

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 29**

BY SENATOR PALUMBO

[Introduced January 13, 2016;

Referred to Committee on the Judiciary.]



1 A BILL to amend and reenact §55-2-21 of the Code of West Virginia, 1931, as amended, relating  
2 generally to tolling statute of limitations in certain cases; limiting circumstances within  
3 which statute of limitations is tolled for institution of third-party complaints associated with  
4 pending civil actions; providing alternative periods when statute of limitations on third-party  
5 complaints is tolled; defining “third-party complaint”; and clarifying that this section does  
6 not limit doctrine of equitable tolling or discovery rule.

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

1 That §55-2-21 of the Code of West Virginia, 1931, as amended, be amended and  
2 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 statute of limitation shall be is  
2 tolled for, and only for, the pendency of that civil action as to any claim which that has been or  
3 may be asserted therein in the civil action by counterclaim, whether compulsory or permissive, or  
4 cross-claim: or third-party complaint: Provided, That if any such a permissive counterclaim would  
5 be barred but for the provisions of this section, such the permissive counterclaim may be asserted  
6 only in the action tolling the statute of limitations under this section.

7 (b) Any defending party wishing to bring a third-party complaint shall have one hundred  
8 eighty days from the date of service of process on that defending party of the original complaint  
9 or the time remaining on the applicable statute of limitations, whichever is longer, in which to bring  
10 the third-party complaint that could be asserted against any person or entity: Provided, That any  
11 new party brought into litigation by the complaint shall also have the benefit of the 180-day or  
12 remaining statute of limitations period, whichever is longer, tolling of the statute of limitation stated  
13 in this section to institute any third-party complaint of its own.

14           (c) For purposes of this section, the term “third-party complaint” means a claim brought by  
15 a defendant against any person or entity that was not originally a party to the underlying civil  
16 action, where the new claim is made a part of the underlying civil action.

17           (d) This section shall be deemed to toll tolls the running of any statute of limitation with  
18 respect to any claim for which the statute of limitation has not expired on the effective date of this  
19 section, but only for so long as the action tolling the statute of limitations is pending. This section  
20 does not limit the ability of a court to use the doctrine of equitable tolling or the discovery rule to  
21 toll the statute of limitations in any action, including any third-party complaint that would otherwise  
22 be subject to subsection (b) of this section.

NOTE: The purpose of this bill is to limit the tolling of the statute of limitations with regard to third-party complaints 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.