

By the Committee on Judiciary and Senator Casas

308-2087-00

1 A bill to be entitled
2 An act relating to explosives; creating s.
3 552.095, F.S.; prohibiting the Division of
4 State Fire Marshal of the Department of
5 Insurance from issuing a user license to an
6 applicant who has not demonstrated financial
7 responsibility; authorizing the division to
8 prescribe by rule the amount of financial
9 responsibility within specified limits;
10 prescribing manner of establishing financial
11 responsibility; authorizing a civil suit to
12 obtain payment of damages from a guarantor of a
13 user's financial responsibility; prescribing
14 rights of a guarantor in such proceeding;
15 amending s. 552.13, F.S.; requiring the
16 division to adopt rules prescribing a distance
17 from a residential area within which explosives
18 may not be used and providing a procedure for
19 determining an appropriate amount for proof of
20 financial responsibility; amending s. 552.161,
21 F.S.; authorizing the division to bring a civil
22 action to recover a civil penalty for violation
23 of a rule prohibiting the use of explosives
24 within a prescribed distance from a residential
25 area; amending s. 552.23, F.S.; providing for
26 injunctive relief for substantially affected
27 persons; providing an effective date.
28
29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 552.095, Florida Statutes, is
2 created to read:

3 552.095 User proof of financial responsibility.--

4 (1) No license shall be issued to a user until he or
5 she has filed with the division proof of financial
6 responsibility in an amount to be determined pursuant to rule
7 but not to exceed \$1 million. Such proof of financial
8 responsibility must be maintained for the duration of the
9 license.

10 (2) A user may establish financial responsibility by
11 means of cash, a trust fund, a surety bond, a letter of
12 credit, casualty insurance, a financial test, a corporate
13 guaranty, or a combination thereof.

14 (3) Any person who is injured or whose property is
15 damaged by a user's use of explosives may join a guarantor as
16 defined as a named party defendant in any civil action brought
17 against a user.

18 (4) When a user is in bankruptcy, reorganization, or
19 arrangement under the Federal Bankruptcy Code, or when with
20 reasonable diligence, jurisdiction in any state court or
21 federal court cannot be obtained over a user likely to be
22 solvent at the time of judgment, any claim arising from
23 conduct for which proof of financial responsibility must be
24 provided under this section may be asserted directly against
25 the guarantor providing such proof of financial
26 responsibility. In any action under this section, such
27 guarantor may invoke all rights and defenses that would have
28 been available to the user had the action been brought against
29 the user by the claimant or that would have been available to
30 the guarantor had the action been brought against the
31 guarantor by the user. The total liability of any guarantor is

1 limited to the aggregate amount that the guarantor has
2 provided as evidence of financial responsibility to the user
3 under this section.

4 (5) For purposes of this section, the term "guarantor"
5 means any surety, bonding company, guarantor under a letter of
6 credit, or an entity or person who must respond or otherwise
7 guarantees the financial responsibility of the user.

8 Section 2. Section 552.13, Florida Statutes, is
9 amended to read:

10 552.13 Promulgation of regulations by the Division of
11 State Fire Marshal.--The division shall make, promulgate, and
12 enforce regulations setting forth minimum general standards
13 covering manufacture; transportation other than on a public
14 street, road, or highway (including loading and unloading);
15 use; sale; handling; and storage of explosives. The division
16 shall adopt rules prescribing a distance from a residential
17 area within which explosives may not be used and rules
18 adopting the procedures and guidelines the division will use
19 to approve or modify the amount of financial responsibility
20 required under s. 552.095.Said regulations shall be such as
21 are reasonably necessary for the protection of the health,
22 welfare, and safety of the public and persons possessing,
23 handling, and using such materials and shall be in substantial
24 conformity with generally accepted standards of safety
25 concerning such subject matters. Such regulations shall be
26 adopted by the division pursuant to the provisions of chapter
27 120.

28 Section 3. Section 552.161, Florida Statutes, is
29 amended to read:

30 552.161 Administrative fines; civil penalty.--
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1 (1) If any person violates any provision of this
2 chapter or any rule or regulation adopted pursuant thereto, or
3 violates a cease and desist order, the division may impose an
4 administrative fine, not to exceed \$1,000 for each violation
5 except as provided in subsection (2), or suspend or revoke the
6 license or permit issued to such person. The division may
7 allow the licensee or permittee a reasonable period, not to
8 exceed 30 days, within which to pay to the division the amount
9 of the penalty so imposed. If the licensee or permittee fails
10 to pay the penalty in its entirety to the division at its
11 office in Tallahassee within the period so allowed, the
12 licenses or permits of the licensee or permittee shall stand
13 revoked upon expiration of such period.

14 (2) The division may bring a civil action in a court
15 of competent jurisdiction to impose and recover a civil
16 penalty of up to \$15,000 per day for a violation of a rule
17 prohibiting the use of explosives within a prescribed distance
18 from a residential area.

19 ~~(3)(2)~~ All such fines, monetary penalties, and costs
20 received by the division in connection with this chapter shall
21 be deposited in the Insurance Commissioner's Regulatory Trust
22 Fund.

23 Section 4. Section 552.23, Florida Statutes, is
24 amended to read:

25 552.23 Injunction.--

26 (1) In addition to the penalties and other enforcement
27 provisions of this chapter, in the event any person engaged in
28 any of the activities covered by this chapter shall violate
29 any provision of this chapter or any rule or regulation
30 adopted or promulgated in pursuance thereto, the division is
31 authorized to resort to proceedings for injunction in the

1 circuit court of the county where such person shall reside or
2 have her or his or its principal place of business, and
3 therein apply for such temporary and permanent orders as the
4 division may deem necessary to restrain such person from
5 engaging in any such activities, until such person shall have
6 complied with the provisions of this chapter and such rules
7 and regulations.

8 (2) Any substantially affected person may bring a
9 civil action in circuit court to seek injunctive relief to
10 enforce compliance with this chapter or with rules adopted
11 under this chapter.

12 Section 5. This act shall take effect July 1, 2000.

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14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 SB 1130

17 Requires proof of financial responsibility by user for
18 issuance of license in lieu of issuance of permit per blasting
activity.

19 Gives the division express rule-making authority to adopt
20 procedures and guidelines for setting appropriate amounts for
proof of financial responsibility.

21 Removes the redundant provision relating to injunctive relief
22 by a division.

23 Relocates the new provision on injunctive relief for
24 substantially affected persons into existing section relating
to injunctive relief.

25 Provides definition for guarantor and clarifies that guarantor
26 may be brought in as party defendant in civil action by a
person who is injured or whose property is damaged by blasting
activities.