

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Michael F. Kane**

*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 Drag Racing in the City of Holyoke.**

PETITION OF:

1 **SECTION 1.** Notwithstanding [section 17B of chapter 90](#) of the General Laws or any other  
2 general or special law to the contrary, the state police and the Holyoke police department may  
3 impound any motor vehicle used in the city of Holyoke by an owner or operator to accelerate at a  
4 high rate of speed in competition with another operator, whether or not there is an agreement to  
5 race, whether or not there is increased noise from skidding tires or amplified noise from racing  
6 engines, so-called drag racing, until such time as a forfeiture hearing can be heard in the manner  
7 set forth in sections 2 and 3.

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

9 (a) any motor vehicle used or intended to be used to violate [section 17B of chapter 90](#) of the  
10 General Laws or used to facilitate a violation of said section 17B of said chapter 90 in the city of  
11 Holyoke, but no forfeiture under this act shall extinguish a perfected security interest held by a  
12 creditor in a motor vehicle at the time of filing of the forfeiture action; and

13 (b) any money, negotiable instrument, securities or other thing of value furnished or intended to  
14 be furnished in exchange for violating said section 17B of said chapter 90 or for facilitating a  
15 violation of said section 17B of said chapter 90 in the city of Holyoke.

16 (2) The following exemptions shall apply:-

17 (a) no motor vehicle used as a common carrier in the transaction of business as a common carrier  
18 shall be subject to forfeiture, unless the owner or other person lawfully in charge of such motor

19 vehicle consented to or participated or intended to participate in the violation or facilitation of a  
20 violation of [section 17B of chapter 90](#) of the General Laws;

21 (b) no motor vehicle used or intended to be used to violate said section 17B of said chapter 90 or  
22 to facilitate a violation of said section 17B of said chapter 90 shall be subject to forfeiture by  
23 reason of any act or omission established by the owner thereof to have been committed or  
24 omitted by any person other than such owner while such motor vehicle was unlawfully in the  
25 possession of a person other than the owner in violation of the criminal laws of the United States,  
26 the commonwealth or any state; and

27 (c) no motor vehicle shall be subject to forfeiture unless the owner knew or should have known  
28 that such motor vehicle was used or intended to be used to violate or to facilitate a violation of  
29 said section 17B of said chapter 90.

30 **SECTION 3.** The Hampden county superior court shall have jurisdiction under any action  
31 brought pursuant to this act.

32 (a) The city may petition the superior court in the name of the city in the nature of a proceeding  
33 in rem to order forfeiture of a motor vehicle, money or other things of value subject to forfeiture  
34 under section 2. Such proceeding shall be deemed a civil suit. Any person claiming a right in the  
35 property subject to forfeiture shall have the right to claim a trial by jury, but if such right is not  
36 claimed, the right to trial by jury shall be waived. In all such suits where the property is claimed  
37 by any person other than the city, the city shall have the burden of proving the existence of  
38 probable cause to institute the action, and any such claimant shall then have the burden of  
39 proving that the property is not forfeitable pursuant to section 2. The court shall order the city to  
40 give notice by certified mail to the owner of the motor vehicle, moneys or other things of value  
41 and to other persons who appear to have an interest therein, and the court shall promptly hold a  
42 hearing on the petition. Upon motion of the owner of said motor vehicle, moneys or other things  
43 of value, the court may continue the hearing on the petition pending the outcome of any criminal  
44 trial related to the violation of [section 17B of chapter 90](#) of the General Laws, and upon a finding  
45 of not guilty, the court shall dismiss the forfeiture petition. At such forfeiture hearing the court  
46 shall hear evidence and, if no jury has been requested, make findings of fact and conclusions of  
47 law, and shall thereupon issue a final order, from which the parties shall have such right of  
48 appeal as is provided by law. In all such suits where a final order results in a forfeiture, said final  
49 order shall provide for disposition of the motor vehicle, moneys or other things of value by the  
50 city in any manner not prohibited by law, including official use by an authorized law  
51 enforcement or other public agency; or by sale at public auction or by competitive bidding. The  
52 proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture  
53 proceedings, seizure, storage, maintenance of custody, advertising and notice, and the balance  
54 thereof shall be deposited in the general fund of the city pursuant to [section 53 of chapter 44](#) of  
55 the General Laws and shall be appropriated to the police department.

56 **SECTION 4.** Whoever violates section 17B of chapter 90 of the General Laws in the city of  
57 Holyoke shall, in addition to forfeiture of the motor vehicle as set forth in section 3, also be  
58 punished by a fine of not less than \$500 nor more than \$1,000, and the registrar shall suspend  
59 such operator's license for a period of not less than 60 days. A subsequent violation shall be

60 punished by a fine of not less than \$2,000 nor more than \$5,000 and a suspension of such license  
61 for a period of not less than 6 months.

62 **SECTION 5.** This act shall take effect upon its passage.

NAME:

Michael F. Kane

DISTRICT/ADDRESS:

5th Hampden

# The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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## AN ACT RELATIVE TO DRAG RACING 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:*