

E N G R O S S E D
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 316

(By Senator Palumbo)

[Originating in the Committee on the Judiciary;
reported January 22, 2014.]

A BILL to amend and reenact §55-2-21 of the Code of West Virginia, 1931, as amended, relating to tolling the statute of limitations in certain cases; limiting the circumstances within which the statute of limitations is tolled for the institution of third-party complaints associated with pending civil actions; and clarifying that this section does not limit the doctrine of equitable tolling or the discovery rule.

Be it enacted by the Legislature of West Virginia:

That §55-2-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

**§55-2-21. Statutes of limitation tolled on claims assertible in
civil actions when actions commence.**

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

11 (b) When a civil action is commenced within sixty days
12 prior to the expiration of the limitation period for
13 commencement of the civil action, any defending party
14 wishing to bring a third-party complaint shall have one
15 hundred eighty days from the date of service of process of the
16 original complaint in which to bring any such third-party

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17 complaint that could be asserted against any person or entity:

18 *Provided*, That any new party brought into litigation by such

19 a complaint shall also have the benefit of the one hundred

20 eighty-day tolling of the statute of limitation stated in this

21 section to institute any third-party complaint of its own.

22 (c) For purposes of this section, the term “third-party

23 complaint” shall mean a claim brought by a defendant against

24 any person or entity that was not originally a party to the

25 underlying civil action, where such new claim is made a part

26 of the underlying civil action.

27 (d) This section shall be deemed to toll ~~shall be deemed to toll~~ tolls the running of

28 any statute of limitation with respect to any claim for which

29 the statute of limitation has not expired on the effective date of

30 this section, but only for so long as the action tolling the statute

31 of limitations is pending. This section does not limit the ability

32 of a court to use the doctrine of equitable tolling or the

33 discovery rule to toll the statute of limitations in any action,

34 including any third-party complaint that would otherwise be

35 subject to subsection (b) of this section.