

House Bill 2328

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**.

Clarifies that party that is not natural person must appear in court proceedings by attorney unless otherwise specifically provided by law.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the representation of parties in legal proceedings; amending ORS 9.320, 18.205, 46.415,
3 55.090, 58.048, 166.274, 166.293, 410.190 and 413.041; and declaring an emergency.

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

5 **SECTION 1.** ORS 9.320 is amended to read:

6 9.320. Any action, suit, or proceeding may be prosecuted or defended by a party in person, or
7 by attorney, except that the state or a [*corporation*] **party that is not a natural person** appears
8 by attorney in all cases, unless otherwise specifically provided by law. Where a party appears by
9 attorney, the written proceedings must be in the name of the attorney, who is the sole represen-
10 tative of the client of the attorney as between the client and the adverse party, except as provided
11 in ORS 9.310.

12 **SECTION 2.** ORS 18.205 is amended to read:

13 18.205. (1) A judgment creditor may assign all or part of the creditor's rights under a judgment.
14 An assignment of judgment document must be signed by the judgment creditor, by the judgment
15 creditor's agent or by an attorney who represents the judgment creditor. Signature by the judgment
16 creditor's agent is not subject to the requirement of ORS 9.320 that a [*corporation*] **party that is**
17 **not a natural person** appear by an attorney in all cases. The signature must be acknowledged by
18 a notary public. The document may be:

19 (a) Filed with the court administrator for the court in which the judgment was entered, and
20 upon such filing shall be entered in the register and in the judgment lien record; or

21 (b) Recorded in any County Clerk Lien Record in which the judgment was recorded under ORS
22 18.152.

23 (2) Upon filing or recording under this section, an assignment of judgment document operates
24 to assign the judgment creditor's rights under the judgment to the extent reflected in the document.

25 (3) If this or another state is assigned or subrogated to the support rights of a person under
26 ORS 412.024, 418.032, 419B.406 or 419C.597 or similar statutes of another state, an assignment of
27 judgment document bearing the signature of the Administrator of the Division of Child Support of
28 the Department of Justice or the authorized representative of the administrator may be filed or re-
29 corded in the same manner as an assignment of judgment document under subsection (1) of this
30 section and shall have the same effect as an assignment of judgment document signed by the judg-

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 ment creditor.

2 (4) This section does not apply to justice courts, municipal courts or county courts performing
3 judicial functions.

4 **SECTION 3.** ORS 46.415 is amended to read:

5 46.415. (1) The judges of a circuit court shall sit as judges of the small claims department.

6 (2) No formal pleadings other than the claim shall be necessary.

7 (3) The hearing and disposition of all cases shall be informal, the sole object being to dispense
8 justice promptly and economically between the litigants. The parties shall have the privilege of of-
9 fering evidence and testimony of witnesses at the hearing. The judge may informally consult wit-
10 nesses or otherwise investigate the controversy and give judgment or make such orders as the judge
11 deems to be right, just and equitable for the disposition of the controversy.

12 (4) No attorney at law or person other than the plaintiff and defendant and their witnesses shall
13 appear on behalf of any party in litigation in the small claims department without the consent of the
14 judge of the court.

15 (5) Notwithstanding the provisions of ORS 9.320, a *[corporation]* **party that is not a natural**
16 **person**, the state or any city, county, district or other political subdivision or public corporation in
17 this state, without appearance by attorney, may appear as a party to any action in the small claims
18 department and in any supplementary proceeding in aid of execution after entry of a small claims
19 judgment.

20 (6) Assigned claims may be prosecuted by an assignee in small claims department to the same
21 extent they may be prosecuted in any other state court.

22 **SECTION 4.** ORS 55.090 is amended to read:

23 55.090. (1) Except as may otherwise be provided by ORS 55.040, no attorney at law nor any
24 person other than the plaintiff and defendant shall become involved in or in any manner interfere
25 with the prosecution or defense of the litigation in the department without the consent of the justice
26 of the justice court, nor shall it be necessary to summon witnesses. But the plaintiff and defendant
27 may offer evidence in their behalf by witnesses appearing at the hearing, and the justice may in-
28 formally consult witnesses or otherwise investigate the controversy and give judgment or make such
29 orders as the justice deems right, just and equitable for the disposition of the controversy.

30 (2) Notwithstanding ORS 9.320, a *[corporation]* **party that is not a natural person**, state or any
31 city, county, district or other political subdivision or public corporation in this state may appear
32 as a party to any action in the department without appearance by attorney.

33 **SECTION 5.** ORS 58.048 is amended to read:

34 58.048. The provisions of ORS 9.320 requiring that a *[corporation]* **party that is not a natural**
35 **person** appear by attorney in all cases *[shall]* **do** not apply to a professional corporation incorpo-
36 rated under this chapter or authorized to *render* professional service or services in this state where
37 the professional corporation is appearing before state administrative agencies.

38 **SECTION 6.** ORS 166.274 is amended to read:

39 166.274. (1) Except as provided in subsection (11) of this section, a person barred from possessing
40 or purchasing a firearm may file a petition for relief from the bar in accordance with subsection (2)
41 of this section if:

42 (a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(A) or (C) or 166.270;

43 or

44 (b) The person is barred from purchasing a firearm under ORS 166.470 (1)(a), (b) or (g).

45 (2) A petition for relief described in this section must be filed in the circuit court in the

1 petitioner's county of residence.

2 (3) A person may apply once per calendar year for relief under the provisions of this section.

3 (4)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

4 (A) The city chief of police if the court in which the petition is filed is located in a city; or

5 (B) The sheriff of the county in which the court is located.

6 (b) The copy of the petition shall be served on the chief of police or sheriff at the same time the
7 petition is filed at the court.

8 (5)(a) When a petition is denied, the judge shall cause that information to be entered into the
9 Department of State Police computerized criminal history files.

10 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
11 the petitioner to be entered into the Department of State Police computerized criminal history files.
12 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
13 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
14 notify the court that granted relief under this section. The court shall review the order granting
15 relief and determine whether to rescind the order. The Department of State Police may charge a
16 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

17 (6) Notwithstanding the provisions of ORS 9.320, a [*corporation*] **party that is not a natural**
18 **person**, the state or any city, county, district or other political subdivision or public corporation in
19 this state, without appearance by attorney, may appear as a party to an action under this section.

20 (7) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall
21 be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner
22 does not pose a threat to the safety of the public or the petitioner.

23 (8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of
24 filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall
25 then make findings and conclusions and issue a judgment based on the findings and conclusions in
26 accordance with the requirements of law.

27 (9) A person filing a petition under this section must pay the filing fee established under ORS
28 21.135.

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

30 (b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the
31 same manner as for any other civil action.

32 (c) If the governmental entity files an appeal under this subsection and does not prevail, it shall
33 be ordered to pay the attorney fees for the prevailing party.

34 (11) The court may not grant relief under this section to a person who:

35 (a) Has been convicted of a person felony, as that term is defined in the rules of the Oregon
36 Criminal Justice Commission, or the statutory counterpart to a person felony in any other jurisdic-
37 tion, if the offense involved the use of a firearm or a deadly weapon as defined in ORS 161.015;

38 (b) Has been convicted of an offense listed in ORS 137.700 or the statutory counterpart to an
39 offense listed in ORS 137.700 in any other jurisdiction; or

40 (c) Is currently serving a felony sentence as defined in ORS 10.030 or has served a felony sen-
41 tence in the one-year period preceding the filing of the petition.

42 **SECTION 7.** ORS 166.274, as amended by section 20, chapter 826, Oregon Laws 2009, section
43 3, chapter 86, Oregon Laws 2010, section 60, chapter 595, Oregon Laws 2011, and section 4, chapter
44 662, Oregon Laws 2011, is amended to read:

45 166.274. (1) Except as provided in subsection (10) of this section, a person barred from possessing

1 a firearm under ORS 166.250 (1)(c)(A) or (C) to (E) or 166.270 or barred from purchasing a firearm
 2 under ORS 166.470 (1)(a), (b) or (e) to (g) may file a petition for relief from the bar in the circuit
 3 court in the petitioner's county of residence.

4 (2) A person may apply once per calendar year for relief under the provisions of this section.

5 (3)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

6 (A) The city chief of police if the court in which the petition is filed is located in a city; or

7 (B) The sheriff of the county in which the court is located.

8 (b) The copy of the petition shall be served on the chief of police or sheriff at the same time the
 9 petition is filed at the court.

10 (4)(a) When a petition is denied, the judge shall cause that information to be entered into the
 11 Department of State Police computerized criminal history files.

12 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
 13 the petitioner to be entered into the Department of State Police computerized criminal history files.
 14 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
 15 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
 16 notify the court that granted relief under this section. The court shall review the order granting
 17 relief and determine whether to rescind the order. The Department of State Police may charge a
 18 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

19 (5) Notwithstanding the provisions of ORS 9.320, a [corporation] **party that is not a natural**
 20 **person**, the state or any city, county, district or other political subdivision or public corporation in
 21 this state, without appearance by attorney, may appear as a party to an action under this section.

22 (6) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall
 23 be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner
 24 does not pose a threat to the safety of the public or the petitioner.

25 (7) Petitions filed under this section shall be heard and disposed of within 15 judicial days of
 26 filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall
 27 then make findings and conclusions and issue a judgment based on the findings and conclusions in
 28 accordance with the requirements of law.

29 (8) A person filing a petition under this section must pay the filing fee established under ORS
 30 21.135.

31 (9)(a) Initial appeals of petitions shall be heard de novo.

32 (b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the
 33 same manner as for any other civil action.

34 (c) If the governmental entity files an appeal under this subsection and does not prevail, it shall
 35 be ordered to pay the attorney fees for the prevailing party.

36 (10) The court may not grant relief under this section to a person who:

37 (a) Has been convicted of a person felony, as that term is defined in the rules of the Oregon
 38 Criminal Justice Commission, or the statutory counterpart to a person felony in any other jurisdic-
 39 tion, if the offense involved the use of a firearm or a deadly weapon as defined in ORS 161.015;

40 (b) Has been convicted of an offense listed in ORS 137.700 or the statutory counterpart to an
 41 offense listed in ORS 137.700 in any other jurisdiction; or

42 (c) Is currently serving a felony sentence as defined in ORS 10.030 or has served a felony sen-
 43 tence in the one-year period preceding the filing of the petition.

44 **SECTION 8.** ORS 166.293 is amended to read:

45 166.293. (1) If the application for the concealed handgun license is denied, the sheriff shall set

1 forth in writing the reasons for the denial. The denial shall be sent to the applicant by certified mail,
 2 restricted delivery, within 45 days after the application was made. If no decision is issued within
 3 45 days, the person may seek review under the procedures in subsection (5) of this section.

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

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

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

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

22 (5) A person denied a concealed handgun license or whose license is revoked or not renewed
 23 under ORS 166.291 to 166.295 may petition the circuit court in the petitioner's county of residence
 24 to review the denial, nonrenewal or revocation. The petition must be filed within 30 days after the
 25 receipt of the notice of denial or revocation.

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

33 (7) Notwithstanding the provisions of ORS 9.320, a *[corporation]* **party that is not a natural**
 34 **person**, the state or any city, county, district or other political subdivision or public corporation in
 35 this state, without appearance by attorney, may appear as a party to an action under this section.

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

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

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

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

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

1 **SECTION 9.** ORS 410.190 is amended to read:

2 410.190. [(1)] Notwithstanding ORS 8.690, 9.160, 9.320[,] **or 203.145 or** ORS chapter 180[, *ORS*
3 *203.145*] or other law, in any contested case proceeding before the Department of Human Services,
4 a [*corporation*] **party that is not a natural person** may be represented by an attorney or by any
5 officer or authorized agent or employee of the [*corporation*] **party**.

6 [(2) *As used in this section, "corporation" includes a public or private corporation, whether or not*
7 *organized for profit.*]

8 **SECTION 10.** ORS 413.041 is amended to read:

9 413.041. [(1)] Notwithstanding ORS 8.690, 9.160, 9.320 or 203.145 or ORS chapter 180 or other
10 law, in any contested case proceeding before the Oregon Health Authority, a [*corporation*] **party**
11 **that is not a natural person** may be represented by an attorney or by any officer or authorized
12 agent or employee of the [*corporation*] **party**.

13 [(2) *As used in this section, "corporation" includes a public or private corporation, whether or not*
14 *organized for profit.*]

15 **SECTION 11.** **This 2015 Act being necessary for the immediate preservation of the public**
16 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
17 **on its passage.**

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