

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 43**

4 (By Senator Palumbo)

5 \_\_\_\_\_  
6 [Originating in the Committee on the Judiciary;  
7 reported January 21, 2015.]  
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11 A BILL to amend and reenact §55-2-21 of the Code of West Virginia, 1931, as amended, relating  
12 to tolling statute of limitations in certain cases generally; limiting circumstances within  
13 which statute of limitations is tolled for institution of third-party complaints associated with  
14 pending civil actions; providing alternative periods when statute of limitations on third-party  
15 complaints is tolled; defining “third-party complaint”; and clarifying that this section does  
16 not limit doctrine of equitable tolling or 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, be amended and reenacted  
19 to read as follows:

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

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

23 (a) After a civil action is commenced, the running of any statute of limitation ~~shall be~~ is

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

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

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

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

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