

Senate Bill No. 43

(By Senator Palumbo)

[Introduced January 14, 2015; referred to the Committee on the Judiciary.]

1
2
3
4
5
6
7
8
9 A BILL to amend and reenact §55-2-21 of the Code of West Virginia, 1931, as amended, relating
10 to tolling statute of limitations in certain cases; limiting circumstances within which statute
11 of limitations is tolled for institution of third-party complaints associated with pending civil
12 actions; and clarifying that this section does not limit the doctrine of equitable tolling or the
13 discovery rule.

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

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

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

18 **§55-2-21. Statutes of limitation tolled on claims assertible in civil actions when actions**
19 **commence.**

20 (a) After a civil action is commenced, the running of any statute of limitation ~~shall be~~ is
21 tolled for, and only for, the pendency of that civil action as to any claim ~~which~~ that has been or may
22 be asserted ~~therein~~ in the civil action by counterclaim, whether compulsory or permissive, or

1 cross-claim: ~~or third-party complaint~~: *Provided*, That if ~~any such a~~ permissive counterclaim would
2 be barred but for the provisions of this section, ~~such~~ the permissive counterclaim may be asserted
3 only in the action tolling the statute of limitations under this section.

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

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

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