

Senate Bill No. 327

(By Senator Nohe)

[Introduced January 18, 2012; referred to the Committee on
Education; and then to the Committee on the Judiciary.]

**FISCAL
NOTE**

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 employed
5 with the judicial department of this state. It is for the purpose
6 of providing such assurances of safety, therefore, that subsections
7 (b), (g) and (h) of this section are enacted as a reasonable
8 regulation of the manner in which citizens may exercise those
9 rights accorded to them pursuant to section twenty-two, article
10 three of the Constitution of the State of West Virginia.

11 (b) (1) It shall be unlawful for any person to possess any
12 firearm or any other deadly weapon on any school bus as defined in
13 section one, article one, chapter seventeen-a of this code, or in
14 or on any public or private primary or secondary education
15 building, structure, facility or grounds thereof, including any
16 vocational education building, structure, facility or grounds
17 thereof where secondary vocational education programs are conducted
18 or at any school-sponsored function.

19 (2) This subsection shall not apply to:

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

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

1 (C) A person who, as otherwise permitted by the provisions of
2 this article, possesses an unloaded firearm or deadly weapon in a
3 motor vehicle, or leaves an unloaded firearm or deadly weapon in a
4 locked motor vehicle;

5 (D) Programs or raffles conducted with the approval of the
6 county board of education or school which include the display of
7 unloaded firearms; ~~or~~

8 (E) The official mascot of West Virginia University, commonly
9 known as "The Mountaineer", acting in his or her official capacity;
10 or

11 (F) The official mascot of Parkersburg South High School,
12 commonly known as "The Patriot," acting in his or her official
13 capacity.

14 (3) Any person violating this subsection shall be guilty of a
15 felony and, upon conviction thereof, shall be imprisoned in ~~the~~
16 ~~penitentiary~~ a correctional facility of this state for a definite
17 term of years of not less than two years nor more than ten years,
18 or fined not more than \$5,000, or both.

19 (c) It shall be the duty of the principal of each school
20 subject to the authority of the State Board of Education to report
21 any violation of subsection (b) of this section discovered by such
22 principal to the State Superintendent of Schools within seventy-two
23 hours after such violation occurs. The State Board of Education
24 shall keep and maintain such reports and may prescribe rules

1 establishing policy and procedures for the making and delivery of
2 the same as required by this subsection. In addition, it shall be
3 the duty of the principal of each school subject to the authority
4 of the State Board of Education to report any violation of
5 subsection (b) of this section discovered by such principal to the
6 appropriate local office of the division of public safety within
7 seventy-two hours after such violation occurs.

8 (d) In addition to the methods of disposition provided by
9 article five, chapter forty-nine of this code, any court which
10 adjudicates a person who is fourteen years of age or older as
11 delinquent for a violation of subsection (b) of this section may,
12 in its discretion, order the Division of Motor Vehicles to suspend
13 any driver's license or instruction permit issued to such person
14 for such period of time as the court may deem appropriate, such
15 suspension, however, not to extend beyond such person's nineteenth
16 birthday; or, where such person has not been issued a driver's
17 license or instruction permit by this state, order the Division of
18 Motor Vehicles to deny such person's application for the same for
19 such period of time as the court may deem appropriate, such denial,
20 however, not to extend beyond such person's nineteenth birthday.
21 Any suspension ordered by the court pursuant to this subsection
22 shall be effective upon the date of entry of such order. Where the
23 court orders the suspension of a driver's license or instruction
24 permit pursuant to this subsection, the court shall confiscate any

1 driver's license or instruction permit in the adjudicated person's
2 possession and forward the same to the Division of Motor Vehicles.

3 (e) (1) If a person eighteen years of age or older is
4 convicted of violating subsection (b) of this section, and if such
5 person does not act to appeal such conviction within the time
6 periods described in subdivision (2) of this subsection, such
7 person's license or privilege to operate a motor vehicle in this
8 state shall be revoked in accordance with the provisions of this
9 section.

10 (2) The clerk of the court in which the person is convicted as
11 described in subdivision (1) of this subsection shall forward to
12 the commissioner a transcript of the judgment of conviction. If
13 the conviction is the judgment of a magistrate court, the
14 magistrate court clerk shall forward such transcript when the
15 person convicted has not requested an appeal within twenty days of
16 the sentencing for such conviction. If the conviction is the
17 judgment of a circuit court, the circuit clerk shall forward such
18 transcript when the person convicted has not filed a notice of
19 intent to file a petition for appeal or writ of error within thirty
20 days after the judgment was entered.

21 (3) If, upon examination of the transcript of the judgment of
22 conviction, the commissioner shall determine that the person was
23 convicted as described in subdivision (1) of this subsection, the
24 commissioner shall make and enter an order revoking such person's

1 license or privilege to operate a motor vehicle in this state for
2 a period of one year, or, in the event the person is a student
3 enrolled in a secondary school, for a period of one year or until
4 the person's twentieth birthday, whichever is the greater period.
5 The order shall contain the reasons for the revocation and the
6 revocation period. The order of suspension shall advise the person
7 that because of the receipt of the court's transcript, a
8 presumption exists that the person named in the order of suspension
9 is the same person named in the transcript. The commissioner may
10 grant an administrative hearing which substantially complies with
11 the requirements of the provisions of section two, article five-a,
12 chapter seventeen-c of this code upon a preliminary showing that a
13 possibility exists that the person named in the notice of
14 conviction is not the same person whose license is being suspended.
15 Such request for hearing shall be made within ten days after
16 receipt of a copy of the order of suspension. The sole purpose of
17 this hearing shall be for the person requesting the hearing to
18 present evidence that he or she is not the person named in the
19 notice. In the event the commissioner grants an administrative
20 hearing, the commissioner shall stay the license suspension pending
21 the commissioner's order resulting from the hearing.

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

1 (f) (1) It shall be unlawful for any parent(s), guardian(s) or
2 custodian(s) of a person less than eighteen years of age who knows
3 that said person is in violation of subsection (b) of this section,
4 or who has reasonable cause to believe that said person's violation
5 of said subsection is imminent, to fail to immediately report such
6 knowledge or belief to the appropriate school or law-enforcement
7 officials.

8 (2) Any person violating this subsection shall be guilty of a
9 misdemeanor and, upon conviction thereof, shall be fined not more
10 than \$1,000, or shall be confined in jail not more than one year,
11 or both.

12 (g) (1) It shall be unlawful for any person to possess any
13 firearm or any other deadly weapon on any premises which houses a
14 court of law or in the offices of a family law master.

15 (2) This subsection shall not apply to:

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

18 (B) A person exempted from the provisions of this subsection
19 by order of record entered by a court with jurisdiction over such
20 premises or offices.

21 (3) Any person violating this subsection shall be guilty of a
22 misdemeanor and, upon conviction thereof, shall be fined not more
23 than \$1,000, or shall be confined in jail not more than one year,
24 or both.

1 (h) (1) It shall be unlawful for any person to possess any
2 firearm or any other deadly weapon on any premises which houses a
3 court of law or in the offices of a family law master with the
4 intent to commit a crime.

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

10 (i) Nothing in this section may be construed to be in conflict
11 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.