, is hereby amended by striking out the words  
3 “or modify or set aside the notice provided for in this section”  
4 and inserting in place thereof the words: — , modify or set aside  
5 the notice provided for in this section, or grant a protective order  
6 in accordance with the standards set forth in Rule 26(c) of the  
7 Massachusetts Rules of Civil Procedure.

1 SECTION 17. Said chapter 68 is hereby amended by inserting  
2 after section 30 the following section: —

3 Section 30A. A person upon whom a notice is served pursuant  
4 to the provisions of section thirty shall comply with the terms  
5 thereof unless otherwise provided by the order of a court of the  
6 commonwealth. Any person who fails to appear, or with intent  
7 to avoid, evade, or prevent compliance, in whole or in part, with  
8 any civil investigation under this chapter, removes from any place,  
9 conceals, withholds, or destroys, mutilates, alters, or by any other  
10 means falsifies any documentary material in the possession,  
11 custody or control of any person subject to any such notice, or  
12 knowingly conceals any relevant information, shall be assessed a  
13 civil penalty of not more than five thousand dollars.

14 The attorney general may file in the superior court of the county  
15 in which such person resides or has his principal place of business,  
16 or in the superior court of Suffolk county if such person is a non-  
17 resident or has no principal place of business in the common-  
18 wealth, and serve upon such person, in the same manner as  
19 provided in section thirty, a petition for an order of such court  
20 for the enforcement of this section and section thirty. Any  
21 disobedience of any final order entered under this section by any  
22 court shall be punished as a contempt thereof.

1 SECTION 18. Subsection (a) of section 32 of said chapter 68,  
2 as so appearing, is hereby amended by striking out the second  
3 sentence and inserting in place thereof the following sentence: —  
4 If the required registration application or statement, annual report  
5 or other information is not filed within two weeks after formal  
6 notification of receipt of such notice, the division may suspend  
7 the registration of such delinquent charitable organization,  
8 professional fund-raising counsel, commercial co-venturer or  
9 professional solicitor until the required application, statement,  
10 report or other information is filed.

1 SECTION 19. Said section 32 of said chapter 68, as so  
2 appearing, is hereby further amended by striking out subsections  
3 (b) and (c) and inserting in place thereof the following two  
4 subsections: —

5 (b) If as a result of an investigation the division finds that any  
6 information contained in any application required under sections

7 eighteen to thirty-five inclusive, is false in any material respect,  
8 it may subject to the provisions of section thirteen of chapter  
9 thirty A, suspend the registration until corrected information is  
10 filed or, if the false information was willingly or knowingly given,  
11 suspend or revoke the registration.

12 (c) The registration of any charitable organization, professional  
13 fund-raising counsel, commercial co-venturer or professional  
14 solicitor which or who knowingly makes a statement that is false  
15 in any material respect in any registration application or  
16 statement, annual report or other information required to be filed  
17 by the division or sections eighteen to thirty-five, inclusive, or who  
18 or which has violated section thirty-three may, subject to the  
19 provisions of section thirteen of chapter thirty A, be suspended  
20 by the division until the violation or false information is corrected  
21 or, if the violation was knowing or willful or the false information  
22 was willfully or knowingly given, be suspended or revoked by the  
23 division.

1 SECTION 20. Section 35 of said chapter 68, as so appearing,  
2 is hereby amended by striking out the second sentence.



