

HOUSE No. 2380

The Commonwealth of Massachusetts

PRESENTED BY:

Frank A. Moran

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 firearm industry accountability and gun violence victims’ access to justice.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>1/13/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/19/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/28/2023</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>4/4/2023</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>4/6/2023</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>	<i>4/14/2023</i>
<i>Lydia Edwards</i>	<i>Third Suffolk</i>	<i>6/9/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>10/2/2023</i>

HOUSE No. 2380

By Representative Moran of Lawrence, a petition (accompanied by bill, House, No. 2380) of Frank A. Moran and David Paul Linsky relative to firearm industry accountability and access to justice by allowing for civil actions by victims of gun violence. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to firearm industry accountability and gun violence victims’ access to justice.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 TITLE XV of Part 1 of the General Laws is hereby amended by inserting after Chapter
2 110H a new Chapter 110I, commencing with Section 1, as follows:

3 Section 1. Short Title.

4 This Act shall be known and may be cited as the Gun Violence Victims’ Access to
5 Justice Act.

6 Section 2. Findings and Declarations.

7 The General Court hereby finds and declares that:

8 (a) The Commonwealth of Massachusetts has a compelling interest in protecting its
9 residents’ life, health, safety, and wellbeing from gun violence and related harms.

10 (b) Unlawful and irresponsible conduct by members of the firearm industry pose
11 significant risks to the life, health, safety, and wellbeing of Massachusetts residents.

12 (c) Our Commonwealth and nation have a longstanding tradition of prescribing standards
13 of responsible conduct and accountability for industries whose business practices may cause
14 harm to the public, including the firearm industry.

15 (d) The federal Protection of Lawful Commerce in Arms Act preserves states' critical
16 authority to enact laws prescribing and enforcing standards of responsible conduct and
17 accountability for the firearm industry.

18 (e) It shall be the policy of the Commonwealth of Massachusetts that firearm industry
19 members have a lawful duty and responsibility to take reasonable precautions to prevent
20 foreseeable risks to life, health, safety, and wellbeing, including but not limited to the
21 requirements of this Chapter.

22 (f) It shall be the policy of the Commonwealth of Massachusetts that persons and entities
23 harmed by firearm industry members' wrongful and unlawful conduct, and public officials acting
24 in the public interest, shall not be barred from pursuing civil actions seeking appropriate justice,
25 fair compensation, and other remedies for those harms in court, consistent with any limitations or
26 immunities otherwise provided in Massachusetts or federal law.

27 Section 3. Definitions.

28 As used in this Chapter:

29 (a) “Firearm industry member” means a person, firm, corporation, or any other entity
30 engaged in the manufacture, distribution, importation, marketing, or wholesale or retail sale of a
31 firearm industry product.

32 (b) “Firearm industry product” means:

33 (1) A firearm;

34 (2) Ammunition;

35 (3) A completed or unfinished frame or receiver;

36 (4) A firearm component or magazine;

37 (5) A device that is designed or adapted to be inserted into, affixed onto, or used in
38 conjunction with a firearm, if the device is marketed or sold to the public, or reasonably designed
39 or intended, to be used to increase a firearm’s rate of fire, concealability, magazine capacity, or
40 destructive capacity, or to increase the firearm’s stability and handling when the firearm is
41 repeatedly fired.

42 (6) Any machine or device that is marketed or sold to the public, or reasonably designed
43 or intended, to be used to manufacture or produce a firearm or any other firearm industry product
44 listed in this paragraph.

45 (c) “Firearm trafficker” means a person who acquires, transfers, or attempts to acquire or
46 transfer a firearm industry product for purposes of unlawful commerce, including but not limited
47 to subsequent transfer to a person who is prohibited from possessing the firearm industry product
48 under Massachusetts or federal law.

49 (d) “Reasonable controls” means reasonable procedures, safeguards, and business
50 practices that are designed to do all of the following:

51 (1) Prevent the sale or distribution of a firearm industry product to:

52 (i) A straw purchaser or firearm trafficker;

53 (ii) A person who is prohibited from possessing the firearm industry product under
54 Massachusetts or federal law;

55 (iii) A person the firearm industry member has reasonable cause to believe is at
56 substantial risk of using a firearm industry product to harm themselves or unlawfully harm
57 another, or of otherwise unlawfully possessing or using a firearm industry product.

58 (2) Prevent the loss or theft of a firearm industry product from a firearm industry
59 member.

60 (3) Ensure the firearm industry member does not promote or facilitate the unlawful
61 manufacture, sale, possession, marketing, or use of a firearm industry product.

62 (4) Ensure the firearm industry member complies with all provisions of Massachusetts
63 and federal law.

64 (e) “Short-barreled rifle” means any of the following:

65 (1) A rifle having a barrel or barrels of less than 16 inches in length.

66 (2) A rifle with an overall length of less than 26 inches.

67 (3) Any weapon made from a rifle, whether by alteration, modification, or otherwise, if
68 that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less
69 than 16 inches in length.

70 (4) Any device that may be readily restored to fire a fixed cartridge which, when so
71 restored, is a device defined in this subdivision (e).

72 (5) Any part, or combination of parts, designed and intended to convert a device into a
73 device defined in this subdivision (e), or any combination of parts from which a device defined
74 in this subdivision (e) may be readily assembled if those parts are in the possession or under the
75 control of the same person.

76 (f) "Straw purchaser" means an individual who conceals, or intends to conceal, from a
77 seller or transferor that the individual is purchasing or obtaining a firearm industry product on
78 behalf of a third party. This term does not apply to an individual obtaining a firearm industry
79 product as a bona fide gift to a person who is not prohibited by law from possessing or receiving
80 a firearm industry product. For the purposes of this paragraph, a gift is not a bona fide gift if the
81 transferee has offered or given the transferor a service or thing of value to acquire the firearm
82 industry product on the transferee's behalf.

83 (g) "Unfinished frame or receiver" means any forging, casting, printing, extrusion,
84 machined body or similar article that has reached a stage in manufacture where it may readily be
85 completed, assembled or converted to be used as the frame or receiver of a functional firearm, or
86 that is marketed or sold to the public to become or be used as the frame or receiver of a
87 functional firearm once completed, assembled, or converted.

88 (h) The following terms shall have the same meaning provided in Section 121 of Chapter
89 140 of the General Laws and the Attorney General’s Enforcement Notice of July 20, 2016
90 governing the definition of “Assault weapon”:

91 (1) “Assault weapon”

92 (2) “Bump stock”

93 (3) “Large capacity feeding device”

94 (4) “Large capacity weapon”

95 (5) “Machine gun”

96 (6) “Sawed-off shotgun”

97 (7) “Trigger crank”

98 (i) “.50 caliber rifle” means a centerfire rifle capable of firing a .50 caliber cartridge. The
99 term does not include any antique firearm, any shotgun including a shotgun that has a rifle barrel,
100 or any muzzle-loader which uses black powder for hunting or historical re-enactments.

101 (j) “.50 caliber cartridge” means a cartridge in .50 BMG caliber, either by designation or
102 actual measurement, that is capable of being fired from a centerfire rifle. The term “.50 caliber
103 cartridge” does not include any memorabilia or display item that is filled with a permanent inert
104 substance or that is otherwise permanently altered in a manner that prevents ready modification
105 for use as live ammunition or shotgun ammunition with a caliber measurement that is equal to or
106 greater than .50 caliber.

107 Section 4. Firearm Industry Standard of Responsible Conduct.

108 (a) A firearm industry member shall:

109 (1) Establish and implement reasonable controls, as defined in Section 3 of this Chapter,
110 regarding the manufacture, distribution, importation, marketing, and sale of firearm industry
111 products; and

112 (2) Take reasonable precautions to ensure the firearm industry member does not sell or
113 distribute a firearm industry product to a downstream distributor or retailer of firearm industry
114 products that fails to establish and implement reasonable controls.

115 (b) A firearm industry member shall not manufacture, distribute, import, market, offer for
116 wholesale, or offer for retail sale a firearm industry product that is:

117 (1) Designed, sold, or marketed in a manner that foreseeably promotes conversion of
118 legal firearm industry products into illegal firearm industry products; or

119 (2) Designed, sold, or marketed in a manner that is targeted at minors or individuals who
120 are legally prohibited from purchasing or possessing firearms;

121 (c) A firearm industry member shall not manufacture, distribute, import, market, offer for
122 wholesale, or offer for retail sale a firearm industry product that is abnormally dangerous and
123 likely to create an unreasonable risk of harm to public health or safety, except for use solely by
124 members of the armed forces, national guard, or law enforcement agencies. For the purposes of
125 this paragraph, the following shall apply:

126 (1) A firearm industry product shall not be considered abnormally dangerous and likely
127 to create an unreasonable risk of harm to public health and safety based upon the inherent
128 potential of a firearm or ammunition to cause injury, damage, or death when discharged.

129 (2) The following firearm industry products shall be considered abnormally dangerous
130 and likely to create an unreasonable risk of harm to public health and safety:

131 (i) Assault weapons;

132 (ii) Bump stocks;

133 (iii) Fifty caliber rifles;

134 (iv) Large capacity feeding devices;

135 (v) Large capacity weapons;

136 (vi) Machine guns;

137 (vii) Sawed-off shotguns;

138 (viii) Short-barreled rifles;

139 (ix) Trigger cranks.

140 (3) There shall be a presumption that any other firearm industry product is abnormally
141 dangerous and likely to create an unreasonable risk of harm to public health and safety if the
142 firearm industry product's features render the product most suitable for assaultive purposes
143 instead of lawful self-defense, hunting, or other legitimate sport and recreational activities.

144 (d) A firearm industry member shall comply with the provisions of all of the following
145 when engaged in the manufacture, distribution, importation, marketing, or wholesale or retail
146 sale of a firearm industry product:

147 (1) The Massachusetts Antitrust Act, Sections 1 to 14A, inclusive, of Chapter 93 of the
148 General Laws;

149 (2) The Regulation of Business Practice and Consumer Protection Act, Chapter 93A of
150 the General Laws;

151 (3) Sections 91 and 92 of Chapter 266 of the General Laws; and

152 (4) Sections 10 to 12, inclusive, of Chapter 269 of Title 1 of the General Laws.

153 (e) This section shall apply to a firearm industry member engaged in the manufacture,
154 distribution, importation, marketing, or wholesale or retail sale of a firearm industry product that
155 meets any of the following conditions:

156 (1) The firearm industry product was sold, made, distributed, or marketed in this state.

157 (2) The firearm industry product was intended to be sold, made, distributed, or marketed
158 in this state.

159 (3) The firearm industry product was used or possessed in this state, and it was
160 reasonably foreseeable that the product would be used or possessed in this state.

161 Section 5. Cause of Action for Violations of Firearm Industry Standard of Responsible
162 Conduct.

163 (a) A person or entity who has suffered harm as a result of a firearm industry member's
164 acts or omissions in violation of any provision of Section 4 may bring a civil action under this
165 section in a court of competent jurisdiction.

166 (b) The Attorney General, or the Attorney General's designee, may bring a civil action in
167 a court of competent jurisdiction to enforce this Act and remedy harms caused by any acts or
168 omissions in violation of any provision of Section 4.

169 (c) In an action brought under this section, if the court determines that a firearm industry
170 member engaged in conduct in violation of Section 4, the court shall award just and appropriate
171 relief, including any or all of the following:

172 (1) Injunctive relief sufficient to prevent the firearm industry member and any other
173 defendant from further violating the law;

174 (2) Compensatory and punitive damages;

175 (3) Reasonable attorney's fees, filing fees, and reasonable costs of action; and

176 (4) Any other just and appropriate relief necessary to enforce this Act and remedy the
177 harm caused by the violation.

178 (d) In an action brought under this section:

179 (1) An intervening act by a third party, including but not limited to the unlawful misuse
180 of a firearm industry product, shall not preclude a firearm industry member from liability for
181 harms caused by the firearm industry member's violation of any provision of Section 4.

182 (2) Notwithstanding any intervening act by a third party, there shall be a presumption that
183 a firearm industry member's violation of Section 4 was the proximate cause of harms suffered by
184 the plaintiff from a firearm industry product involved in the violation, if the firearm industry
185 member's violation of Section 4 created a reasonably foreseeable risk that the harm would occur.

186 (e) An action under this Act may be commenced within 5 years from the date that the
187 violation occurred or the harm was incurred.

188 (f) A civil action brought under this section may be brought in:

189 (1) The county in which all or a substantial part of the events or omissions giving rise to
190 the claim occurred;

191 (2) The county of residence of any natural person defendant at the time the cause of
192 action accrued;

193 (3) The county of the principal office in this state of any defendant that is not a natural
194 person; or

195 (4) The county of residence for the plaintiff if the plaintiff is a natural person residing in
196 this State.

197 Section 6. Limitations.

198 (a) Nothing in this Act shall be construed or implied to limit or impair in any way the
199 right of the Attorney General, or any person or entity, to pursue a legal action under any other
200 law, cause of action, tort theory, or other authority.

201 (b) Nothing in this Act shall be construed or implied to limit or impair in any way an
202 obligation or requirement placed on a firearm industry member by any other authority.

203 (c) This Act shall be construed and applied in a manner that is consistent with the
204 requirements of the Constitutions of Massachusetts and the United States.

205 Section 7. Severability.

206 If any provision of this Act, or part of this Act, any clause within this Act, any
207 combination of words within this Act, or the application of any provision or part or clause or
208 combination of words of this Act to any person or circumstance, is for any reason held to be
209 invalid or unconstitutional, the remaining provisions, clauses, words, or applications of
210 provisions, clauses, or words shall not be affected, but shall remain in full force and effect, and
211 to this end the provisions of this Act are severable.

212 Section 8. Effective date.

213 This Act shall take effect 120 days after the date of enactment.