

HOUSE No. 4434

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia A. Duffy

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 Holyoke.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>1/26/2022</i>

HOUSE No. 4434

By Ms. Duffy of Holyoke, a petition (accompanied by bill, House, No. 4434) of Patricia A. Duffy (with the approval of the mayor and city council) relative to the use of recreation vehicles in the city of Holyoke. The Judiciary. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to the use of recreation vehicles in the City of Holyoke.

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

8 SECTION 2. 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
10 used or intended to be used to violate section 26B of Chapter 90B of the General Laws or used
11 to facilitate a violation of said section 26B of said Chapter 90B in the City of Holyoke, 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 (b) the following exemptions shall apply:

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

20 ii. 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;
26 and

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

30 iv. no recreation or off-highway vehicle shall be subject to

31 crushing upon forfeiture if it is registered with the Director of division of law
32 enforcement of the department of fisheries, wildlife, and environmental law enforcement as a
33 vintage recreation or off-highway vehicle.

34 SECTION 3. The Hampden County Superior Court shall have jurisdiction under any
35 action brought pursuant to this act.

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

54 auction or by competitive bidding; or by crushing of the recreation or off-highway vehicle. The
55 proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture
56 proceedings, seizure, storage, maintenance of custody, advertising and notice, and the balance
57 thereof shall be deposited in the general fund of the City pursuant to section 53 of Chapter 44 of
58 the General Laws and shall be appropriated to the police department.

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

63 SECTION 5. All owners or operators of a recreation or off-highway vehicle used or
64 intended to be used to violate section 26B of said Chapter 90B shall be precluded from fueling
65 such recreation or off-highway vehicles at any gas station located within Holyoke.

66 SECTION 6. This act shall take effect upon its passage.