

TESTIMONY OF CRAIG C. FISHBEIN
RE: SB 554

Dear Committee Members:

My name is CRAIG C. FISHBEIN, and I am an attorney, licensed to practice in the State of Connecticut. Unfortunately I cannot be with you today in person to give my testimony as I am on vacation with my family.

I am writing in support of SB 554 to revise the pistol permit appeals process. In support of my testimony, and proposed revisions, I offer two snapshots of cases of which I have recently been involved:

Case 1: A client of mine is the owner of a gun store. He ordered some firearms from an out of state distributor for sale at his store. After receiving the merchandise, he sold some of them, and these transactions were fully cleared by the Connecticut State Police ("CSP"). About two months later, he was visited by members of the CSP who had since decided that the firearms were not to be sold in Connecticut. They confiscated the remaining ones from my client, as well as those from the customers on the prior sales. All through the investigation my client was cooperative. Nonetheless, in November of 2005, he was charged importing and selling guns that are not legal in Connecticut.

Upon being charged, even though no handguns were involved, my client's pistol permit was revoked. He immediately appealed the revocation. My client was informed that the appeal of the revocation would not be heard for about three years (September of 2008).

In May of 2007, all charges against my client were dismissed. This fact was brought to the attention of the CSP, who had the power to restore the permit. Nonetheless, they still refused to restore my client's permit. Ultimately my client had to wait the almost three years to be heard and, because there was no credible reason for the revocation, he was successful on his appeal when it was finally heard.

Case 2: In March of 2005, a client of mine, who is an Honorably Discharged veteran of the Iraqi war, had the unfortunate circumstance of having his gun was stolen off of his person. Within minutes of the incident, he reported the theft to the local police, and he fully cooperated with their investigation which resulted in the arrest of the perpetrator, and recovery of the firearm. My client has no criminal record, and not so much as a speeding ticket. Nonetheless, about a month after his being a victim of this crime, and even though he was never arrested for anything that took place with regard to the incident, he was informed by the CSP that his pistol permit was being revoked, "for his involvement in a certain incident" in March of 2005.

My client appealed the revocation. The Board of Firearms Permit Examiners refused to schedule his appeal until they received a questionnaire back from the appellant, asking such things as when and where he received his permit, if he had even been charged with a crime, his motor vehicle driving history, as well as why he is filing the appeal. Upon submittal of the questionnaire, he was informed that he would have to wait for over three years to have his appeal heard. Even though my client had never been charged with a crime, he was expected to wait three years to try and get his rights restored.

Please be reminded that C.G.S. 29-32(b), states that, “[a]ny state permit or temporary state permit for the carrying of any pistol or revolver may be revoked by the Commissioner of Public Safety for cause and shall be revoked by said commissioner upon conviction of the holder of such permit of a felony or of any misdemeanor specified in subsection (b) of section 29-28 or upon the occurrence of any event which would have disqualified the holder from being issued the state permit or temporary state permit pursuant to subsection (b) of section 29-28. Further, that it also says that, “[t]he commissioner may revoke the state permit or temporary state permit based upon the commissioner’s own investigation or upon the request of any law enforcement agency.”

Unfortunately, all too often permits are being revoked, not for a conviction, but merely for an arrest, or even where there is no arrest at all, and for no stated reason. For the permit holder to have to wait more than three months, let alone three years, to have their appeal heard and decided, places a chilling effect upon the whole permitting process.

In light of the above, I have proposed certain revisions to C.G.S. 29-32B (Please see the attached).

Generally, I am proposing that:

- 1) The appellant merely tell the Board that they are filing an appeal and that they are asking for the restoring or issuing of a permit. (Currently the statute requires that the appellant tell the Board WHY they are filing the appeal, and that is self-explanatory as that is the only power that the Board is given under statute.)
- 2) The implied language about additional information be removed from the statute as it is being used to delay the scheduling of appeals. (The questionnaire process should be optional to the Board, based upon the particular facts of the case. For the questionnaire to ask for information which is already within the purview of the revoking authority is, in my opinion, merely to delay due process.)
- 3) Prior to the hearing that the appellant receive a clear and concise statement as to why exactly their permit has been revoked or not issued (too many times the claims are too general and at the hearing they become a moving target. An appellant should be properly apprised of what they are being accused of, so as to cause the revocation and/or non-issuance of a permit.)
- 4) Appeals be scheduled within 10 days of filing and heard within 90 days of the revocation and/or the decision not to issue a permit. Failure to be heard and decided within 90 days should be cause to have the permit restored and/or issued. (Because we are dealing with constitutional and due process issues here, there is no reason that anyone should have to wait more than three months to be heard on such an appeal.)
- 5) The Board of Firearms Permit Examiners conduct hearings on appeals no less than one every thirty days. (In order to protect our citizen’s Constitutional and due process concerns, there should be no reason that hearings occur no less than monthly, unless of course there are no matters to be heard.)

I thank you in advance for your kind consideration of these issues, and hope that you will consider the changes that I have proposed. Once again, I apologize for not being able to give you my testimony in person. Should any of you have any questions or concerns about this matter, I ask that you call my office at 203-265-2895 or email me at ccf@fishbeinlaw.com.

§ 29-32b. Board of Firearms Permit Examiners. Appeals to board. Hearings

(a) There shall be established a Board of Firearms Permit Examiners, within the Department of Public Safety for administrative purposes only, hereinafter referred to as the board, to be comprised of seven members appointed by the governor to serve during his term and until their successors are appointed and qualify. With the exception of public members, the members shall be appointed from nominees of the Commissioner of Public Safety, the Connecticut State Association of Chiefs of Police, the Commissioner of Environmental Protection, The Connecticut State Rifle and Revolver Association, Inc., and Ye Connecticut Gun Guild, Inc., and each of said organizations shall be entitled to representation on the board. At least one member of the board shall be a lawyer licensed to practice in this state, who shall act as chairman of the board during the hearing of appeals brought under this section.

(b) Any person aggrieved by any refusal to issue or renew a permit or certificate under the provisions of section 29-28 or 29-36f, or by any limitation or revocation of a permit or certificate issued under any of said sections, or by a refusal or failure of any issuing authority to furnish an application as provided in section 29-28a, may, within ninety days after receipt of notice of such refusal, limitation or revocation, or refusal or failure to supply an application as provided in section 29-28a, and without prejudice to any other course of action open to such person in law or in equity, appeal to the board. On such appeal the board shall inquire into and determine the facts, de novo, and unless it finds that such a refusal, limitation or revocation, or such refusal or failure to supply an application, as the case may be, would be for just and proper cause, it shall order such permit or certificate to be issued, renewed or restored, or the limitation removed or modified, as the case may be. If the refusal was for failure to document compliance with local zoning requirements, under subsection (a) of section 29-28, the board shall not issue a permit.

(c) Any person aggrieved by the action of an issuing authority may file **[an appeal to]** with the board ~~a clear and concise statement of the facts on which he relies for relief, and shall state the relief sought by the appellant.~~ The receipt by the board of the appellant's statement shall initiate the appeals process, and no appeal may be rejected for mere lack of formality. The board shall, within ten days next following receipt of the appeal, set a time and place at which the appeal shall be heard. The board, while such appeal is pending, ~~may request such additional information from the appellant and from the issuing authority as it deems reasonably necessary to conduct a fair and impartial hearing, and shall require of the issuing authority from whose decision or action the appeal is being sought a statement in writing setting forth the reasons for such failure, refusal, revocation or limitation.~~ **[Said written statement shall be forwarded to the appellant and the board, via certified mail, return receipt requested, no less than fifteen days prior to the date of the hearing.]** Failure or refusal of the issuing authority to furnish such written statement **[as described above]**, or to supply the appellant with an application, at least ten days prior to the hearing shall be cause for the board to grant the relief sought, forthwith and without further hearing. **[All appeals filed under this section shall be duly heard no more than ninety days following the filing of the appeal. Failure to be heard within this ninety day period shall be cause for the board to grant the relief sought, forthwith and without further hearing.]**

(d) The board shall hold hearings at such times and places as it in its discretion reasonably determines to be required, but not less than once every ~~ninety~~ **[thirty]** days, and shall give reasonable notice of the time and place of the hearing to the appellant and to the issuing authority. The board shall have the power to compel attendance at its sessions.

(e) All appeals hearings shall be conducted in an informal manner, but otherwise according to the rules of evidence, and all witnesses shall be sworn by the chairman. The board shall cause a verbatim transcript of the hearing to be kept in such manner as it may determine, and shall furnish such transcript to any party appealing its decision as hereinafter set forth. The statements of witnesses made under oath shall be privileged. Decisions of the board shall be by majority vote and shall be communicated in writing to the appellant and to the issuing authority within twenty days after the rendering of the decision. If any issuing authority neglects or refuses to comply with a decision of the board within ten days after notice of the board's decision has been given to such issuing authority, the board shall apply to the superior court for a writ of mandamus to enforce the board's decision.

(f) Any person aggrieved by the decision of the board may appeal therefrom in accordance with the provisions of section 4-183.

(g) The board shall serve without compensation, but its members shall be entitled to reasonable subsistence and travel allowances in the performance of their duties.