

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Senate Bill 29

BY SENATOR PALUMBO

[Passed March 7, 2016; in effect 90 days from passage]

1 AN ACT 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 is tolled for,
2 and only for, the pendency of that civil action as to any claim that has been or may be asserted
3 in the civil action by counterclaim, whether compulsory or permissive, or cross-claim : *Provided,*
4 That if a permissive counterclaim would be barred but for the provisions of this section, the
5 permissive counterclaim may be asserted only in the action tolling the statute of limitations under
6 this section. This section shall be deemed to toll the running of any statute of limitation with respect
7 to any claim for which the statute of limitation has not expired on the effective date of this section,
8 but only for so long as the action tolling the statute of limitations is pending.

9 (b) Any defendant who desires to file a third-party complaint shall have one hundred eighty
10 days from the date of service of process of the original complaint, or the time remaining on the
11 applicable statute of limitations, whichever is longer, to bring any third-party complaint against
12 any non-party person or entity: *Provided,* That any new party brought into litigation by a third-
13 party complaint shall be afforded, from the date of service of process of the third-party complaint,
14 an additional 180-day period, or the remaining statute of limitations period, whichever is longer,

15 to file any third-party complaint of its own, and any applicable statute of limitation shall be tolled
16 during this time period.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2016.

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Governor