

1 **Senate Bill No. 316**

2 (By Senator Palumbo)

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4 [Introduced January 10, 2014; referred to the Committee on the

5 Judiciary.]

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10 A BILL to amend and reenact §55-2-21 of the Code of West Virginia,

11 1931, as amended, relating to tolling the statute of

12 limitations in certain cases; limiting the circumstances

13 within which the statute of limitations is tolled for the

14 institution of third-party complaints associated with pending

15 civil actions; and clarifying that this section does not limit

16 the doctrine of equitable tolling or the discovery rule.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §55-2-21 of the Code of West Virginia, 1931, as amended,

19 be amended and reenacted to read as follows:

20 **ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.**

21 **§55-2-21. Statutes of limitation tolled on claims assertible in**

22 **civil actions when actions commence.**

23 (a) After a civil action is commenced, the running of any

1 statute of limitation ~~shall be~~ is tolled for, and only for, the
2 pendency of that civil action as to any claim which has been or may
3 be asserted ~~therein~~ in the civil action by counterclaim, whether
4 compulsory or permissive or cross-claim: ~~or third-party complaint:~~
5 *Provided*, That if ~~any such~~ a permissive counterclaim would be
6 barred but for the provisions of this section, ~~such~~ the permissive
7 counterclaim may be asserted only in the action tolling the statute
8 of limitations under this section.

9 (b) When a civil action is commenced within sixty days prior
10 to the expiration of the limitation period for commencement of the
11 civil action and a defending party or parties desire to institute
12 a third-party complaint, the running of the period of limitations
13 against the action is tolled for a period of days such that the
14 defending party has sixty days from the actual service of process
15 of the complaint against the defending party within which to
16 institute a third-party complaint: *Provided*, That any new party
17 brought into litigation by a third-party complaint also has the
18 benefit of the tolling of the statute of limitations stated in this
19 section to institute any counterclaim, cross-claim or third-party
20 complaint of its own within sixty days of actual service of
21 process.

22 (c) This section shall be deemed to toll tolls the running of
23 any statute of limitation with respect to any claim for which the
24 statute of limitation has not expired on the effective date of this

1 section, but only for so long as the action tolling the statute of
2 limitations is pending. This section does not limit the ability of
3 a court to use the doctrine of equitable tolling or the discovery
4 rule to toll the statute of limitations in any action.

NOTE: The purpose of this bill is to limit the tolling of the statute of limitations with regard to third-party complaints and cross-claims within a civil action to be filed within a reasonable time.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.