

By Representative R. Diaz de la Portilla

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; amending s. 552.161, F.S.;  
19          providing for injunctive relief; authorizing  
20          the division to bring a civil action to recover  
21          a civil penalty for violation of a rule  
22          prohibiting the use of explosives within a  
23          prescribed distance from a residential area;  
24          providing an effective date.

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26 Be It Enacted by the Legislature of the State of Florida:

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28           Section 1. Section 552.095, Florida Statutes, is  
29 created to read:

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552.095 User financial responsibility.--

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1       (1) An applicant for a user license must provide to  
2 the division proof of financial responsibility in an amount  
3 determined by rule of the division not to exceed \$1 million,  
4 and based upon the extent and duration of the use of  
5 explosives.

6       (2) A user may establish financial responsibility by  
7 means of cash, a trust fund, surety bond, a letter of credit,  
8 casualty insurance, a financial test, corporate guaranty, or a  
9 combination thereof. The financial responsibility must be  
10 maintained until the division determines that the explosive  
11 activity has been completed.

12       (3) Any person who is injured or whose property is  
13 damaged by a user's use of explosives may initiate a civil  
14 action for payment of damages from the guarantor of the user's  
15 financial responsibility.

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

3 Section 2. Section 552.13, Florida Statutes, is  
4 amended to read:

5 552.13 Promulgation of regulations by the Division of  
6 State Fire Marshal.--The division shall make, promulgate, and  
7 enforce regulations setting forth minimum general standards  
8 covering manufacture; transportation other than on a public  
9 street, road, or highway (including loading and unloading);  
10 use; sale; handling; and storage of explosives. The division  
11 shall adopt rules prescribing a distance from a residential  
12 area within which explosives may not be used.Said regulations  
13 shall be such as are reasonably necessary for the protection  
14 of the health, welfare, and safety of the public and persons  
15 possessing, handling, and using such materials and shall be in  
16 substantial conformity with generally accepted standards of  
17 safety concerning such subject matters. Such regulations  
18 shall be adopted by the division pursuant to the provisions of  
19 chapter 120.

20 Section 3. Section 552.161, Florida Statutes, is  
21 amended to read:

22 552.161 Administrative fines; injunctive relief; civil  
23 penalty.--

24 (1) If any person violates any provision of this  
25 chapter or any rule or regulation adopted pursuant thereto, or  
26 violates a cease and desist order, the division may impose an  
27 administrative fine, not to exceed \$1,000 for each violation  
28 except as provided in subsection (3), or suspend or revoke the  
29 license or permit issued to such person. The division may  
30 allow the licensee or permittee a reasonable period, not to  
31 exceed 30 days, within which to pay to the division the amount

1 of the penalty so imposed. If the licensee or permittee fails  
2 to pay the penalty in its entirety to the division at its  
3 office in Tallahassee within the period so allowed, the  
4 licenses or permits of the licensee or permittee shall stand  
5 revoked upon expiration of such period.

6 (2) The division or any substantially affected person  
7 may bring a civil action in a court of competent jurisdiction  
8 to seek injunctive relief to enforce compliance with this  
9 chapter or with rules adopted under this chapter.

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

15 (4)~~(2)~~ All such fines, monetary penalties, and costs  
16 received by the division in connection with this chapter shall  
17 be deposited in the Insurance Commissioner's Regulatory Trust  
18 Fund.

19 Section 4. This act shall take effect July 1, 2000.

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22 SENATE SUMMARY

23 Provides that an applicant for a user license to use  
24 explosives must provide to the Division of State Fire  
25 Marshal of the Department of Insurance proof of financial  
26 responsibility in an amount set by the division not to  
27 exceed \$1 million. Provides means of providing financial  
28 responsibility. Authorizes a civil action against the  
29 guarantor of a user's financial responsibility for  
30 damages. Authorizes a claim against a guarantor under  
31 certain circumstances. Prescribes rights of a guarantor  
in such a proceeding. Authorizes the division to adopt  
rules prescribing a distance from a residential area  
within which explosives may not be used. Provides  
authority for the division or any interested person to  
bring an action for injunctive relief. Authorizes the  
division to bring a civil action to recover a civil  
penalty for a division rule prohibiting the use of  
explosives within a prescribed distance from a  
residential area.