

**STATE OF CONNECTICUT  
DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION**

**RICHARD E. BURGESS, PRESIDENT,** :  
**CONNECTICUT CARRY, INC.** :

**PETITIONERS** :

**V.** :

**DORA B. SCHIRO, COMMISSIONER,** :  
**DEPARTMENT OF EMERGENCY SERVICES:** :  
**AND PUBLIC PROTECTION** :

**RESPONDENT** : **MARCH 24, 2014**

**PETITION FOR DECLARATORY RULINGS**

Pursuant to General Statutes § 4-176,<sup>1</sup> Petitioners Richard E. Burgess and Connecticut Carry, Inc., through undersigned counsel, hereby petition the Commissioner for rulings to declare:

- (1) The act of modifying a lawfully possessed assault weapon by adding features or changing characteristics is lawful and therefore not subject to criminal liability.

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<sup>1</sup> General Statutes § 4-176 mandates that each agency: "[A]dopt regulations, in accordance with the provisions of this chapter, that provide for (1) the form and content of petitions for declaratory rulings, (2) the filing procedure for such petitions and (3) the procedural rights of persons with respect to the petitions." The Department of Emergency Services and Public Protection (DESPP) has refused to adopt regulations for filing petitions for declaratory rulings as mandated by the requirements of § 4-176. In *Patten v. Spada*, Superior Court, judicial district of Litchfield, Docket No. CV-0300090209-S (September 22, 2003) (35 Conn. L. Rptr. 518), the trial court rejected Patten's argument that the failure of the DESPP to issue regulations providing for rules of practice in requesting declaratory rulings foreclosed Patten from seeking a declaratory ruling. An affidavit from an attorney in the DESPP Legal Affairs unit persuaded the court that "any interested party may file such a petition and that the defendant [DESPP] will consider it." *Id.* Patten's case was dismissed for failure to exhaust administrative remedies. More than ten years later, the DESPP still has not adopted regulations for filing requests for declaratory rulings. By not adopting regulations as the Uniform Administrative Procedures Act mandates, the DESPP has denied individuals a meaningful opportunity to submit requests for declaratory rulings in at least three respects: First, an individual cannot know the form and content required by DESPP for consideration of a request for declaratory ruling. General Statutes § 4-176(b)(1). Second, an individual cannot know the filing procedure required by DESPP for consideration of a request for declaratory ruling. General Statutes § 4-176(b)(2). Third, an individual cannot know his or her procedural rights in the DESPP consideration of a request for declaratory ruling. General Statutes § 4-176(b)(3). Nevertheless, the court's opinion in *Patten* and the more recent decision in *Peruta v. Commissioner of Public Safety*, 128 Conn. App. 777, 20 A.3d 691 (2001) confirm that the courts do not require the DESPP to follow the law as set forth in § 4-176.

- (2) The laws passed in No. 13-220 of the 2013 Public Acts (P.A. 13-220) on June 18, 2013, retroactively legalized firearms that had been defined since passage of No. 01-130 of the 2001 Public Acts (P.A. 01-130) on June 28, 2001, as assault weapons subject to a prohibition on possession.

## **I. SCOPE AND SUMMARY OF PETITION**

### **A. Lawful Modification and Retroactive Legalization**

As President of Connecticut Carry, Burgess has received numerous inquiries from the organization's membership concerning criminal liability for modification of assault weapons lawfully possessed in the State of Connecticut.<sup>2</sup> Burgess and Connecticut Carry petition the Commissioner for rulings to declare:

- (1) The act of modifying a lawfully possessed assault weapon by adding features or changing characteristics is lawful and therefore not subject to criminal liability.
- (2) The laws passed in No. 13-220 of the 2013 Public Acts (P.A. 13-220) on June 18, 2013, retroactively legalized firearms that had been defined since passage of No. 01-130 of the 2001 Public Acts (P.A. 01-130) on June 28, 2001, as assault weapons subject to a prohibition on possession.

The scope of this Petition is limited to persons (1) not subject to exemption from the prohibited possession of assault weapons<sup>3</sup> and (2) not prohibited by law from the possession of firearms.

Burgess is an interested party in his individual status and as President of Connecticut Carry, a 26

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<sup>2</sup> Lawful possession of an assault weapon in Connecticut requires the submission of an application for a certificate of possession to the Department of Emergency Services and Public Protection (DESPP) by January 1, 2014. General Statutes § 53-202d(a)(2)(A).

<sup>3</sup> Public Act 13-220, § 6, effective June 18, 2013 (codified as General Statutes § 53-202c(b)) ("The provisions of subsection (a) of this section shall not apply to the possession of assault weapons by: (1) The Department of Emergency Services and Public Protection, police departments, the Department of Correction, the Division of Criminal Justice, the Department of Motor Vehicles, the Department of Energy and Environmental Protection or the military or naval forces of this state or of the United States, (2) a sworn and duly certified member of an organized police department, the Division of State Police within the Department of Emergency Services and Public Protection or the Department of Correction, a chief inspector or inspector in the Division of Criminal Justice, a salaried inspector of motor vehicles designated by the Commissioner of Motor Vehicles, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection pursuant to section 26-5, or a constable who is certified by the Police Officer Standards and Training Council and appointed by the chief executive authority of a town, city or borough to perform criminal law enforcement duties, for use by such sworn member, inspector, officer or constable in the discharge of such sworn member's, inspector's, officer's or constable's official duties or when off duty, (3) a member of the military or naval forces of this state or of the United States, or (4) a nuclear facility licensed by the United States Nuclear Regulatory Commission for the purpose of providing security services at such facility, or any contractor or subcontractor of such facility for the purpose of providing security services at such facility.").

U.S.C. § 501(c)(4) non-partisan, grassroots, non-profit organization established in 2011 to protect constitutional rights in Connecticut through education and advocacy.

B. Proposed Declaratory Ruling

The State of Connecticut passed legislation in No. 13-3 of the Public Acts 2013 (P.A. 13-3) on April 4, 2013, to enact laws prohibiting a person from possessing any firearm defined as an assault weapon unless in receipt of a certificate of possession applied for by January 1, 2014, to the Department of Emergency Services and Public Protection (DESPP). The confusion that followed from P.A. 13-3 led to the passage of laws in P.A. 13-220 on June 18, 2013, intended to remedy existing problems and problems anticipated to arise from the laws already passed in P.A. 13-3.

One problem arising from P.A. 13-3 was that certain firearms defined as assault weapons since 2001 were suddenly no longer defined as assault weapons in P.A. 13-3, § 25, and, as of April 4, 2013, were legal to sell, purchase, and possess in the State of Connecticut.<sup>4</sup> In reliance upon this change individuals purchased, after April 4, 2013, previously prohibited firearms that had been legalized by their omission from P.A. 13-3. The legislature addressed in P.A. 13-220, § 3, this unintended legalization of previously defined assault weapons by re-adding on June 18, 2013, the firearms defined previous to April 4, 2013, as assault weapons. A separate provision was added to P.A. 13-220 to allow for the registration of firearms purchased on or after April 4, 2013, but prior to June 18, 2013, that were defined as assault weapons since 2001 but omitted from the definition of assault weapons in P.A. 13-3.<sup>5</sup>

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<sup>4</sup> For example, by limiting the definition of assault rifles to only semiautomatic, centerfire rifles, P.A. 13-3, § 25, legalized previously prohibited semiautomatic, rimfire rifles. See footnote 19 for text of General Statutes (Rev. of 2013) § 53-202a(a)(3)(A).

<sup>5</sup> Public Act 13-220, § 7, effective June 18, 2013 (codified as General Statutes § 53-202d(a)(2)(A)) ("[A]ny person who lawfully possesses an assault weapon, as defined in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a, on April 4, 2013, under the provisions of sections 53-202a to 53-202k, inclusive, in effect on January 1, 2013, . . . , or any person who lawfully purchases a firearm on or after April 4, 2013, but prior

In summary: The laws passed in P.A. 13-220 to remedy the deficiencies in P.A. 13-3 retroactively legalized firearms that had been defined since 2001 through April 4, 2013, as assault weapons subject to a prohibition on possession. The pertinent provisions of law added by P.A. 13-220 on June 18, 2013, include:

- Public Act 13-220, § 3, adds rifles, pistols, and shotguns defined as assault weapons since 2001 by a criterion of features and characteristics to the list of firearms prohibited under the new laws passed in 2013.
- Public Act 13-220, § 7, allows a person to apply to the DESPP for a certificate of possession for rifles, pistols, and shotguns defined since 2001 as assault weapons by a criterion of features and characteristics if the firearms were legally possessed prior to April 4, 2013.
- Public Act 13-3, § 25, defines "legally possess" to include "actual possession." Public Act 13-220, § 4, clarifies the means for a person to prove "actual" and thereby "legal" possession" of an assault weapon. "Actual possession" is evidenced by a written statement made under penalty of false statement on such form as the DESPP Commissioner prescribes.<sup>6</sup> The form prescribed by then DESPP Commissioner Reuben F. Bradford demands a sworn affidavit that the specified assault weapon was purchased, not necessarily possessed, in compliance with state and federal laws on or prior to April 4, 2013. "Actual possession" proved by a purchase in compliance with state and federal laws is "legal possession" of an assault weapon.

In reliance upon these provisions and the analyses that follows, the following assault weapons, if originally purchased in compliance with state and federal laws, were included within the population of assault weapons permitted to be registered by application for a certificate of possession submitted by January 1, 2014, rendering them legally possessed since date of purchase:

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to June 18, 2013, that meets the criteria set forth in subdivision (3) or (4) of subsection (a) of section 53-202a of the Conn. Gen. Stat., revision of 1958, revised to January 1, 2013, shall apply by January 1, 2014, ... to the state to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon ... ").

<sup>6</sup> Public Act 13-220, § 4, effective June 18, 2013 (codified as General Statutes § 53-202a(7)(C)).

- A. A semiautomatic rifle that has an ability to accept a detachable magazine and has at least two of the following and may have three, four, or five:
- (i) A folding or telescoping stock;
  - (ii) A pistol grip that protrudes conspicuously beneath the action of the weapon;
  - (iii) A bayonet mount;
  - (iv) A flash suppressor or threaded barrel designed to accommodate a flash suppressor; and
  - (v) A grenade launcher.<sup>7</sup>
- B. A semiautomatic pistol that has an ability to accept a detachable magazine and has at least two of the following and may have three, four, or five:
- (i) An ammunition magazine that attaches to the pistol outside of the pistol grip;
  - (ii) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
  - (iii) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;
  - (iv) A manufactured weight of fifty ounces or more when the pistol is unloaded; and
  - (v) A semiautomatic version of an automatic firearm.<sup>8</sup>
- C. A semiautomatic shotgun that has at least two of the following and may have three or four:
- (i) A folding or telescoping stock;
  - (ii) A pistol grip that protrudes conspicuously beneath the action of the weapon;
  - (iii) A fixed magazine capacity in excess of five rounds; and
  - (iv) An ability to accept a detachable magazine.<sup>9</sup>

The consequence is that any person with a firearm described in A, B, or C, above, must be granted a window of opportunity in the future to apply for a certificate of possession to the DESPP given the language in P.A. 13-3 and P.A. 13-220 which compels that the firearms described in A, B, and C, above, were retroactively legalized on June 18, 2013, so long as purchased originally in accordance with state and federal laws.

<sup>7</sup> Public Act 01-130, § 1, effective June 28, 2001 (codified as General Statutes (Rev. of 2013) § 53-202a(a)(3)(A)).

<sup>8</sup> Public Act 01-130, § 1, effective June 28, 2001 (codified as General Statutes (Rev. of 2013) § 53-202a(a)(3)(B)).

<sup>9</sup> Public Act 01-130, § 1, effective June 28, 2001 (codified as General Statutes (Rev. of 2013) § 53-202a(a)(3)(C)).

Furthermore, as there is no provision in the law that provides for degrees of assault weapon status, i.e. a firearm is either an assault weapon or it is not, the modification of a lawfully possessed assault weapon by adding features or changing characteristics is lawful and therefore not subject to criminal liability. This conclusion is supported in the omission of any reference to features, characteristics, or parts in the DESPP form prescribed by the Commissioner to implement the statutory authority delegated to him or her in P.A. 13-220, § 4, for issuing certificates of possession.

## **II. STATUTORY TEXT AND LEGISLATIVE HISTORY**

### **A. Assault Weapons: Definitions in Public Acts 13-3 and 13-220**

Assault weapons in Connecticut are defined by type, series, or model in subparagraphs (A),<sup>10</sup> (B),<sup>11</sup> (C),<sup>12</sup> and (D)<sup>13</sup> or by a criterion of features and characteristics in subparagraph (E)<sup>14</sup>

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<sup>10</sup> Public Act 93-306, § 1, effective June 8, 1993 (codified as General Statutes § 53-202a(1)(A)).

<sup>11</sup> Public Act 13-3, § 25, effective April 4, 2013 (codified as General Statutes § 53-202a(1)(B)(i)-(xlix)) ("Any of the following specified semiautomatic centerfire rifles, or copies or duplicates thereof with the capability of any such rifles, that were in production prior to or on April 4, 2013: (i) AK-47; (ii) AK-74; (iii) AKM; (iv) AKS-74U; (v) ARM; (vi) MAADI AK47; (vii) MAK90; (viii) MISR; (ix) NHM90 and NHM91; (x) Norinco 56, 56S, 84S and 86S; (xi) Poly Technologies AKS and AK47; (xii) SA 85; (xiii) SA 93; (xiv) VEPR; (xv) WASR-10; (xvi) WUM; (xvii) Rock River Arms LAR-47; (xviii) Vector Arms AK-47; (xix) AR-10; (xx) AR-15; (xxi) Bushmaster Carbon 15, Bushmaster XM15, Bushmaster ACR Rifles, Bushmaster MOE Rifles; (xxii) Colt Match Target Rifles; (xxiii) Armalite M15; (xxiv) Olympic Arms AR-15, A1, CAR, PCR, K3B, K30R, K16, K48, K8 and K9 Rifles; (xxv) DPMS Tactical Rifles; (xxvi) Smith and Wesson M&P15 Rifles; (xxvii) Rock River Arms LAR-15; (xxviii) Doublestar AR Rifles; (xxix) Barrett REC7; (13-3) Beretta Storm; (13-3i) Calico Liberty 50, 50 Tactical, 100, 100 Tactical, I, I Tactical, II and II Tactical Rifles; (13-3ii) Hi-Point Carbine Rifles; (13-3iii) HK-PSG-1; (13-3iv) Kel-Tec Sub-2000, SU Rifles, and RFB; (13-3v) Remington Tactical Rifle Model 7615; (13-3vi) SAR-8, SAR-4800 and SR9; (13-3vii) SLG 95; (13-3viii) SLR 95 or 96; (13-3ix) TNW M230 and M2HB; (xl) Vector Arms UZI; (xli) Galil and Galil Sporter; (xlii) Daewoo AR 100 and AR 110C; (xliii) Fabrique Nationale/FN 308 Match and L1A1 Sporter; (xliv) HK USC; (xlv) IZHMASH Saiga AK; (xlvi) SIG Sauer 551-A1, 556, 516, 716 and M400 Rifles; (xlvii) Valmet M62S, M71S and M78S; (xlviii) Wilkinson Arms Linda Carbine; and (xlix) Barrett M107A1.").

<sup>12</sup> Public Act 13-3, § 25, effective April 4, 2013 (codified as General Statutes § 53-202a(1)(C)(i)-(xxii)) ("Any of the following specified semiautomatic pistols, or copies or duplicates thereof with the capability of any such pistols, that were in production prior to or on April 4, 2013: (i) Centurion 39 AK; (ii) Draco AK-47; (iii) HCR AK-47; (iv) IO Inc. Hellpup AK-47; (v) Mini-Draco AK-47; (vi) Yugo Krebs Krink; (vii) American Spirit AR-15; (viii) Bushmaster Carbon 15; (ix) Doublestar Corporation AR; (x) DPMS AR-15; (xi) Olympic Arms AR-15; (xii) Rock River Arms LAR 15; (xiii) Calico Liberty III and III Tactical Pistols; (xiv) Masterpiece Arms MP.A. Pistols and Velocity Arms VMA Pistols; (xv) Intratec TEC-DC9 and AB-10; (xvi) Colefire Magnum; (xvii) German Sport 522 PK and Chiappa Firearms Mfour-22; (xviii) DSA SA58 PKP FAL; (xix) I.O. Inc. PPS-43C; (xx) Kel-Tec PLR-16 Pistol; (xxi) Sig Sauer P516 and P556 Pistols; and (xxii) Thompson TA5 Pistols.").

of subdivision (1) of General Statutes § 53-202a. The firearms listed in subparagraph (A) have been prohibited since the June 8, 1993 enactment of No. 93-306 of the 1993 Public Acts (P.A. 93-306) and were required to be registered by October 1, 1994. The firearms listed in subparagraphs (B), (C), and (D) were not defined as assault weapons until the April 4, 2013 enactment of P.A. 13-3, § 25, and were required to be registered by January 1, 2014.

When P.A. 13-3, § 25, was enacted on April 4, 2013, subparagraph (E) defined a firearm meeting at least the minimum criterion of features and characteristics described in eight clauses numbered (i) to (viii) as an assault weapon.<sup>15</sup> A firearm meeting the minimum criterion in

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<sup>13</sup> Public Act 13-3, § 25, effective April 4, 2013 (codified as General Statutes § 53-202a(1)(D)) ("Any of the following semiautomatic shotguns, or copies or duplicates thereof with the capability of any such shotguns, that were in production prior to or on April 4, 2013: All IZHMASH Saiga 12 Shotguns.").

<sup>14</sup> Public Act 13-220, § 3, effective June 18, 2013 (codified as General Statutes § 53-202a(1)(E)(i)-(ix)) ("Any semiautomatic firearm regardless of whether such firearm is listed in subparagraphs (A) to (D), inclusive, of this subparagraph, and regardless of the date such firearm was produced, that meets the following criteria: (i) A semiautomatic, centerfire rifle that has an ability to accept a detachable magazine and has at least one of the following: (I) A folding or telescoping stock; (II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing; (III) A forward pistol grip; (IV) A flash suppressor; or (V) A grenade launcher or flare launcher; or (ii) A semiautomatic, centerfire rifle that has a fixed magazine with the ability to accept more than ten rounds; or (iii) A semiautomatic, centerfire rifle that has an overall length of less than thirty inches; or (iv) A semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the following: (I) An ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol grip; (II) A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer; (III) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to fire the firearm without being burned, except a slide that encloses the barrel; or (IV) A second hand grip; or (v) A semiautomatic pistol with a fixed magazine that has the ability to accept more than ten rounds; or (vi) A semiautomatic shotgun that has both of the following: (I) A folding or telescoping stock; and (II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing; or (vii) A semiautomatic shotgun that has the ability to accept a detachable magazine; or (viii) A shotgun with a revolving cylinder; or (ix) Any semiautomatic firearm that meets the criteria set forth in subdivision (3) or (4) of subsection (a) of section 53-202a of the general statutes, revision of 1958, revised to January 1, 2013.").

<sup>15</sup> Public Act 13-3, § 25, effective April 4, 2013 (codified as General Statutes § 53-202a(1)(E)(i)-(viii)) ("Any semiautomatic firearm regardless of whether such firearm is listed in subparagraphs (A) to (D), inclusive, of this subparagraph, and regardless of the date such firearm was produced, that meets the following criteria: (i) A semiautomatic, centerfire rifle that has an ability to accept a detachable magazine and has at least one of the following: (I) A folding or telescoping stock; (II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing; (III) A forward pistol grip; (IV) A flash suppressor; or (V) A grenade launcher or flare launcher; or (ii) A semiautomatic, centerfire rifle that has a fixed magazine with the ability to accept more than ten rounds; or (iii) A semiautomatic, centerfire rifle that has an overall length of less than thirty inches; or (iv) A semiautomatic pistol that

clauses (i) to (viii) of subparagraph (E) was not defined as an assault weapon until the April 4, 2013, enactment of P.A. 13-3, § 25, and was required to be registered by January 1, 2014. Specifically, P.A. 13-3, § 28, enacted on April 4, 2013, permitted any person in lawful possession of an assault weapon as defined in subparagraphs (B) to (F), on or before April 4, 2013, under the provisions of General Statutes §§ 53–202a to 53–202k, in effect on January 1, 2013, to apply for a certificate of possession by January 1, 2014.<sup>16</sup> Subparagraph (F) prohibits the possession of a part or combination of parts designed or intended to convert a firearm into a firearm defined as an assault weapon in subparagraphs (A) to (E).<sup>17</sup>

B. Integration of Previously Prohibited Assault Weapons into Population of Assault Weapons Amenable to Registration

The amendment of subparagraph (E) by P.A. 13-220, § 3, on June 18, 2013, added another category of prohibited firearms to clauses (i) through (viii). The new clause (ix) to subparagraph (E) enacted by P.A. 13-220, § 3, on June 18, 2013, incorporated by reference subdivisions (3) and (4) of subsection (a) of General Statutes § 53-202a, revised to January 1,

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has an ability to accept a detachable magazine and has at least one of the following: (I) An ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol grip; (II) A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer; (III) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to fire the firearm without being burned, except a slide that encloses the barrel; or (IV) A second hand grip; or (v) A semiautomatic pistol with a fixed magazine that has the ability to accept more than ten rounds; or (vi) A semiautomatic shotgun that has both of the following: (I) A folding or telescoping stock; and (II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing; (vii) A semiautomatic shotgun that has the ability to accept a detachable magazine; (viii) A shotgun with a revolving cylinder.").

<sup>16</sup> Public Act 13-3, § 28, effective April 4, 2013 (amended by P.A. § 13-220, § 7, effective June 18, 2013) ("Any person who lawfully possesses an assault weapon, as defined in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53–202a, as amended by this act, on the date immediately preceding the effective date of this section, under the provisions of sections 53–202a to 53–202k, inclusive, in effect on January 1, 2013, shall apply by January 1, 2014, ... to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.").

<sup>17</sup> Public Act 13-220, § 3, effective June 18, 2013 (codified as General Statutes § 53-202a(1)(F)) ("A part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, of this subdivision, or any combination of parts from which an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, of this subdivision, may be assembled if those parts are in the possession or under the control of the same person.").



2013, prohibiting the transfer or possession of any semiautomatic rifle or pistol with a detachable magazine and two or more of the statutorily listed features and any semiautomatic shotgun with two or more of the statutorily listed features.<sup>18</sup> Clause (ix) of subparagraph (E), enacted on June, 18, 2013, by P.A. 13-220, § 3, prohibits:

Any semiautomatic firearm that meets the criteria set forth in subdivision (3) or (4) of subsection (a) of section 53-202a of the Conn. Gen. Stat., revision of 1958, revised to January 1, 2013.<sup>19</sup>

At the same time that P.A. 13-220 added to the assault weapon definitions a category of assault weapons in subparagraph (E) previously prohibited under P.A. 01-130, P.A. 13-220, § 7, permitted a person to apply by January 1, 2014, for a certificate of possession with respect to a legally possessed firearm listed in subparagraphs (B) to (F).<sup>20</sup> This amendment drew within the

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<sup>18</sup> See footnote 14 for text of P.A. 13-220, § 3, effective June 18, 2013 (codified as General Statutes § 53-202a(1)(E)(i)-(ix)).

<sup>19</sup> Public Act 01-130, § 1, effective June 28, 2001 (codified as General Statutes (Rev. of 2013) § 53-202a(a)) ("(3)(A) A semiautomatic rifle that has an ability to accept a detachable magazine and has at least two of the following: (i) A folding or telescoping stock; (ii) A pistol grip that protrudes conspicuously beneath the action of the weapon; (iii) A bayonet mount; (iv) A flash suppressor or threaded barrel designed to accommodate a flash suppressor; and (v) A grenade launcher. (B) A semiautomatic pistol that has an ability to accept a detachable magazine and has at least two of the following: (i) An ammunition magazine that attaches to the pistol outside of the pistol grip; (ii) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip or silencer; (iii) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned; (iv) A manufactured weight of fifty ounces or more when the pistol is unloaded; and (v) A semiautomatic version of an automatic firearm. (C) A semiautomatic shotgun that has at least two of the following: (i) A folding or telescoping stock; (ii) A pistol grip that protrudes conspicuously beneath the action of the weapon; (iii) A fixed magazine capacity in excess of five rounds; and (iv) An ability to accept a detachable magazine. (4) A part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in subdivision (3) of this subsection, or any combination of parts from which an assault weapon, as defined in subdivision (3) of this subsection, may be rapidly assembled if those parts are in the possession or under the control of the same person.").

<sup>20</sup> P.A. § 13-220, § 7, effective June 18, 2013 (codified as General Statutes § 53-202d(a)(2)(A)) ("Except as provided in subparagraph (B) of this subdivision, any person who lawfully possesses an assault weapon, as defined in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a, on April 4, 2013, under the provisions of sections 53-202a to 53-202k, inclusive, in effect on January 1, 2013, or any person who regains possession of an assault weapon as defined in any provision of said subparagraphs pursuant to subsection (e) of section 53-202f, or any person who lawfully purchases a firearm on or after April 4, 2013, but prior to June 18, 2013, that meets the criteria set forth in subdivision (3) or (4) of subsection (a) of section 53-202a of the general statutes, revision of 1958, revised to January 1, 2013, shall apply by January 1, 2014, or, if such person is a member of the military or naval forces of this state or of the United States and is unable to apply by January 1, 2014, because such member is or was on official duty outside of this state, shall apply within ninety days of returning to the state to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon. Any person who lawfully purchases a semiautomatic pistol that is defined as an assault weapon in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a that the Commissioner of

scope of assault weapons eligible for certificates of possession upon application to the DESPP those assault weapons defined in clause (ix) of paragraph (E) that had previously been prohibited by P.A. 01-130.<sup>21</sup>

C. From Lawful Possession to Lawful Purchase

The term "lawfully possesses" is defined in P.A. 13-3, § 25, effective April 4, 2013, as:

'Lawfully possesses' means, with respect to an assault weapon described in any provision of subparagraphs (B) to (F), inclusive, of this subparagraph, (A) actual possession that is lawful under sections 53-202b to 53-202k, as amended by this act, or (B) constructive possession pursuant to a lawful purchase transacted prior to the effective date of this section, regardless of whether the assault weapon was delivered to the purchaser prior to the effective date of this section.

This definition was repealed entirely in P.A. 13-220, § 4, effective June 18, 2013, and the following definition substituted:

'Lawfully possesses' means, with respect to an assault weapon described in any provision of subparagraphs (B) to (F), inclusive, of this subparagraph, (A) actual possession that is lawful under sections 53-202b to 53-202k, (B) constructive possession pursuant to a lawful purchase transacted prior to or on April 4, 2013, regardless of whether the assault weapon was delivered to the purchaser prior to or on April 4, 2013, which lawful purchase is evidenced by a writing sufficient to indicate that (i) a contract for sale was made between the Parties prior to or on April 4, 2013, for the purchase of the assault weapon, or (ii) full or Partial Payment for the assault weapon was made by the purchaser to the seller of the assault weapon prior to or on April 4, 2013, or (C) actual possession under subparagraph (A) of this subparagraph, or constructive possession under subparagraph (B) of this subparagraph, as evidenced by a written statement made under penalty of false statement on such form as the Commissioner of Emergency Services and Public Protection prescribes.

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Emergency Services and Public Protection designates as being designed expressly for use in target shooting events at the Olympic games sponsored by the International Olympic Committee pursuant to regulations adopted under subdivision (4) of subsection (b) of section 53-202b shall apply within ninety days of such purchase to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.").

<sup>21</sup> See footnote 19 for text of P.A. 01-130, §1, effective June 28, 2001 (codified as General Statutes (Rev. of 2013) § 53-202a(a)).

The Assault Weapon Certificate Application, Form DPS-414-C (Rev. 10/02/13),<sup>22</sup> prescribed by the Commissioner to implement the registration requirements of P.A. 13-3 and P.A. 13-220 states:

Submit proof that you purchased this weapon on or prior to April 4, 2013 in the form of a valid sales receipt and/or a DPS-3, or sworn affidavit that the specified assault weapon was purchased in compliance with state and federal laws.

The form prescribed by the Commissioner does not ask the applicant to submit a sworn affidavit confirming that the assault weapon was lawfully possessed on or prior to April 4, 2013, only that it was purchased in compliance with state and federal laws, so that a firearm lawfully purchased but modified to have two, three, four, or five features that would have made the firearm illegal to possess under subdivisions (3) and (4) subsection (a) of General Statutes § 53-202a, revised to January 1, 2013, was subject to lawful registration on or before January 1, 2014.

Lawful possession of a firearm under General Statutes §§ 53-202a through 53-202k, in effect on January 1, 2013, as set forth by the DESPP in Form DPS-414-C, requires a purchase in compliance with state and federal laws. The legislature delegated the authority to implement the laws permitting registration of assault weapons to the Commissioner. In response, the Commissioner prescribed a form for the registration of assault weapons lawfully purchased on or prior to April 4, 2013.

Firearms defined in subdivisions (3) and (4) of subsection (1) of General Statutes § 53-202a, revised to January 1, 2013, could not have been lawfully purchased prior to April 4, 2013, except if they were purchased prior to adding features or changing characteristics. As firearms defined in subdivisions (3) and (4) of subsection (1) of General Statutes § 53-202a, revised to January 1, 2013, may be registered if lawfully purchased on or prior to April 4, 2013, and they

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<sup>22</sup> See attached Assault Weapon Certificate Application, Form DPS-414-C (Rev. 10/02/13).

could not have been lawfully purchased on or prior to April 4, 2013, in the State of Connecticut had they met the criterion of features and characteristics making them unlawful, then principles of statutory construction leave no alternative but to conclude that firearms lawfully purchased on or prior to April 4, 2013, and converted thereafter into assault weapons by adding features or changing characteristics, are permitted to be registered under General Statutes § 53-202d(a)(2)(A) as General Statutes § 53-202d(a)(2)(A) incorporates the firearms referenced in General Statutes § 53-202a(1)(E)(ix).

The form prescribed by the Commissioner requires a firearm owner applying for a certificate of possession to submit a sworn affidavit that the specified assault weapon was purchased, not possessed, in compliance with state and federal laws. "Actual possession" is equated with "legal possession" in P.A. 13-220, § 4, if the firearm owner affirms that the firearm was legally purchased on or prior to April 4, 2013. The form prescribed by the Commissioner does not ask the firearm owner to affirm that no features were added and no characteristics changed subsequent to the lawful purchase of the firearm or if in fact the lawfully purchased firearm meets the definition of an assault weapon by a criterion of features and characteristics already prohibited since the June 28, 2001, effective date of P.A. 01-130.<sup>23</sup>

D. Modification of Lawfully Possessed Assault Weapons

In P.A. 01-130, effective June 28, 2001, firearms meeting a criterion of characteristics and features were defined as assault weapons and prohibited. A semiautomatic rifle with a detachable magazine and two or more of five listed features was defined as an assault weapon

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<sup>23</sup> Nor does the form prescribed by the Commissioner provide any means of applying for a certificate of possession for a part or combination of parts designed or intended to convert a firearm into an assault weapon. This omission has denied gun owners the sole means provided under state statute to register a part or combination of parts from which an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, may be assembled. General Statutes § 53-202a(1)(F). If a certificate of possession is required to register a part or combination of parts from which an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, may be assembled and the Commissioner has provided no means for making an application then criminal liability for possession of a part or combination of parts is susceptible to challenge.

and prohibited. A semiautomatic pistol with a detachable magazine and two or more of five listed features was defined as a semiautomatic pistol and prohibited. A semiautomatic shotgun with two or more of four listed features was defined as an assault weapons and prohibited.<sup>24</sup> These prohibitions were codified in General Statutes (Rev. of 2013) § 53-202a(a)(3). General Statutes (Rev. of 2013) § 53-202a(a)(4) defined a part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in subdivision (3), or any combination of parts from which an assault weapon, as defined in subdivision (3), could be rapidly assembled as an assault weapon.

Subdivision (3) was repealed by P.A. 13-3, § 25, effective April 4, 2013. It was re-added to the definitions of assault weapons in P.A. 13-220, § 3, effective June 18, 2013, and codified in General Statutes § 53-202a(1)(E)(ix). Subdivision (4) was repealed by P.A., § 25, effective April 4, 2013. It was re-added to the definitions of assault weapons in P.A. 13-220, § 3, effective June 18, 2013, and codified as General Statutes § 53-202a(1)(F). Subparagraph (F) continues to include within the definitions of assault weapons a part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in any provision of subparagraphs (B) to (E) of subdivision (1) of General Statutes § 53-202a, or any combination of parts from which an assault weapon, as defined in any provision of subparagraphs (B) to (E), may be assembled if those parts are in the possession or under the control of the same person. The only difference is that the prohibition standard for possessing a part or combination of any parts changed from the ability to rapidly assemble in P.A. 01-130 to the ability to assemble in P.A. 13-220. Public Act 13-220, § 3, continues to apply the term "convert" to describe the prohibited use of a part or combination of parts in relationship to the end result of an "assault weapon."

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<sup>24</sup> See footnotes 7 to 9 and paragraphs (A) to (C) in Part I of this Petition.

The term "convert" means to change something into a different form or properties, to transmute the original or transform it into something it was not previously. In other words, a part or combination of parts constitutes an assault weapon if used to convert an existing firearm into an assault weapon. The addition of assault weapon characteristics or features to a firearm already registered as an assault weapon with a certificate of possession does not convert the assault weapon into more of an assault weapon any more than the firearm becomes less of an assault weapon when characteristics or features are removed but the firearm still meets the definition of an assault weapon. A part or a combination of parts that may be assembled into an assault weapon requires the availability of each and every part to assemble to weapon. A part or combination of parts that do not suffice to assemble an assault weapon but are assault weapon features do not convert a firearm that is already an assault weapon into an assault weapon nor are they a part or combination of parts from which an assault weapon may be assembled, rapidly or not.

Furthermore, as there is no provision in the law that provides for degrees of assault weapon status, i.e. a firearm is either an assault weapon or it is not, the modification of an assault weapon by adding features or changing characteristics is not subject to criminal liability. This conclusion is supported in the omission of any reference to features, characteristics, or parts in the DESPP form prescribed by the Commissioner to implement the statutory authority delegated to him or her in P.A. 13-220, § 4, for issuing certificates of possession.

### **III. CONCLUSIONS**

In drafting P.A. 13-220 the legislature had opportunities between April 4, 2013, and June 18, 2013, to review and perfect the new firearm laws. In specifically limiting the population of assault weapons permitted to be registered to only those assault weapons defined in General Statutes § 53-202a(1)(B)-(F), the legislature recognized that the assault weapons named in subparagraph (A) by type, series, or model were illegal if not registered already by October 1, 1994. If the legislature intended to class the previously prohibited assault weapons in clause (ix) of subparagraph (E) similarly then the legislature would not have included these previously prohibited firearms within subparagraphs (B) to (F) specifically referenced as amenable to registration. This indicator of clear legislative intent, and the Commissioner's implementation of that intent in asking only for a sworn affidavit affirming that a firearm was legally purchased, retroactively legalized firearms that had been defined since 2001 through April 4, 2013, as assault weapons and subject to a prohibition on possession.<sup>25</sup>

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<sup>25</sup> The further omission by the Commissioner of a section on the prescribed form to apply for a certificate of possession for applicants to specify the features and characteristics of a firearm not prohibited by type, series, or model but by the criterion of features and characteristics meeting the criterion indicates the clear intent of the legislature that assault weapons are not defined by degrees. The criminal penalty for an assault weapons with five features is not more or less than for an assault weapon with one feature.

**WHEREFORE**, for all of these reasons, Richard E. Burgess and Connecticut Carry, Inc. petition the Commissioner for rulings to declare:

- (1) The act of modifying a lawfully possessed assault weapon by adding features or changing characteristics is lawful and therefore not subject to criminal liability.
- (2) The laws passed in No. 13-220 of the 2013 Public Acts (P.A. 13-220) on June 18, 2013, retroactively legalized firearms that had been defined since passage of No. 01-130 of the 2001 Public Acts (P.A. 01-130) on June 28, 2001, as assault weapons subject to a prohibition on possession.

And furthermore to declare that the Commissioner's failure to provide public notice of the retroactive legalization of firearms previously prohibited as assault weapons must be remedied by providing a period of time for impacted firearm owners to apply for certificates of possession.

PETITIONERS  
RICHARD E. BURGESS, PRESIDENT,  
CONNECTICUT CARRY, INC.

BY:

\_\_\_\_\_  
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**STATE OF CONNECTICUT  
DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION  
DIVISION OF STATE POLICE**



**ASSAULT WEAPON CERTIFICATE APPLICATION**  
*(Pursuant to C.G.S. § 53-202a, et. seq., as amended by P.A. 13-3 and P.A.13-220)*

Certificate Number: \_\_\_\_\_

**Instructions:**

1. Type or print all information in all sections. (Must be legible or it will be returned.)
2. Submit proof that you purchased this weapon on or prior to April 4, 2013 in the form of a valid sales receipt and/or a DPS-3, or sworn affidavit that the specified assault weapon was purchased in compliance with state and federal laws.
3. See Appendix A, Declaration of Large Capacity Magazines Form, DESPP-788-C, to declare high capacity magazines.

**Note: Thumbprint is required for application to be processed.**

Applicant's Name: (Last, First, Middle)			Permit Number: (If applicable)		
Address: (Number, Street, City or Town, State, Zip Code) <b>NO P.O. Boxes</b>					
Date of Birth:		Social Security Number <i>(Optional, but will help prevent misidentification)</i> :		Home Telephone Number:	
Sex:		Height:		Weight:	
Motor Vehicle Operator's License Number and State:					
Manufacturer:	Importer:	Serial Number:	Model:	Caliber:	Unique I.D./Markings:
<div style="border: 2px solid black; width: 150px; height: 100px; margin: 0 auto;"> <p align="center">Applicant's Right Thumbprint</p> </div>			<p>(notary seal may be placed here)</p>		
<p>I understand that any false statement herein, which I do not believe to be true and which is intended to mislead a public servant in the performance of his or her official function, is punishable by law (See C.G.S. § 53a-157b). I further understand that any statement in this application that is determined to be false or inaccurate shall constitute grounds for the denial of such application. If approved before the facts are known, such approval shall be void if based on a false or inaccurate statement. My signature below attests to the accuracy, completeness and truth of all information supplied on this application:</p>					
Applicant Signature:			Date:		
Signature of Notary Public:					
My commission expires:					

**CERTIFICATE OF POSSESSION OF ASSAULT WEAPON**

Certificate Number: \_\_\_\_\_

Owner's name: (Last, First, Middle)					
Address: (Number, Street, City or Town, State, Zip Code) <b>NO P.O. Boxes</b>					
Date of Birth:		Social Security Number <i>(Optional, but will help prevent misidentification)</i> :		Motor Vehicle Operator's License Number and State:	
Manufacturer:	Importer:	Serial Number:	Model:	Caliber:	Unique I.D./Markings:
<p>_____</p> <p align="center">Signature of Owner</p>					<div style="border: 2px solid black; width: 150px; height: 100px; margin: 0 auto;"> <p align="center">Applicant's Right Thumbprint</p> </div>