

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Binienda

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 adoption of the accompanying bill:

AN ACT AUTHORIZING THE FORFEITURE OF VEHICLES USED IN CONNECTION
WITH PROSTITUTION AND RELATED CRIMES IN THE CITY OF WORCESTER.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>John J. Binienda</i>	<i>17th Worcester</i>	<i>8/15/2012</i>

HOUSE No.

By Mr. Binienda of Worcester, a petition (subject to Joint Rule 12) of John J. Binienda (with the approval of the city council) relative to the forfeiture of property for crimes committed in the city of Worcester. The Judiciary. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

AN ACT AUTHORIZING THE FORFEITURE OF VEHICLES USED IN CONNECTION WITH PROSTITUTION AND RELATED CRIMES IN THE CITY OF WORCESTER.

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. Notwithstanding any contrary provisions of any law, regulation, rule or
2 guideline, the following provisions shall be effective in the city of Worcester.

3 (a) The following property shall be subject to forfeiture to the city of Worcester: (1) All
4 moneys, negotiable instruments, securities or other things of value furnished or intended to be
5 furnished by any person relating to any transaction in violation of sections 4B, 6, 7, 8, 12, 13, 24
6 or 53A of chapter two hundred seventy-two of the General Laws, including all proceeds
7 traceable to such transaction, or any moneys, negotiable instruments or securities used or
8 intended to be used to facilitate any violation of said sections 4B, 6, 7, 8, 12, 13, 24 or 53A; (2)
9 All real property, including any right, title and interest in the whole of any lot or tract of land and
10 any appurtenances or improvements thereto, which is used in any manner or part, to commit or to
11 facilitate the commission of a violation of said sections 4B, 6, 7, 8, 12, 13, 24 or 53A; (3) No

forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of a forfeiture action.

(b) Property subject to forfeiture under clauses (1) or (2) of subsection (a) shall, upon motion of the Worcester district attorney, be declared forfeit by any court having jurisdiction over the property or having final jurisdiction over any related criminal proceeding brought under sections 4B, 6, 7, 8, 12, 13, 24 or 53A.

(c) The court shall order forfeiture of all real property subject to clause (2) of subsection (a), except as follows: (1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of sections 4B, 6, 7, 8, 12, 13 or 53A;

(2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States the commonwealth or of any state;

(3) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used to violate section 4B, 6, 7, 8, 12, 13 or 53A and proof that the conveyance or real property was used to facilitate a violation of any said section, or combination thereof, on 3 or more different dates shall be prima facie evidence that the conveyance or real property was used in furtherance of and for the business of prostitution.

(d) The Worcester district attorney may petition the courts in the name of the commonwealth or the city of Worcester, respectively, in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or any other thing of value subject to forfeiture under clause (1) or (2) of subsection (a). Such petition shall be filed in the court having jurisdiction over said

conveyance, real property, monies or other thing of value or having final jurisdiction over any related criminal proceeding brought under sections 4B, 6, 7, 8, 12, 13 or 53A. In all such suits where the property is claimed by any person, other than the commonwealth, the Worcester district attorney shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to said clause (1) or (2) of said subsection (a). The owner of the conveyance or real property, or other person making such a claim there under shall have the burden of proof as to all exceptions set forth in subsection (c). The court shall order the Worcester district attorney or the city of Worcester to give notice by certified or registered mail to the owner of the conveyance, real property, moneys or other thing of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of the conveyance, real property, moneys or other thing of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of sections 4B, 6, 7, 8, 12, 13 or 53A. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits in which a final order results in a forfeiture, the final order shall provide for disposition of the conveyance, real property, moneys or any other thing of value by the Worcester district

attorney or the city of Worcester in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section. The final order of the court shall provide how the moneys and proceeds of any such sale shall be distributed between the Worcester district attorney and the city of Worcester, including its police department. There shall be established within the office of the state treasurer a separate special law enforcement trust fund for the Worcester district attorney for funds acquired under this act. The city of Worcester shall establish a separate special law enforcement trust fund for funds it acquires under this act. All such monies and proceeds received by the Worcester district attorney and the city of Worcester shall be deposited, respectively, in such trust funds and shall then be expended without further appropriation for the purposes of defraying the costs of law enforcement as the Worcester district attorney and the city of Worcester deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of the Worcester Police Department. Within 90 days of the close of the fiscal year, the Worcester district attorney and the city of Worcester shall file an annual report with the house and senate committees on ways and means on the use of monies in such trust funds.

(e) Any officer, department or agency having custody of any property subject to forfeiture under this act or having disposed of such property shall keep and maintain full and complete records showing from whom it received the property, under what authority it held or received or disposed of the property, to whom it delivered the property, the date and manner of destruction or disposition of the property, and the exact kinds, quantities and forms of property.

79 These records shall be open to inspection by the offices of the inspector general and the attorney
80 general and all federal and state officers charged with enforcement of federal and state laws
81 prohibiting prostitution and human trafficking. Persons making final disposition or destruction of
82 such property under court order shall report, under oath, to the court the exact circumstances of
83 such disposition or destruction.

84 (f) During a pending proceeding the court may issue at the request of the Worcester
85 district attorney ex parte any preliminary order or process as is necessary to seize or secure the
86 property for which forfeiture is sought and to provide for its custody including, but not limited
87 to: an order that the Worcester district attorney remove the property if possible and safeguard it
88 in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing
89 escrow account; and that a substitute custodian be appointed to manage such property. Property
90 taken or detained under this section shall not be replevable, but once seized shall be deemed to
91 be lawfully in the custody of the Worcester district attorney or the city of Worcester pending
92 forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process
93 for seizure of the property shall issue only upon a showing of probable cause, and the application
94 therefore and the issuance, execution and return thereof shall be subject to chapter 276, in so far
95 as applicable. The Worcester district attorney may refer any real property, and any furnishings,
96 equipment and related personal property located therein and for which seizure is sought to the
97 office of seized property management within the division of capital asset management and
98 maintenance. The office of seized property management shall preserve and manage such
99 property in a reasonable fashion and dispose of such property upon a judgment ordering
100 forfeiture issued pursuant to subsection (d), and to enter into contracts to preserve, manage and
101 dispose of such property. The office of seized property management may receive initial funding

102 from the special law enforcement trust funds of the Worcester district attorney or the city of
103 Worcester.

104 (g) The owner of any real property which is the principal domicile of an immediate
105 family member of the owner and which is subject to forfeiture under this act may file a petition
106 for homestead exemption with the Worcester Superior or Worcester District Court. The court
107 may, in its discretion, allow the petition exempting from forfeiture an amount allowed under
108 section 1 of chapter 188 of the General Laws. The value of the balance of the principal domicile,
109 if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired
110 on only one principal domicile for the benefit of the immediate family of the owner.

111 (h) A forfeiture proceeding affecting the title to real property or the use and occupation
112 thereof or the buildings thereon shall not have any effect except against the parties thereto and
113 persons having actual notice thereof, until a memorandum containing the names of the parties to
114 such proceeding, the name of the town wherein the affected real property lies, and a description
115 of such real property sufficiently accurate for identification is recorded in the registry of deeds
116 for the county or district wherein the real property lies. At any time after a judgment on the
117 merits, or after the discontinuance, dismissal or other final disposition is recorded by the court
118 having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of
119 such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be
120 recorded in the registry in which the original memorandum recorded pursuant to this section was
121 filed.

122 SECTION 2. This act shall take effect upon acceptance by a majority vote of the
123 Worcester City Council.