

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Morrissey

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 passage of the accompanying bill:

An Act relative to civil asset forfeiture.

PETITION OF:

NAME:

Mr. Morrissey

DISTRICT/ADDRESS:

Norfolk and Plymouth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO CIVIL ASSET FORFEITURE.

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. Chapter 272 of the General Laws, as appearing in the 2006 Official Edition, is
2 hereby amended by adding the following section:-

3
4 Section 106. (a) The following property shall be subject to forfeiture to the commonwealth and all
5 property rights therein shall be in the commonwealth: (1) All moneys, negotiable instruments, securities
6 or other things of value furnished or intended to be furnished by any person relating to any transaction in
7 violation of sections 4B, 6, 7, 8, 12, 13, 24 or 53A of this chapter, including all proceeds traceable to such
8 transaction, or any moneys, negotiable instruments or securities used or intended to be used to facilitate
9 any violation of said sections 4B, 6, 7, 8, 12, 13, 24 or 53A; (2) All real property, including any right,
10 title and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto,
11 which is used in any manner or part, to commit or to facilitate the commission of a violation of said
12 sections 4B, 6, 7, 8, 12, 13, 24 or 53A; (3) No forfeiture under this section shall extinguish a perfected
13 security interest held by a creditor in a conveyance or in any real property at the time of the filing of a
14 forfeiture action.

15
16 (b) Property subject to forfeiture under clauses (1) or (2) of subsection (a) shall, upon motion of the
17 attorney general or district attorney, be declared forfeit by any court having jurisdiction over the property
18 or having final jurisdiction over any related criminal proceeding brought under sections 4B, 6, 7, 8, 12,
19 13, 24 or 53A.

20
21 (c) The court shall order forfeiture of all real property subject to clause (2) of subsection (a), except as
22 follows: (1) No conveyance used by any person as a common carrier in the transaction of business as a
23 common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such
24 conveyance was a consenting party or privy to a violation of sections 4B, 6, 7, 8, 12, 13 or 53A;
25 (2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to
26 have been committed or omitted by any person other than such owner while such conveyance was
27 unlawfully in the possession of a person other than the owner in violation of the criminal laws of the
28 United States the commonwealth or of any state; (3) No conveyance or real property shall be subject to
29 forfeiture unless the owner thereof knew or should have known that such conveyance or real property was

30 used to violate section 4B, 6, 7, 8, 12, 13 or 53A and proof that the conveyance or real property was used
31 to facilitate a violation of any said section, or combination thereof, on 3 or more different dates shall be
32 prima facie evidence that the conveyance or real property was used in furtherance of and for the business
33 of prostitution.

34
35 (d) A district attorney or the attorney general may petition the superior court in the name of the
36 commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property,
37 moneys or any other thing of value subject to forfeiture under clause (1) or (2) of subsection (a). Such
38 petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other
39 thing of value or having final jurisdiction over any related criminal proceeding brought under sections 4B,
40 6, 7, 8, 12, 13 or 53A. In all such suits where the property is claimed by any person, other than the
41 commonwealth, the commonwealth shall have the burden of proving to the court the existence of
42 probable cause to institute the action, and any such claimant shall then have the burden of proving that the
43 property is not forfeitable pursuant to said clause (1) or (2) of said subsection (a). The owner of the
44 conveyance or real property, or other person making such a claim there under shall have the burden of
45 proof as to all exceptions set forth in subsection(c). The court shall order the commonwealth to give
46 notice by 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 promptly, but
48 not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of the
49 conveyance, real property, moneys or other thing of value, the court may continue the hearing on the
50 petition pending the outcome of any criminal trial related to the violation of sections 4B, 6, 7, 8, 12, 13 or
51 53A. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon
52 issue a final order, from which the parties shall have a right of appeal. In all such suits in which a final
53 order results in a forfeiture, the final order shall provide for disposition of the conveyance, real property,
54 moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not
55 prohibited by law, including official use by an authorized law enforcement or other public agency, or sale
56 at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the
57 reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising,
58 and notice, and the balance thereof shall be distributed as further provided in this section. The final order
59 of the court shall provide that the moneys and proceeds of any such sale shall be distributed equally
60 between the prosecuting district attorney or attorney general and the city, town or state police department
61 involved in the seizure. If more than 1 department was substantially involved in the seizure, the court
62 having jurisdiction over the forfeiture proceeding shall distribute the 50 per cent equitably among these
63 departments. There shall be established within the office of the state treasurer separate special law
64 enforcement trust funds for each office of district attorney and for the attorney general. All such monies
65 and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a
66 trust fund and shall then be expended without further appropriation for the purposes of defraying the costs
67 of law enforcement as such district attorney or attorney general deems appropriate. Within 90 days of the
68 close of the fiscal year, each district attorney and the attorney general shall file an annual report with the
69 house and senate committees on ways and means on the use of monies in such trust funds. All such
70 moneys and proceeds received by any police department shall be deposited in a special law enforcement
71 trust fund and shall be expended without further appropriation to defray the costs of to obtain federal
72 grants or to accomplish such other law enforcement purposes as the chief of police of such city or town,
73 or the colonel of state police deems appropriate, but such funds shall not be considered a source of
74 revenue to meet the operating needs of such department.

75
76 (e) Any officer, department or agency having custody of any property subject to forfeiture under this
77 section or having disposed of such property shall keep and maintain full and complete records showing
78 from whom it received the property, under what authority it held or received or disposed of the property,
79 to whom it delivered the property, the date and manner of destruction or disposition of the property, and
80 the exact kinds, quantities and forms of property. These records shall be open to inspection by the offices

81 of the inspector general and the attorney general and all federal and state officers charged with
82 enforcement of federal and state laws prohibiting prostitution and human trafficking. Persons making
83 final disposition or destruction of such property under court order shall report, under oath, to the court the
84 exact circumstances of such disposition or destruction.
85

86 (f) During a pending proceeding the court may issue at the request of the commonwealth *ex parte* any
87 preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought
88 and to provide for its custody including, but not limited to: an order that the commonwealth remove the
89 property if possible and safeguard it in a secure location in a reasonable fashion; that monies be deposited
90 in an interest-bearing escrow account; and that a substitute custodian be appointed to manage such
91 property. Property taken or detained under this section shall not be repleviable, but once seized shall be
92 deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders
93 and decrees of the court having jurisdiction thereof. Process for seizure of the property shall issue only
94 upon a showing of probable cause, and the application therefore and the issuance, execution and return
95 thereof shall be subject to chapter 276, in so far as applicable. A district attorney or the attorney general
96 may refer any real property, and any furnishings, equipment and related personal property located therein
97 and for which seizure is sought to the office of seized property management within the division of capital
98 asset management and maintenance. The office of seized property management shall preserve and
99 manage such 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 dispose of
101 such property. The office of seized property management may receive initial funding from the special law
102 enforcement trust funds of the attorney general and each district attorney established pursuant to
103 subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such
104 managed property to the extent provided as payment of reasonable expenses in subsection (d).
105

106 (g) The owner of any real property which is the principal domicile of an immediate family member of the
107 owner and which is subject to forfeiture under this section may file a petition for homestead exemption
108 with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition
109 exempting from forfeiture an amount allowed under section 1 of chapter 188. The value of the balance of
110 the principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption
111 may be acquired on only 1 principal domicile for the benefit of the immediate family of the owner.
112

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