COMMITTEE REPORT

April 11, 2013

**H. 3609**

Introduced by Reps. Barfield, Clemmons and Sandifer

S. Printed 4/11/13--H.

Read the first time February 26, 2013.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3609) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 77 to Title 39 so as to prohibit the sale, possession, and use of certain laser, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking SECTION 1 and inserting:

/ SECTION 1. Chapter 1, Title 39 of the 1976 Code is amended by adding:

“Section 39‑1‑100. (A) It is unlawful for an individual to sell a laser device to a minor under the age of eighteen years.

(B) It is unlawful to sell a laser device to an individual who does not present upon demand proper proof of age. Failure to demand identification to verify an individual’s age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, presented, and reasonably relied upon for the individual’s proof of age is a defense to an action initiated pursuant to this subsection.

(C) An individual who knowingly violates the provisions of subsection (A) or (B) in person, by agent, or in any other way is guilty of a misdemeanor and, upon conviction, must be:

(1) for a first offense, fined not less than one hundred dollars nor more than two hundred dollars;

(2) for a second offense, which occurs within three years of the first offense, fined not less than two hundred dollars nor more than three hundred dollars; and

(3) for a third or subsequent offense, which occurs within three years of the first offense, fined not less than three hundred dollars nor more than four hundred dollars.

(D)(1) A minor under the age of eighteen years may not purchase, attempt to purchase, possess, or attempt to possess a laser device, or present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing a laser device. A minor under the age of eighteen may possess a laser device if it is:

(a) used by an individual as an emergency signaling device to send an emergency distress signal;

(b) used for legitimate educational purposes so long as it is used solely for that purpose;

(c) used for legitimate business purposes and during the normal course of that business;

(d) necessary for the individual’s employment, education, trade or occupation, so long as it is used solely for that purpose; or

(e) used as part of a gun sight, so long as it is used in a lawful manner.

(2) A minor who knowingly violates a provision of this subsection in person, by agent, or in any other way commits a noncriminal offense and is subject to a civil fine of twenty‑five dollars. The civil fine is subject to all applicable court costs, assessments, and surcharges.

(3) A violation of this subsection is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this subsection.

(4) A violation of this subsection is not grounds for denying, suspending, or revoking an individual’s participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need‑based grant.

(E) As used in this section, ‘laser’ means a device that utilizes the natural oscillations of atoms or molecules between energy levels for generating coherent electromagnetic radiation in the ultraviolet, visible, or infrared region of the spectrum, and when discharged exceeds one milliwatt continuous wave.” /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 77 TO TITLE 39 SO AS TO PROHIBIT THE SALE, POSSESSION, AND USE OF CERTAIN LASER POINTING DEVICES UNDER CERTAIN CIRCUMSTANCES, AND TO PROVIDE DEFINITIONS, EXEMPTIONS, AND REMEDIES.

Be it enacted by the General Assembly of the State of South Carolina:

Whereas, laser pointers are small, handheld devices, usually battery operated, equipped with a laser diode emitting a very narrow laser beam of visible light, intended to be used to highlight something of interest by illuminating it with a small bright spot of colored light; and

Whereas, laser pointers are often used in educational and business presentations for visual demonstrations as a pointing device, are useful in the construction setting, and for certain gun sights; however, if they are aimed at a person’s eyes, they can cause temporary disturbances to vision, and in some cases permanent retinal damage; and

Whereas, when pointed at aircraft at night, laser pointers may dazzle and distract pilots at critical times, and have been used maliciously to distract or annoy individuals on the ground as well as in the air; and

Whereas, due to their appeal as a recreational device and low cost to manufacture, there has been a recent proliferation of lasers in the marketplace, particularly higher powered lasers of greater than one milliwatt output which feature brighter colors; and

Whereas, especially because of these higher powered lasers, with the resulting increase in their intensity and range, and extra potential hazard when pointed at objects and people, there also has been a dramatic escalation in the number of incidents in which damaging laser beams are being directed at people and aircraft; and

Whereas,the United States Coast Guard, Charleston Sector, has reported several recent cases where pilots were forced to land their aircraft and abort missions during search and rescue operations after being hit with laser beams that are particularly debilitating when the pilot is wearing night vision equipment; and

Whereas, during the summer of 2012, there were more than seventy reported incidents of aircraft being hit by lasers in and around the Myrtle Beach International Airport alone; and

Whereas,it is the will of the General Assembly to provide for the public’s health, safety, and welfare through the regulation of the sale, possession, and use of laser pointing devices. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 39 of the 1976 Code is amended by adding:

“CHAPTER 77

Laser Pointers

Section 39‑77‑10. For purposes of this chapter:

(1) ‘Laser pointer’ or ‘device’ means an apparatus that is designed to amplify electromagnetic radiation by stimulated emission that emits a beam designed to be used by the operator as a pointer or highlighter to indicate, mark, or identify a specific position, place, item, or object. The term also means an apparatus that projects a beam or point of light by means of light amplification by simulated emission of radiation or other means or that emits light which simulates the appearance of a beam of light.

(2)(a) ‘Contraband’means:

(i) a laser pointer or device that is used unlawfully;

(ii) a laser pointer or device that is greater than one milliwatt, as shown by the manufacturer’s or distributor’s technical specifications as shown on the pointer or device or otherwise; or

(iii) a laser pointer or device for which the merchant who offers the device for distribution, sale or barter has no technical specifications showing the manufacturer’s or distributor’s confirmation that the laser pointer or device is one milliwatt or less in output.

(b) ‘Contraband’does not mean lasers:

(i) used by an authorized individual in the conduct of research and development or flight test operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or another person authorized by the Federal Aviation Administration to conduct research and development or flight test operations;

(ii) used by members or elements of the Department of Defense or Department of Homeland Security acting in an official capacity for the purpose of research, development, operations, testing or training;

(iii) used by an individual as an emergency signaling device to send an emergency distress signal;

(iv) used by public safety officials in the regular conduct of their duties;

(v) used in a manner specifically permitted by federal or state law;

(vi) used for legitimate educational purposes;

(vii) used for testing in the course of product manufacturing;

(viii) used for legitimate business purposes and during the normal course of that business;

(ix) that in the possession of individuals, if the possession is necessary for the individual’s employment, education, trade or occupation, and when not in use; or

(x) possessed or used as part of a gun sight, so long as they are possessed or used in a lawful manner.

(3) ‘Minor’means a person who has not attained eighteen years of age.

Section 39‑77‑20. (A) A minor may not possess a laser pointer or device, unless he is under the direct supervision of a parent, guardian, or teacher, and the parent, guardian, or teacher takes full responsibility for its possession and use under this chapter, and bears the full consequences of its misuse.

(B) Laser pointers or devices in the wrongful possession of minors are subject to immediate confiscation as contraband.

(C) A person, other than a parent, guardian, or teacher, may not knowingly provide a laser pointer or device to a minor.

(D) It is an unfair trade practice for a business license holder to distribute, sell, or barter a laser pointer or device to a minor. A business license holder who violates the provisions of this subsection may have his license suspended or revoked.

Section 39‑77‑30. (A) A person may not direct the light from a laser pointer or device from public or private property upon:

(1) another person;

(2) a person’s means of conveyance;

(3) an animal;

(4) public or private property; or

(5) a watercraft, airplane, helicopter or other aircraft, in public airspace or waterways.

This subsection does not prohibit the possession or use of laser gun sights when possessed or used for lawful hunting purposes, or for self defense as defined by law.

(B) A parent, guardian, person acting in loco parentis, or responsible adult may not purchase and give to a minor, or permit a minor in their custody to possess or use, a laser pointer or device, while not under the direct supervision of the parent, guardian, person acting in loco parentis, responsible adult, or teacher.

Section 39‑77‑40. (A) A person may not distribute, sell, or barter a laser pointer or device to an adult except under the following conditions:

(1) Distribution of a laser pointer or device must be verified by the manufacturer’s or distributor’s technical specifications confirming that the pointer or device is not more than one milliwatt, and the proof of wattage, as shown by the technical specifications, must be maintained by the merchant to be available upon demand of law enforcement. It is the merchant’s responsibility to obtain proof from the seller, vendor, or wholesaler. Laser pointers or devices offered for distribution, sale, or barter, which do not have the proper proof of wattage limitations, are subject to immediate confiscation as contraband. Laser pointers and devices offered for sale in their original unopened packaging that confirms that the devices are one milliwatt or less in output are sufficient proof of compliance. If greater than one milliwatt, the distribution, sale, or barter must be accompanied by a statement concerning their use limitations, as set forth in this chapter, with a written acknowledgment on the part of the buyer as to which exception applies to the possession and use of that laser pointer or device.

(2) A distribution, sale, or barter of each individual laser pointer or device must be accompanied by the following written warnings of use and a signed customer receipt that the warnings of use have been provided in conjunction with the distribution, sale, or barter. After verifying the adult status of the customer, the merchant shall require the customer to affix his signature under the legibly printed name affirming that the warning has been provided and read.

‘REQUIRED WARNINGS OF USE

I, the undersigned, have read and understand the warnings of use that are required to accompany the receipt of this laser pointer or device.

WARNING ON POSSESSION AND USE OF A LASER POINTER OR DEVICE

PARENTS! DO NOT BUY THIS PRODUCT FOR MINORS!

• Laser beams can temporarily blind or disorient an operator of an airplane, helicopter, or vehicle when the beam is directed toward them. The beam is much larger at long distances than you might think. Even though the laser projects a small, millimeter‑sized dot close up, at longer distances the beam can be many inches across. When the beam hits the windscreen of a cockpit, or the bubble of a helicopter, imperfections in and on the glass spread the light out even more, making it impossible for the pilot to safely navigate. Pilot exposure to the beam can result in flash blindness, glare, and distraction in the immediate task of piloting the aircraft. Pointing a laser at an aircraft places all the persons aboard in mortal jeopardy.

• It is a federal felony crime to aim a laser pointer at an aircraft, or at the flight path of an aircraft. The federal penalty is up to five years in a federal prison and/or a fine of several thousand dollars. The United States Federal Aviation Administration (FAA) will pursue the toughest penalties against persons who deliberately aim lasers at aircraft, Transportation Secretary Ray LaHood announced on May 16, 2012. Since June 2011, the FAA has taken action against twenty‑eight persons, with an average fine of $11,000 per laser strike. The highest penalty sought so far is $30,800. The FAA has directed its staff not to seek warning notices or counseling, but to use ‘moderately high civil penalties’ for inadvertent laser illuminations, and maximum penalties for deliberate violations. The appropriate state or local law enforcement agency will inform the federal authorities of an arrest relating to this crime so that appropriate prosecution to the fullest extent of the law can be achieved at the federal level.

• Section 55‑3‑130 of the South Carolina Code of Laws also makes it a criminal offense to point, aim, or discharge a laser device at an occupied aircraft, in the air or on the ground, providing a potential sentence for a first offense of one year in prison, a fine of $2,000, or both. A second or subsequent violation triggers the possibility of even greater sentencing.

• A laser’s light is concentrated into a narrow beam. If aimed at a person’s eye from close up, most or all of the light goes through the pupil. The already‑concentrated light is further focused by the lens onto a sharp ‘diffraction‑limited’ dot on the retina. Even at the lower power outputs, the power density from a one milliwatt laser, focused to a point, is brighter than the equivalent area of the sun’s surface. This can cause a detectable injury to the retina, if the laser stays in one spot for a few seconds. Laser beams can permanently blind a person or animal when the beam is directed into their eyes.

• PARENTS, GUARDIANS, RESPONSIBLE ADULTS: YOU WILL BE HELD PERSONALLY RESPONSIBLE FOR THE MISUSE OF THIS DEVICE BY A MINOR TO WHOM YOU PROVIDE THIS DEVICE, OR BY ANOTHER PERSON TO WHOM THAT MINOR PROVIDES THIS DEVICE.

• A minor, seventeen years of age or younger, who is in possession of, or who uses a laser pointer or device unlawfully, is subject to service of a juvenile summons and will be prosecuted in family court by the solicitor’s office.

• Lasers in the unlawful possession of minors are subject to immediate confiscation as contraband, in addition to other legal remedies.

• Laser pointers or devices that are used illegally are contraband, and subject to immediate confiscation, in addition to other legal remedies.

Date:

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Print merchant name and signature that adult status has been verified, and that the manufacturer’s technical specifications are available to prove that the device is one milliwatt or less, or if greater than one milliwatt, sets forth specific exception(s) applicable to possession and use.

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Print customer’s name and signature that affirms the warnings have been received and read.’

Section 39‑77‑50. (A) A person who violates the provisions of this chapter may be subject to a civil penalty. A civil action may be brought in a court of competent jurisdiction by a county, municipal, or state officer or official to recover a civil penalty of not less than:

(1) one hundred dollars nor more than two hundred dollars for a first violation;

(2) two hundred fifty dollars nor more than five hundred dollars for a second violation within two years from the date of the first violation;

(3) one thousand dollars nor more than two thousand five hundred dollars for a third violation within two years from the date of the first violation.

(B) A laser pointer or device found on the person of a minor, or used by a person in a prohibited manner, or found in a business as an item for sale without the manufacturer’s technical specifications showing that the output is one milliwatt or less, may be immediately seized as contraband by law enforcement, a court of competent jurisdiction to determine the temporary or permanent nature of the confiscation.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded on the repealed or amended act or law, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. If a section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, that holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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