

SHORT TITLE: Civil procedure; determining real party in interest in action for recovery against motor vehicle liability insurance policy; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1313

By: Shurden

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 1991, Section 2017, which relates to the Oklahoma Pleading Code; stating real party in interest in certain action against certain motor vehicle liability insurance policies; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1991, Section 2017, is amended to read as follows:

Section 2017.

PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

A. 1. REAL PARTY IN INTEREST. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his or her own name without joining with him or her the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

2. In any action for personal injury or property damage in which the tortfeasor is covered by a policy of motor vehicle liability insurance, the plaintiff shall name the tortfeasor's insurer or insurers who shall defend the action as the real party in interest. The provisions of this paragraph shall not alter the insurer's responsibilities to its insured.

B. CAPACITY TO SUE OR BE SUED. Except as otherwise provided by law, any person, corporation, partnership, or unincorporated association shall have capacity to sue or be sued in this state.

C. INFANTS OR INCOMPETENT PERSONS. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his or her next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

D. ASSIGNMENT AND SUBROGATION OF CLAIMS. The assignment of claims not arising out of contract is prohibited. ~~However;~~ however, nothing in this section shall be construed to affect the law in this state as relates to the transfer of claims through subrogation.

SECTION 2. This act shall become effective November 1, 1996.

45-2-1570

KSM