

# H. B. 2355

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(BY DELEGATE(S) D. POLING, ELLEM, AZINGER AND ANDERSON)

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[Introduced February 13, 2013; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to providing an exemption for the official mascot of Parkersburg South High School, commonly known as “The Patriot”, which would allow the mascot to carry a musket on school grounds when the mascot is acting in his or her official capacity.

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

That §61-7-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## ARTICLE 7. DANGEROUS WEAPONS.

**§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver license; possessing deadly weapons on premises housing courts of law and in offices of family law master.**

1       (a) The Legislature hereby finds that the safety and welfare  
2 of the citizens of this state are inextricably dependent upon  
3 assurances of safety for children attending and ~~the~~ persons  
4 employed by schools in this state and for ~~those~~ persons em-  
5 ployed ~~with~~ by the judicial department of this state. It is for the  
6 purpose of providing ~~such~~ assurances of safety ~~therefore~~, that  
7 subsections (b), (g) and (h) of this section are enacted as a  
8 reasonable regulation of the manner in which citizens may  
9 exercise ~~those~~ the rights accorded to them pursuant to section  
10 twenty-two, article three of the Constitution of the State of West  
11 Virginia.

12       (b) (1) It ~~shall be~~ is unlawful for ~~any~~ a person to possess ~~any~~  
13 a firearm or ~~any~~ other deadly weapon on ~~any~~ a school bus as  
14 defined in section one, article one, chapter seventeen-a of this  
15 code, or in or on ~~any~~ a public or private primary or secondary  
16 education building, structure, facility or grounds ~~thereof~~,

17 including ~~any~~ a vocational education building, structure, facility  
18 or grounds ~~thereof~~ where secondary vocational education  
19 programs are conducted or at ~~any~~ a school-sponsored function.

20 (2) This subsection ~~shall~~ does not apply to:

21 (A) A law-enforcement officer acting in his or her official  
22 capacity;

23 (B) A person specifically authorized by the board of  
24 education of the county or principal of the school where the  
25 property is located to conduct programs with valid educational  
26 purposes;

27 (C) A person who, as otherwise permitted by the provisions  
28 of this article, possesses an unloaded firearm or deadly weapon  
29 in a motor vehicle or leaves an unloaded firearm or deadly  
30 weapon in a locked motor vehicle;

31 (D) Programs or raffles conducted with the approval of the  
32 county board of education or school which include the display of  
33 unloaded firearms; ~~or~~

34 (E) The official mascot of West Virginia University,  
35 commonly known as “The Mountaineer”, acting in his or her  
36 official capacity; or

37        (F) The official mascot of Parkersburg South High School,  
38        commonly known as “The Patriot”, acting in his or her official  
39        capacity.

40        (3) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty  
41        of a felony and, upon conviction thereof, shall be imprisoned in  
42        ~~the penitentiary of this state~~ a state correctional facility for a  
43        definite term of years of not less than two years nor more than  
44        ten years, or fined not more than \$5,000, or both.

45        (c) It ~~shall be~~ is the duty of the principal of each school  
46        subject to the authority of the State Board of Education to report  
47        ~~any~~ a violation of subsection (b) of this section discovered by  
48        ~~such~~ the principal to the State Superintendent of Schools within  
49        seventy-two hours after ~~such~~ the violation occurs. The State  
50        Board of Education shall keep and maintain ~~such~~ these reports  
51        and may prescribe rules establishing policy and procedures for  
52        the making and delivery of ~~the same~~ the reports as required by  
53        this subsection. In addition, it ~~shall be~~ is the duty of the principal  
54        of each school subject to the authority of the State Board of  
55        Education to report ~~any~~ a violation of subsection (b) of this  
56        section discovered by ~~such~~ the principal to the appropriate local

57 office of the Division of Public Safety within seventy-two hours  
58 after ~~such~~ the violation occurs.

59 (d) In addition to the methods of disposition provided by  
60 article five, chapter forty-nine of this code, ~~any~~ a court which  
61 adjudicates a person who is fourteen years of age or older as  
62 delinquent for a violation of subsection (b) of this section may,  
63 in its discretion, order the Division of Motor Vehicles to suspend  
64 ~~any~~ a driver's license or instruction permit issued to ~~such~~ the  
65 person for ~~such~~ a period of time as the court ~~may deem~~ considers  
66 appropriate, ~~such suspension, however,~~ not to extend beyond  
67 ~~such~~ the person's nineteenth birthday. ~~or, Where such~~ Where the  
68 person has not been issued a driver's license or instruction  
69 permit by this state, a court may order the Division of Motor  
70 Vehicles to deny ~~such~~ the person's application for ~~the same for~~  
71 ~~such~~ a license or permit for a period of time as the court ~~may~~  
72 ~~deem~~ considers appropriate, ~~such denial, however,~~ not to extend  
73 beyond ~~such~~ the person's nineteenth birthday. ~~Any~~ A suspension  
74 ordered by the court pursuant to this subsection ~~shall be~~ is  
75 effective upon the date of entry of ~~such~~ the order. Where the  
76 court orders the suspension of a driver's license or instruction

77 permit pursuant to this subsection, the court shall confiscate any  
78 driver's license or instruction permit in the adjudicated person's  
79 possession and forward ~~the same~~ to the Division of Motor  
80 Vehicles.

81 (e) (1) If a person eighteen years of age or older is convicted  
82 of violating subsection (b) of this section, and if ~~such~~ the person  
83 does not act to appeal ~~such~~ the conviction within the time  
84 periods described in subdivision (2) of this subsection, ~~such~~ the  
85 person's license or privilege to operate a motor vehicle in this  
86 state shall be revoked in accordance with the provisions of this  
87 section.

88 (2) The clerk of the court in which the person is convicted as  
89 described in subdivision (1) of this subsection shall forward to  
90 the commissioner a transcript of the judgment of conviction. If  
91 the conviction is the judgment of a magistrate court, the magis-  
92 trate court clerk shall forward ~~such~~ the transcript when the  
93 person convicted has not requested an appeal within twenty days  
94 of the sentencing for ~~such~~ the conviction. If the conviction is the  
95 judgment of a circuit court, the circuit clerk shall forward ~~such~~  
96 ~~transcript~~ a transcript of the judgment of conviction when the

97 person convicted has not filed a notice of intent to file a petition  
98 for appeal or writ of error within thirty days after the judgment  
99 was entered.

100 (3) If, upon examination of the transcript of the judgment of  
101 conviction, the commissioner ~~shall determine~~ determines that the  
102 person was convicted as described in subdivision (1) of this  
103 subsection, the commissioner shall make and enter an order  
104 revoking ~~such~~ the person's license or privilege to operate a  
105 motor vehicle in this state for a period of one year or, in the  
106 event the person is a student enrolled in a secondary school, for  
107 a period of one year or until the person's twentieth birthday,  
108 whichever is the greater period. The order shall contain the  
109 reasons for the revocation and the revocation period. The order  
110 of suspension shall advise the person that because of the receipt  
111 of the court's transcript, a presumption exists that the person  
112 named in the order of suspension is the same person named in  
113 the transcript. The commissioner may grant an administrative  
114 hearing which substantially complies with the requirements of  
115 the provisions of section two, article five-a, chapter seventeen-c  
116 of this code upon a preliminary showing that a possibility exists

117 that the person named in the notice of conviction is not the same  
118 person whose license is being suspended. ~~Such~~ The request for  
119 hearing shall be made within ten days after receipt of a copy of  
120 the order of suspension. The sole purpose of this hearing ~~shall be~~  
121 is for the person requesting the hearing to present evidence that  
122 he or she is not the person named in the notice. ~~In the event~~ If  
123 the commissioner grants an administrative hearing, the commis-  
124 sioner shall stay the license suspension pending the commis-  
125 sioner's order resulting from the hearing.

126 (4) For the purposes of this subsection, a person is convicted  
127 when such person enters a plea of guilty or is found guilty by a  
128 court or jury.

129 (f) (1) It ~~shall be~~ is unlawful for ~~any~~ a parent(s), guardian(s)  
130 or custodian(s) of a person less than eighteen years of age who  
131 knows that ~~said~~ the person is in violation of subsection (b) of this  
132 section or ~~who~~ has reasonable cause to believe that ~~said~~ the  
133 person's violation of ~~said~~ subsection (b) is imminent, to fail to  
134 immediately report ~~such~~ his or her knowledge or belief to the  
135 appropriate school or law-enforcement officials.

136 (2) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty  
137 of a misdemeanor and, upon conviction thereof, shall be fined



138 not more than \$1,000, or shall be confined in jail not more than  
139 one year, or both.

140 (g) (1) It ~~shall be~~ is unlawful for ~~any~~ a person to possess ~~any~~  
141 a firearm or ~~any~~ other deadly weapon on ~~any premises which~~  
142 ~~houses~~ premises of a court of law ~~or in the offices of a family~~  
143 ~~law master.~~ including family courts.

144 (2) This subsection ~~shall~~ does not apply to:

145 (A) A law-enforcement officer acting in his or her official  
146 capacity; and

147 (B) A person exempted from the provisions of this subsec-  
148 tion by order of record entered by a court with jurisdiction over  
149 ~~such~~ the premises or offices.

150 (3) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty  
151 of a misdemeanor and, upon conviction thereof, shall be fined  
152 not more than \$1,000, or shall be confined in jail not more than  
153 one year, or both.

154 (h) (1) It ~~shall be~~ is unlawful for ~~any~~ a person to possess ~~any~~  
155 a firearm or ~~any~~ other deadly weapon on ~~any premises which~~  
156 ~~houses a court of law or in the offices of a family law master~~ the  
157 premises of a court of law, including family courts, with the  
158 intent to commit a crime.

159       (2) ~~Any~~ A person violating this subsection ~~shall be~~ is guilty  
160   of a felony and, upon conviction thereof, shall be imprisoned in  
161   ~~the penitentiary of this state~~ a state correctional facility for a  
162   definite term of years of not less than two years nor more than  
163   ten years, or fined not more than \$5,000, or both.

164       (i) Nothing in this section ~~may be construed to be~~ is in  
165   conflict with the provisions of federal law.

NOTE: The purpose of this bill is to provide an exemption for the official mascot of Parkersburg South High School, commonly known as “The Patriot”, which would allow the mascot to carry a musket on school grounds when the mascot is acting in his or her official capacity. This is the same exemption that is granted to the West Virginia University Mountaineer.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.



