

House Bill 2589

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Eliminates requirement that concealed handgun licensee be resident of county in which license is issued.

Modifies fees related to issuance of concealed handgun license.

A BILL FOR AN ACT

1
2 Relating to concealed handgun licenses; amending ORS 166.291 and 166.293.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 166.291 is amended to read:

5 166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed
6 handgun license, upon receipt of the appropriate fees and after compliance with the procedures set
7 out in this section, shall issue the person a concealed handgun license if the person:

8 (a)(A) Is a citizen of the United States; or

9 (B) Is a legal resident alien who can document continuous residency in the [county] **United**
10 **States** for at least six months and has declared in writing to the United States Citizenship and
11 Immigration Services the intent to acquire citizenship status and can present proof of the written
12 declaration to the sheriff at the time of application for the license;

13 (b) Is at least 21 years of age;

14 [(c) *Is a resident of the county;*]

15 [(d)] (c) Has no outstanding warrants for arrest;

16 [(e)] (d) Is not free on any form of pretrial release;

17 [(f)] (e) Demonstrates competence with a handgun by any one of the following:

18 (A) Completion of any hunter education or hunter safety course approved by the State Depart-
19 ment of Fish and Wildlife or a similar agency of another state if handgun safety was a component
20 of the course;

21 (B) Completion of any National Rifle Association firearms safety or training course if handgun
22 safety was a component of the course;

23 (C) Completion of any firearms safety or training course or class available to the general public
24 offered by law enforcement, community college, or private or public institution or organization or
25 firearms training school utilizing instructors certified by the National Rifle Association or a law
26 enforcement agency if handgun safety was a component of the course;

27 (D) Completion of any law enforcement firearms safety or training course or class offered for
28 security guards, investigators, reserve law enforcement officers or any other law enforcement offi-
29 cers if handgun safety was a component of the course;

30 (E) Presents evidence of equivalent experience with a handgun through participation in organ-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 ized shooting competition or military service;

2 (F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been
3 revoked; or

4 (G) Completion of any firearms training or safety course or class conducted by a firearms in-
5 structor certified by a law enforcement agency or the National Rifle Association if handgun safety
6 was a component of the course;

7 [(g)] (f) Has never been convicted of a felony or found guilty, except for insanity under ORS
8 161.295, of a felony;

9 [(h)] (g) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS
10 161.295, of a misdemeanor within the four years prior to the application;

11 [(i)] (h) Has not been committed to the Oregon Health Authority under ORS 426.130;

12 [(j)] (i) Has not been found to be mentally ill and is not subject to an order under ORS 426.130
13 that the person be prohibited from purchasing or possessing a firearm as a result of that mental
14 illness;

15 [(k)] (j) Has been discharged from the jurisdiction of the juvenile court for more than four years
16 if, while a minor, the person was found to be within the jurisdiction of the juvenile court for having
17 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-
18 volving violence, as defined in ORS 166.470;

19 [(L)] (k) Has not been convicted of an offense involving controlled substances or participated in
20 a court-supervised drug diversion program, except this disability does not operate to exclude a per-
21 son if:

22 (A) The person has been convicted only once of violating ORS 475.864 (3) and has not completed
23 a court-supervised drug diversion program under ORS 135.907; or

24 (B) The person has completed a court-supervised drug diversion program under ORS 135.907 and
25 has not been convicted of violating ORS 475.864 (3);

26 [(m)] (L) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS
27 30.866, 107.700 to 107.735 or 163.738;

28 [(n)] (m) Has not received a dishonorable discharge from the Armed Forces of the United States;
29 and

30 [(o)] (n) Is not required to register as a sex offender in any state.

31 (2) A person who has been granted relief under ORS 166.274 or 166.293 or section 5, chapter 826,
32 Oregon Laws 2009, or 18 U.S.C. 925(c) or has had the person's record expunged under the laws of
33 this state or equivalent laws of other jurisdictions is not subject to the disabilities in subsection
34 [(1)(g) to (L)] (1)(f) to (k) of this section.

35 (3) Before the sheriff may issue a license:

36 (a) The application must state the applicant's legal name, current address and telephone number,
37 date and place of birth, hair and eye color and height and weight. The application must also list the
38 applicant's residence address or addresses for the previous three years. The application must contain
39 a statement by the applicant that the applicant meets the requirements of subsection (1) of this
40 section. The application may include the Social Security number of the applicant if the applicant
41 voluntarily provides this number. The application must be signed by the applicant.

42 (b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff
43 shall fingerprint and photograph the applicant and shall conduct any investigation necessary to
44 corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal
45 records check is necessary, the sheriff shall request the Department of State Police to conduct the

1 check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal
2 Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records
3 check and may not keep any record of the fingerprints. The Department of State Police shall report
4 the results of the fingerprint-based criminal records check to the sheriff. The Department of State
5 Police shall also furnish the sheriff with any information about the applicant that the Department
6 of State Police may have in its possession including, but not limited to, manual or computerized
7 criminal offender information.

8 (4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon re-
9 quest. The forms shall be uniform throughout this state in substantially the following form:

10 _____
11
12 APPLICATION FOR LICENSE TO CARRY
13 CONCEALED HANDGUN

14 Date _____

15 I hereby declare as follows:

16 I am a citizen of the United States or a legal resident alien who can document continuous resi-
17 dency in the [county] **United States** for at least six months and have declared in writing to the
18 United States Citizenship and Immigration Services my intention to become a citizen and can pres-
19 ent proof of the written declaration to the sheriff at the time of this application. I am at least 21
20 years of age. I have been discharged from the jurisdiction of the juvenile court for more than four
21 years if, while a minor, I was found to be within the jurisdiction of the juvenile court for having
22 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-
23 volving violence, as defined in ORS 166.470. I have never been convicted of a felony or found guilty,
24 except for insanity under ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not,
25 within the last four years, been convicted of a misdemeanor or found guilty, except for insanity
26 under ORS 161.295, of a misdemeanor. Except as provided in ORS 166.291 [(1)(L)] (1)(k), I have not
27 been convicted of an offense involving controlled substances or completed a court-supervised drug
28 diversion program. There are no outstanding warrants for my arrest and I am not free on any form
29 of pretrial release. I have not been committed to the Oregon Health Authority under ORS 426.130,
30 nor have I been found mentally ill and presently subject to an order prohibiting me from purchasing
31 or possessing a firearm because of mental illness. If any of the previous conditions do apply to me,
32 I have been granted relief or wish to petition for relief from the disability under ORS 166.274 or
33 166.293 or section 5, chapter 826, Oregon Laws 2009, or 18 U.S.C. 925(c) or have had the records
34 expunged. I am not subject to a citation issued under ORS 163.735 or an order issued under ORS
35 30.866, 107.700 to 107.735 or 163.738. I have never received a dishonorable discharge from the Armed
36 Forces of the United States. I am not required to register as a sex offender in any state. I under-
37 stand I will be fingerprinted and photographed.

38
39 Legal name _____
40 Age _____ Date of birth _____
41 Place of birth _____
42 Social Security number _____

43 (Disclosure of your Social Security account number is voluntary. Solicitation of the number is au-
44 thorized under ORS 166.291. It will be used only as a means of identification.)

1 Proof of identification (Two pieces of current identification are required, one of which must bear a
2 photograph of the applicant. The type of identification and the number on the identification are to
3 be filled in by the sheriff.):

- 4 1. _____
- 5 2. _____

6
7 Height _____ Weight _____
8 Hair color _____ Eye color _____

9
10 Current address _____

(List residence addresses for the
past three years on the back.)

11
12
13
14 City _____ County _____ Zip _____
15 Phone _____

16
17 I have read the entire text of this application, and the statements therein are correct and true.
18 (Making false statements on this application is a misdemeanor.)

19 _____
20 (Signature of Applicant)

21
22 Character references.

23 _____

Name	Address
_____	_____
Name	Address

24
25
26
27
28 Approved _____ Disapproved _____ by _____

29
30 Competence with handgun demonstrated by _____ (to be filled in by sheriff)

31 Date _____ Fee Paid _____

32 License No. _____
33 _____

34
35 (5)(a) Fees for concealed handgun licenses are:

36 [(A)] (a) [\$15] \$_____ to the Department of State Police for conducting the fingerprint check
37 of the applicant.

38 [(B)] (b) [\$50] \$_____ to the sheriff for the issuance or renewal of a concealed handgun li-
39 cense.

40 [(C)] (c) [\$15] \$_____ to the sheriff for the duplication of a license because of loss or change
41 of address.

42 [(b)] (6) The sheriff may enter into an agreement with the Department of Transportation to
43 produce the concealed handgun license.

44 [(6)] (7) No civil or criminal liability shall attach to the sheriff or any authorized representative
45 engaged in the receipt and review of, or an investigation connected with, any application for, or in

1 the issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the
2 lawful performance of duties under those sections.

3 [(7)] (8) Immediately upon acceptance of an application for a concealed handgun license, the
4 sheriff shall enter the applicant's name into the Law Enforcement Data System indicating that the
5 person is an applicant for a concealed handgun license or is a license holder.

6 [(8) *The county sheriff may waive the residency requirement in subsection (1)(c) of this section for
7 a resident of a contiguous state who has a compelling business interest or other legitimate demonstrated
8 need.*]

9 [(9) *For purposes of subsection (1)(c) of this section, a person is a resident of a county if the
10 person:*]

11 [(a) *Has a current Oregon driver license issued to the person showing a residence address in the
12 county;*]

13 [(b) *Is registered to vote in the county and has a memorandum card issued to the person under
14 ORS 247.181 showing a residence address in the county;*]

15 [(c) *Has documentation showing that the person currently leases or owns real property in the
16 county; or*]

17 [(d) *Has documentation showing that the person filed an Oregon tax return for the most recent tax
18 year showing a residence address in the county.*]

19 **SECTION 2.** ORS 166.291, as amended by section 10, chapter 826, Oregon Laws 2009, and sec-
20 tion 34, chapter 547, Oregon Laws 2011, is amended to read:

21 166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed
22 handgun license, upon receipt of the appropriate fees and after compliance with the procedures set
23 out in this section, shall issue the person a concealed handgun license if the person:

24 (a)(A) Is a citizen of the United States; or

25 (B) Is a legal resident alien who can document continuous residency in the [county] **United**
26 **States** for at least six months and has declared in writing to the United States Citizenship and
27 Immigration Services the intent to acquire citizenship status and can present proof of the written
28 declaration to the sheriff at the time of application for the license;

29 (b) Is at least 21 years of age;

30 [(c) *Is a resident of the county;*]

31 [(d)] (c) Has no outstanding warrants for arrest;

32 [(e)] (d) Is not free on any form of pretrial release;

33 [(f)] (e) Demonstrates competence with a handgun by any one of the following:

34 (A) Completion of any hunter education or hunter safety course approved by the State Depart-
35 ment of Fish and Wildlife or a similar agency of another state if handgun safety was a component
36 of the course;

37 (B) Completion of any National Rifle Association firearms safety or training course if handgun
38 safety was a component of the course;

39 (C) Completion of any firearms safety or training course or class available to the general public
40 offered by law enforcement, community college, or private or public institution or organization or
41 firearms training school utilizing instructors certified by the National Rifle Association or a law
42 enforcement agency if handgun safety was a component of the course;

43 (D) Completion of any law enforcement firearms safety or training course or class offered for
44 security guards, investigators, reserve law enforcement officers or any other law enforcement offi-
45 cers if handgun safety was a component of the course;

1 (E) Presents evidence of equivalent experience with a handgun through participation in organ-
 2 ized shooting competition or military service;

3 (F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been
 4 revoked; or

5 (G) Completion of any firearms training or safety course or class conducted by a firearms in-
 6 structor certified by a law enforcement agency or the National Rifle Association if handgun safety
 7 was a component of the course;

8 [(g)] (f) Has never been convicted of a felony or found guilty, except for insanity under ORS
 9 161.295, of a felony;

10 [(h)] (g) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS
 11 161.295, of a misdemeanor within the four years prior to the application;

12 [(i)] (h) Has not been committed to the Oregon Health Authority under ORS 426.130;

13 [(j)] (i) Has not been found to be mentally ill and is not subject to an order under ORS 426.130
 14 that the person be prohibited from purchasing or possessing a firearm as a result of that mental
 15 illness;

16 [(k)] (j) Has been discharged from the jurisdiction of the juvenile court for more than four years
 17 if, while a minor, the person was found to be within the jurisdiction of the juvenile court for having
 18 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-
 19 volving violence, as defined in ORS 166.470;

20 [(L)] (k) Has not been convicted of an offense involving controlled substances or participated in
 21 a court-supervised drug diversion program, except this disability does not operate to exclude a per-
 22 son if:

23 (A) The person has been convicted only once of violating ORS 475.864 (3) and has not completed
 24 a court-supervised drug diversion program under ORS 135.907; or

25 (B) The person has completed a court-supervised drug diversion program under ORS 135.907 and
 26 has not been convicted of violating ORS 475.864 (3);

27 [(m)] (L) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS
 28 30.866, 107.700 to 107.735 or 163.738;

29 [(n)] (m) Has not received a dishonorable discharge from the Armed Forces of the United States;
 30 and

31 [(o)] (n) Is not required to register as a sex offender in any state.

32 (2) A person who has been granted relief under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or
 33 has had the person's record expunged under the laws of this state or equivalent laws of other ju-
 34 risdictions is not subject to the disabilities in subsection [(1)(g) to (L)] (1)(f) to (k) of this section.

35 (3) Before the sheriff may issue a license:

36 (a) The application must state the applicant's legal name, current address and telephone number,
 37 date and place of birth, hair and eye color and height and weight. The application must also list the
 38 applicant's residence address or addresses for the previous three years. The application must contain
 39 a statement by the applicant that the applicant meets the requirements of subsection (1) of this
 40 section. The application may include the Social Security number of the applicant if the applicant
 41 voluntarily provides this number. The application must be signed by the applicant.

42 (b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff
 43 shall fingerprint and photograph the applicant and shall conduct any investigation necessary to
 44 corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal
 45 records check is necessary, the sheriff shall request the Department of State Police to conduct the

1 check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal
2 Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records
3 check and may not keep any record of the fingerprints. The Department of State Police shall report
4 the results of the fingerprint-based criminal records check to the sheriff. The Department of State
5 Police shall also furnish the sheriff with any information about the applicant that the Department
6 of State Police may have in its possession including, but not limited to, manual or computerized
7 criminal offender information.

8 (4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon re-
9 quest. The forms shall be uniform throughout this state in substantially the following form:

10 _____
11
12 APPLICATION FOR LICENSE TO CARRY
13 CONCEALED HANDGUN

14 Date _____

15 I hereby declare as follows:

16 I am a citizen of the United States or a legal resident alien who can document continuous resi-
17 dency in the [county] **United States** for at least six months and have declared in writing to the
18 United States Citizenship and Immigration Services my intention to become a citizen and can pres-
19 ent proof of the written declaration to the sheriff at the time of this application. I am at least 21
20 years of age. I have been discharged from the jurisdiction of the juvenile court for more than four
21 years if, while a minor, I was found to be within the jurisdiction of the juvenile court for having
22 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-
23 volving violence, as defined in ORS 166.470. I have never been convicted of a felony or found guilty,
24 except for insanity under ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not,
25 within the last four years, been convicted of a misdemeanor or found guilty, except for insanity
26 under ORS 161.295, of a misdemeanor. Except as provided in ORS 166.291 [(1)(L)] (1)(k), I have not
27 been convicted of an offense involving controlled substances or completed a court-supervised drug
28 diversion program. There are no outstanding warrants for my arrest and I am not free on any form
29 of pretrial release. I have not been committed to the Oregon Health Authority under ORS 426.130,
30 nor have I been found mentally ill and presently subject to an order prohibiting me from purchasing
31 or possessing a firearm because of mental illness. If any of the previous conditions do apply to me,
32 I have been granted relief or wish to petition for relief from the disability under ORS 166.274 or
33 166.293 or 18 U.S.C. 925(c) or have had the records expunged. I am not subject to a citation issued
34 under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or 163.738. I have never
35 received a dishonorable discharge from the Armed Forces of the United States. I am not required
36 to register as a sex offender in any state. I understand I will be fingerprinted and photographed.

37
38 Legal name _____
39 Age _____ Date of birth _____
40 Place of birth _____
41 Social Security number _____

42 (Disclosure of your Social Security account number is voluntary. Solicitation of the number is au-
43 thorized under ORS 166.291. It will be used only as a means of identification.)

44
45 Proof of identification (Two pieces of current identification are required, one of which must bear a

1 photograph of the applicant. The type of identification and the number on the identification are to
2 be filled in by the sheriff.):

3 1. _____

4 2. _____

5
6 Height _____ Weight _____

7 Hair color _____ Eye color _____

8
9 Current address _____

(List residence addresses for the
past three years on the back.)

10
11
12
13 City _____ County _____ Zip _____

14 Phone _____

15
16 I have read the entire text of this application, and the statements therein are correct and true.
17 (Making false statements on this application is a misdemeanor.)

18 _____
19 (Signature of Applicant)

20
21 Character references.

22 _____
23 Name: Address

24 _____
25 Name: Address

26
27 Approved _____ Disapproved _____ by _____

28
29 Competence with handgun demonstrated by _____ (to be filled in by sheriff)

30 Date _____ Fee Paid _____

31 License No. _____
32 _____

33
34 (5)[(a)] Fees for concealed handgun licenses are:

35 [(A)] (a) [\$15] \$_____ to the Department of State Police for conducting the fingerprint check
36 of the applicant.

37 [(B)] (b) [\$50] \$_____ to the sheriff for the issuance or renewal of a concealed handgun li-
38 cense.

39 [(C)] (c) [\$15] \$_____ to the sheriff for the duplication of a license because of loss or change
40 of address.

41 [(b)] (6) The sheriff may enter into an agreement with the Department of Transportation to
42 produce the concealed handgun license.

43 [(6)] (7) No civil or criminal liability shall attach to the sheriff or any authorized representative
44 engaged in the receipt and review of, or an investigation connected with, any application for, or in
45 the issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the

1 lawful performance of duties under those sections.

2 [(7)] (8) Immediately upon acceptance of an application for a concealed handgun license, the
 3 sheriff shall enter the applicant's name into the Law Enforcement Data System indicating that the
 4 person is an applicant for a concealed handgun license or is a license holder.

5 [(8) *The county sheriff may waive the residency requirement in subsection (1)(c) of this section for*
 6 *a resident of a contiguous state who has a compelling business interest or other legitimate demonstrated*
 7 *need.*]

8 [(9) *For purposes of subsection (1)(c) of this section, a person is a resident of a county if the*
 9 *person:*]

10 [(a) *Has a current Oregon driver license issued to the person showing a residence address in the*
 11 *county;*]

12 [(b) *Is registered to vote in the county and has a memorandum card issued to the person under*
 13 *ORS 247.181 showing a residence address in the county;*]

14 [(c) *Has documentation showing that the person currently leases or owns real property in the*
 15 *county; or*]

16 [(d) *Has documentation showing that the person filed an Oregon tax return for the most recent tax*
 17 *year showing a residence address in the county.*]

18 **SECTION 3.** ORS 166.293 is amended to read:

19 166.293. (1) If the application for the concealed handgun license is denied, the sheriff shall set
 20 forth in writing the reasons for the denial. The denial shall be sent to the applicant by certified mail,
 21 restricted delivery, within 45 days after the application was made. If no decision is issued within
 22 45 days, the person may seek review under the procedures in subsection (5) of this section.

23 (2) Notwithstanding ORS 166.291 (1), and subject to review as provided in subsection (5) of this
 24 section, a sheriff may deny a concealed handgun license if the sheriff has reasonable grounds to
 25 believe that the applicant has been or is reasonably likely to be a danger to self or others, or to the
 26 community at large, as a result of the applicant's mental or psychological state or as demonstrated
 27 by the applicant's past pattern of behavior involving unlawful violence or threats of unlawful vi-
 28 olence.

29 (3)(a) Any act or condition that would prevent the issuance of a concealed handgun license is
 30 cause for revoking a concealed handgun license.

31 (b) A sheriff may revoke a concealed handgun license by serving upon the licensee a notice of
 32 revocation. The notice must contain the grounds for the revocation and must be served either per-
 33 sonally or by certified mail, restricted delivery. The notice and return of service shall be included
 34 in the file of the licensee. The revocation is effective upon the licensee's receipt of the notice.

35 (4) Any peace officer or corrections officer may seize a concealed handgun license and return
 36 it to the issuing sheriff if the license is held by a person who has been arrested or cited for a crime
 37 that can or would otherwise disqualify the person from being issued a concealed handgun license.
 38 The issuing sheriff shall hold the license for 30 days. If the person is not charged with a crime
 39 within the 30 days, the sheriff shall return the license unless the sheriff revokes the license as
 40 provided in subsection (3) of this section.

41 (5) A person denied a concealed handgun license or whose license is revoked or not renewed
 42 under ORS 166.291 to 166.295 may petition the circuit court [*in the petitioner's county of residence*]
 43 to review the denial, nonrenewal or revocation. The petition must be filed **in the county in which**
 44 **the application is denied or in which the license is not renewed or revoked, no later than**
 45 [*within*] 30 days after the receipt of the notice of denial, **nonrenewal** or revocation.

1 (6) The judgment affirming or overturning the sheriff's decision shall be based on whether the
2 petitioner meets the criteria that are used for issuance of a concealed handgun license and, if the
3 petitioner was denied a concealed handgun license, whether the sheriff has reasonable grounds for
4 denial under subsection (2) of this section. Whenever the petitioner has been previously sentenced
5 for a crime under ORS 161.610 or for a crime of violence for which the person could have received
6 a sentence of more than 10 years, the court shall grant relief only if the court finds that relief
7 should be granted in the interest of justice.

8 (7) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county,
9 district or other political subdivision or public corporation in this state, without appearance by at-
10 torney, may appear as a party to an action under this section.

11 (8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of
12 filing or as soon as practicable thereafter.

13 (9) Filing fees for actions shall be as for any civil action filed in the court. If the petitioner
14 prevails, the amount of the filing fee shall be paid by the respondent to the petitioner and may be
15 incorporated into the court order.

16 (10) Initial appeals of petitions shall be heard de novo.

17 (11) Any party to a judgment under this section may appeal to the Court of Appeals in the same
18 manner as for any other civil action.

19 (12) If the governmental entity files an appeal under this section and does not prevail, it shall
20 be ordered to pay the attorney fees for the prevailing party.

21
