

HOUSE No. 3352

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>1/18/2013</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/1/2013</i>

HOUSE No. 3352

By Mr. Binienda of Worcester, a petition (accompanied by bill, House, No. 3352) of John J. Binienda and Michael O. Moore (with the approval of the city council) relative to the forfeiture of vehicles used in connection with certain crimes committed in the city of Worcester. The Judiciary. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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

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

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

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

27 (3) No conveyance or real property shall be subject to forfeiture unless the owner thereof
28 knew or should have known that such conveyance or real property was used to violate section
29 4B, 6, 7, 8, 12, 13 or 53A and proof that the conveyance or real property was used to facilitate a
30 violation of any said section, or combination thereof, on 3 or more different dates shall be prima
31 facie evidence that the conveyance or real property was used in furtherance of and for the
32 business of prostitution.

33 (d) The Worcester district attorney may petition the courts in the name of the
34 commonwealth or the city of Worcester, respectively, in the nature of a proceeding in rem to
35 order forfeiture of a conveyance, real property, moneys or any other thing of value subject to
36 forfeiture under clause (1) or (2) of subsection (a). Such petition shall be filed in the court having
37 jurisdiction over said conveyance, real property, monies or other thing of value or having final
38 jurisdiction over any related criminal proceeding brought under sections 4B, 6, 7, 8, 12, 13 or
39 53A. In all such suits where the property is claimed by any person, other than the
40 commonwealth, the Worcester district attorney shall have the burden of proving to the court the
41 existence of probable cause to institute the action, and any such claimant shall then have the
42 burden of proving that the property is not forfeitable pursuant to said clause (1) or (2) of said
43 subsection (a). The owner of the conveyance or real property, or other person making such a
44 claim there under shall have the burden of proof as to all exceptions set forth in subsection (c).
45 The court shall order the Worcester district attorney or the city of Worcester to give notice by
46 certified or registered mail to the owner of the conveyance, real property, moneys or other thing
47 of value and to such other persons as appear to have an interest therein, and the court shall
48 promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion
49 of the owner of the conveyance, real property, moneys or other thing of value, the court may
50 continue the hearing on the petition pending the outcome of any criminal trial related to the
51 violation of sections 4B, 6, 7, 8, 12, 13 or 53A. At such hearing the court shall hear evidence and
52 make conclusions of law, and shall thereupon issue a final order, from which the parties shall
53 have a right of appeal. In all such suits in which a final order results in a forfeiture, the final
54 order shall provide for disposition of the conveyance, real property, moneys or any other thing of
55 value by the Worcester district attorney or the city of Worcester in any manner not prohibited by
56 law, including official use by an authorized law enforcement or other public agency, or sale at

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

73 (e) Any officer, department or agency having custody of any property subject to
74 forfeiture under this act or having disposed of such property shall keep and maintain full and
75 complete records showing from whom it received the property, under what authority it held or
76 received or disposed of the property, to whom it delivered the property, the date and manner of
77 destruction or disposition of the property, and the exact kinds, quantities and forms of property.
78 These records shall be open to inspection by the offices of the inspector general and the attorney
79 general and all federal and state officers charged with enforcement of federal and state laws
80 prohibiting prostitution and human trafficking. Persons making final disposition or destruction of
81 such property under court order shall report, under oath, to the court the exact circumstances of
82 such disposition or destruction.

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

96 office of seized property management within the division of capital asset management and
97 maintenance. The office of seized property management shall preserve and manage such
98 property in a reasonable fashion and dispose of such property upon a judgment ordering
99 forfeiture issued pursuant to subsection (d), and to enter into contracts to preserve, manage and
100 dispose of such property. The office of seized property management may receive initial funding
101 from the special law enforcement trust funds of the Worcester district attorney or the city of
102 Worcester.

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

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

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