

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 316**

4 (By Senator Palumbo)

5 _____
6 [Originating in the Committee on the Judiciary;
7 reported January 22, 2014.]
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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
24 statute of limitation ~~shall be~~ is tolled for, and only for, the
25 pendency of that civil action as to any claim ~~which~~ that has been
26 or may be asserted ~~therein~~ in the civil action by counterclaim,
27 whether compulsory or permissive, or cross-claim: ~~or third party~~
28 ~~complaint:~~ *Provided, That if ~~any such~~ a permissive counterclaim*

1 would be barred but for the provisions of this section, ~~such~~ the
2 permissive counterclaim may be asserted only in the action tolling
3 the statute of limitations under this section.

4 (b) When a civil action is commenced within sixty days prior
5 to the expiration of the limitation period for commencement of the
6 civil action, any defending party wishing to bring a third-party
7 complaint shall have ninety days from the date of service of
8 process of the original complaint in which to bring any such third-
9 party complaint that could be asserted against any person or
10 entity: *Provided*, That any new party brought into litigation by
11 such a complaint shall also have the benefit of the ninety-day
12 tolling of the statute of limitation stated in this section to
13 institute any third-party complaint of its own.

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

19 (d) This section ~~shall be deemed to toll~~ tolls the running of
20 any statute of limitation with respect to any claim for which the
21 statute of limitation has not expired on the effective date of this
22 section, but only for so long as the action tolling the statute of
23 limitations is pending. This section does not limit the ability of
24 a court to use the doctrine of equitable tolling or the discovery
25 rule to toll the statute of limitations in any action, including
26 any third-party complaint that would otherwise be subject to
27 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.)