

HOUSE No. 4599

The Commonwealth of Massachusetts

PRESENTED BY:

José F. Tosado

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 relative to the use of recreation vehicles in the city of Springfield.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>7/9/2019</i>
<i>James T. Welch</i>	<i>Hampden</i>	<i>7/10/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>7/10/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>7/10/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>7/11/2019</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>7/16/2019</i>

HOUSE No. 4599

By Mr. Tosado of Springfield, a petition (subject to Joint Rule 12) of José F. Tosado and others (with the approval of the mayor and city council) relative to the use of recreation vehicles in the city of Springfield. The Judiciary. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the use of recreation vehicles in the city of Springfield.

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 section 26B of chapter 90B of the General Laws or any
2 other general or special law to the contrary, the state police and the Springfield police department
3 may impound any recreation vehicle or off-road vehicle as defined in section 20 of chapter 90B
4 used in the city of Springfield by an owner or operator on any City-owned or -controlled public
5 way, sidewalk, park, playground, recreational area, public school property or any other property
6 owned or controlled by the City until such time as a forfeiture hearing can be heard in the
7 manner set forth in sections 2 and 3.

8 SECTION 2. (1) The following items shall be subject to forfeiture:

9 (a) any recreation vehicle or off-road vehicle as defined in section 20 of chapter 90B used
10 or intended to be used to violate section 26B of chapter 90B of the General Laws or used to
11 facilitate a violation of said section 26B of said chapter 90B in the city of Springfield, but no

12 forfeiture under this act shall extinguish a perfected security interest held by a creditor in a
13 recreation or off-highway vehicle at the time of filing of the forfeiture action; and

14 (2) The following exemptions shall apply:

15 (a) no recreation or off-highway vehicle used as a common carrier in the transaction of
16 business as a common carrier shall be subject to forfeiture, unless the owner or other person
17 lawfully in charge of such recreation or off-highway vehicle consented to or participated or
18 intended to participate in the violation or facilitation of a violation of section 26B of chapter 90B
19 of the General Laws;

20 (b) no recreation or off-highway vehicle used or intended to be used to violate said
21 section 26B of said chapter 90B or to facilitate a violation of said section 26B of said chapter
22 90B shall be subject to forfeiture by reason of any act or omission established by the owner
23 thereof to have been committed or omitted by any person other than such owner while such
24 recreation or off-highway vehicle was unlawfully in the possession of a person other than the
25 owner in violation of the criminal laws of the United States, the commonwealth or any state; and

26 (c) no recreation or off-highway vehicle shall be subject to forfeiture unless the owner
27 knew or should have known that such recreation or off-highway vehicle was used or intended to
28 be used to violate or to facilitate a violation of said section 26B of said chapter 90B.

29 (d) no recreation of off-highway vehicle shall be subject to crushing upon forfeiture if it
30 is registered with the Director of division of law enforcement of the department of fisheries,
31 wildlife and environmental law enforcement as a vintage recreation or off-high way vehicle.

32 SECTION 3. The Hampden county superior court shall have jurisdiction under any action
33 brought pursuant to this act.

34 (a) The Springfield Police Department will hold all impounded recreation or off-highway
35 vehicle for 90 days, beginning the day of impoundment, to verify whether or not the vehicle is
36 stolen. After the 90 days hold for verification, the city may petition the superior court in the
37 name of the city in the nature of a proceeding in rem to order forfeiture of a recreation vehicle or
38 off-highway vehicle. Such proceeding shall be deemed a civil suit. Any person claiming a right
39 in the property subject to forfeiture shall have the right to claim a trial by jury, but if such right is
40 not claimed, the right to trial by jury shall be waived. In all such suits where the property is
41 claimed by any person other than the city, the city shall have the burden of proving the existence
42 of probable cause to institute the action, and any such claimant shall then have the burden of
43 proving that the property is not forfeitable pursuant to section 2. The court shall order the city to
44 give notice by certified mail to the owner of the recreation or off-highway vehicle and to other
45 persons who appear to have an interest therein, and the court shall promptly hold a hearing on the
46 petition. At such forfeiture hearing the court shall hear evidence and, if no jury has been
47 requested, make findings of fact and conclusions of law, and shall thereupon issue a final order,
48 from which the parties shall have such right of appeal as is provided by law. In all such suits
49 where a final order results in forfeiture, said final order shall provide for disposition of the
50 recreation or off-highway vehicle by the city in any manner not prohibited by law, including
51 official use by an authorized law enforcement or other public agency; or by sale at public auction
52 or by competitive bidding; or by crushing of the recreation or off-highway vehicle. The proceeds
53 of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings,
54 seizure, storage, maintenance of custody, advertising and notice, and the balance thereof shall be

55 deposited in the general fund of the city pursuant to section 53 of chapter 44 of the General Laws
56 and shall be appropriated to the police department.

57 SECTION 4. Whoever violates section 25 of chapter 90B of the General Laws in the city
58 of Springfield shall, in addition to forfeiture of the recreation or off-highway vehicle as set forth
59 in section 3, also be punished by a fine of not less than \$250 for a first violation and not less than
60 \$500 nor more than \$2,500 for a second or subsequent violation.

61 SECTION 5. This act shall take effect upon its passage.