The Florida Senate

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Title XXXIII REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS	Chapter 552 MANUFACTURE, DISTRIBUTION, AND USE OF EXPLOSIVES

CHAPTER 552
MANUFACTURE, DISTRIBUTION, AND USE OF EXPLOSIVES

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552.081 Definitions.— As used in this chapter:

(1) "Explosive materials" means explosives, blasting agents, or detonators.

(2) "Explosives" means any chemical compound, mixture, or device, the primary purpose of which is to function by explosion. The term "explosives" includes, but is not limited to, dynamite, nitroglycerin, trinitrotoluene, other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. "Explosives" does not include cartridges for firearms and does not include fireworks as defined in chapter 791.

(3) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, intended for blasting and not otherwise defined as an explosive, provided the finished product, ready for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

(4) "Detonator" means any device containing a detonating charge that is used for initiating detonation of an explosive and includes, but is not limited to, blasting caps and electric blasting caps of instantaneous and delay types.

(5) "Person" means any natural person, partnership, association, or corporation.

(6) "Manufacturer-distributor" means a person engaged in the manufacture, compounding, combining, production, or distribution of explosives.

(7) "Dealer" means a person engaged in the wholesale or retail business of buying and selling explosives.

(8) "User" means a dealer or manufacturer-distributor who uses an explosive as an ultimate consumer or a person who, as an ultimate consumer of an explosive, purchases such explosive from a dealer or manufacturer-distributor.

(9) "Blaster" means a person employed by a user who detonates or otherwise effects the explosion of an explosive.

(10) "Sale" and its various forms includes delivery of an explosive with or without consideration.

(11) "Highway" means any public highway in this state, including public streets, alleys, and other thoroughfares, by whatever name, in any municipality.

(12) "Manufacturer's mark" means the mark placed on each carton of and each individual piece of explosive by the manufacturer to identify the manufacturer and the location, date, and shift of manufacture.

(13) "Two-component explosives" means any two inert components which, when mixed, become capable of detonation by a No. 6 blasting cap, and shall be classified as a Class "A" explosive when so mixed.

(14) "Division" means the Division of State Fire Marshal of the Department of Financial Services.

(15) "Purchase" and its various forms means acquisition of any explosive by a person with or without consideration.

History.—s. 1, ch. 29944, 1955; ss. 1, 2, ch. 59-83; ss. 13, 35, ch. 69-106; s. 205, ch. 71-377; s. 2, ch. 77-84; s. 658, ch. 2003-261.

552.091 License or permit required of manufacturer-distributor, dealer, user, or blaster of explosives.—

(1) It shall be unlawful for any person to engage in the business of a manufacturer-distributor or to acquire, sell, possess, store, or engage in the use of explosives in this state, except in conformity with the provisions of this chapter.

(2) Each manufacturer-distributor, dealer, user, or blaster must be possessed of a valid and subsisting license or permit issued by the division, except that if a manufacturer-distributor makes sales to users, such manufacturer shall not be required to obtain an additional license as a dealer.

(3) In the case of multiple locations for storage of explosives, each manufacturer-distributor, dealer, or user maintaining more than one permanent storage magazine location shall possess an additional license, as herein set forth, for each such location.

(4) The manufacturer-distributor of two-component explosives is required to purchase a manufacturer-distributor explosive license. Dealers of two-component explosives are required to purchase a dealer's explosive license. A user's explosive license is required of any person to purchase, mix, or use two-component explosives from a dealer or manufacturer-distributor. A blaster's explosive permit is required of any person employed by a user to mix, detonate, or otherwise effect the explosion of two-component explosives, provided that a user who is a natural person is not required to obtain a blaster's permit in addition to the user's license in order to mix, detonate, or otherwise effect the

explosion of any explosive.

(5)(a) Licenses, permits, and fees therefor are required for each license year for the following:

1. Manufacturer-distributor license. $650
2. Dealer license. 450
3. User license. 125
4. Blaster permit. 50
5. Duplicate licenses or permits or address changes. 5

(b) However, no fee shall be required for a dealer license if the only explosive sold by the dealer is black powder for recreational use.

(6) Said licenses and permits shall be issued by the division for each license year beginning October 1 and expiring the following September 30.

History.—s. 2, ch. 29944, 1955; s. 1, ch. 57-184; s. 3, ch. 59-83; s. 1, ch. 65-59; ss. 13, 35, ch. 69-106; s. 3, ch. 77-84; s. 1, ch. 80-169; s. 3, ch. 89-233.

552.092 Forms for applications for licenses and permits.—

(1) The forms for applications for explosives licenses and permits shall be prescribed by the division.

(2) Each application for a license required under this chapter shall be filed in writing with the division. Each application for a license shall require, as a minimum, the full name, date of birth, place of birth, social security number, physical description, residence address, and business address of the applicant; the types of explosives to be manufactured, distributed, or used by the applicant; and the purpose for which the license is sought in relation to explosives. Each application shall be accompanied by an accurate and current photograph of the applicant and a complete set of fingerprints of the applicant taken by an authorized law enforcement officer, unless the applicant has possessed a valid license during the prior license year and such license has not lapsed or been suspended or revoked. If fingerprints are required, the set of fingerprints shall be accompanied by a processing fee to be established by rule, which fee shall defray the costs of processing to the division, and such fingerprints shall be submitted by the division to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. If the application does not require a set of fingerprints, the division shall submit the name of the applicant to the Department of Law Enforcement for processing. Each application shall be in such form as to provide that the data and other information set forth therein shall be sworn to by the applicant or, if the applicant is a corporation, the application shall be sworn to by an officer thereof. The officer applying on behalf of a corporation shall provide all the information and data, and meet all other requirements, which are required for a natural person.

(3) Each application for a permit required under this chapter shall be filed in writing with the division. Each application for a permit shall require, as a minimum, the full name, date of birth, place of birth, social security number, physical description, and residence address of the applicant and the name and the license number of the user employing such blaster. Each application shall be accompanied by an accurate and current photograph of the applicant and a complete set of fingerprints of the applicant taken by an authorized law enforcement officer, unless the applicant has possessed a valid permit during the prior permit year and such permit has not lapsed or been suspended or revoked. If fingerprints are required, the set of fingerprints shall be accompanied by a processing fee to be established by rule, which fee shall defray the costs of processing to the division, and such fingerprints shall be submitted by the division to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. If the application does not require a set of fingerprints, the division shall submit the name of the applicant to the Department of Law Enforcement for processing. Each application shall be in such form as to provide that the data and other information set forth therein shall be sworn to by the applicant.

(4) The division may require any applicant to furnish such other information or data not required by this section if such information or data is deemed necessary.

History.—s. 4, ch. 77-84; s. 20, ch. 79-8; s. 1, ch. 79-174; s. 4, ch. 89-233.

552.093 Competency examinations required.—

(1) No license or permit shall be issued by the division until the applicant for such license or permit has satisfactorily passed an examination proving to the satisfaction of the division that the applicant is thoroughly competent and familiar with explosives and the operation to be performed.

(2) Any licensee or permittee who allows his or her license to lapse or whose license or permit is suspended or revoked shall be required to submit to and satisfactorily pass an examination prior to issuance of a license or permit.

(3) Each applicant shall be required to pay an examination fee of $30 upon application for the required license or permit, which fee shall apply to one scheduled examination attempt. Such fee shall not be refundable in the event the applicant does not appear for examination or does not successfully pass the examination. If the applicant does not appear for examination or does not successfully pass the examination, the applicant shall submit an additional $30 fee for each examination scheduled.

(4) The division shall formulate the competency examinations and shall establish the minimum passing grade for such examinations.

History.—s. 5, ch. 77-84; s. 5, ch. 89-233; s. 792, ch. 97-103; s. 7, ch. 2000-323.

552.094 Issuance of licenses, permits; prohibitions.—

(1) Each license issued by the division shall set forth, as a minimum, the full name, date of birth, and physical description of the licensee; the purpose for which the license is to be used in relation to explosives; the type of explosives to be manufactured, distributed, or used; a license number; and any restrictions placed upon the licensee by the division.

(2) Each permit issued by the division shall set forth, as a minimum, the full name, date of birth, and physical description of the permittee; the purpose for which the permit is to be used in relation to explosives; a permit number; the name and license number of the user employing such blaster; and any restrictions placed upon the permittee by the division.

(3) A blaster's permit shall be valid solely for use by the holder thereof in the course of her or his employment by the licensed user named therein.

(4) The division may, in its discretion, include other information and data in the license or permit.

(5) No license or permit shall be issued, renewed, or be allowed to remain in effect for any natural person:

(a) Under 21 years of age.

(b) Who has been convicted of a felony and has not been pardoned or had her or his civil rights restored.

(c) Who has been adjudicated mentally incompetent and has not had her or his civil rights restored.

(6) No license or permit shall be issued to any person by the division pursuant to an application unless the division shall determine from the information set forth in the application that the purpose for which the applicant seeks the permit or license falls within the purview of this chapter and that such purpose is not violative of any other laws of the state.

(7) It is unlawful for any person knowingly to withhold information or present to the division any false, fictitious, or misrepresented application, identification, document, information, or data intended or likely to deceive the division for the purpose of obtaining a license or permit.

History.—s. 6, ch. 77-84; s. 6, ch. 89-233; s. 793, ch. 97-103.

552.101 Possession without license prohibited; exceptions.—It is unlawful for any person to possess an explosive unless he or she is the holder of a current, valid license or permit, as above provided, and possesses such explosive for the purpose covered by the license or permit held. However, there is excepted from this provision common, contract, and private carriers, as described in s. 552.12, possessed of an explosive in connection with transportation of the same in the ordinary course of their business.

History.—s. 3, ch. 29944, 1955; s. 4, ch. 59-83; s. 7, ch. 77-84; s. 794, ch. 97-103.

552.111 Maintenance of records and sales of explosives by manufacturer-distributors and dealers; inspections.

(1) It is unlawful for any licensed manufacturer-distributor to sell or distribute explosives to any person except a person presenting a current, valid dealer's explosive license or user's explosive license.

(2) It is unlawful for any licensed dealer to sell or distribute explosives to any person except a person presenting a current, valid user of explosives license or dealer's explosive license.

(3) Each sale shall be evidenced by an invoice or sales ticket, which shall bear the name, address, and explosives license number of the purchaser, the date of sale, quantity sold, type of explosive sold, manufacturer's mark, and use for which the explosive is purchased. All original invoices or sales tickets shall be retained by the manufacturer-distributor or dealer and a copy thereof provided to the purchaser.

(4) Each manufacturer-distributor and each dealer shall keep an accurate and current written account of all inventories and sales of explosives. Such records shall be maintained by the manufacturer-distributor or dealer for a period of 5 years.

(5) Such records and inventories shall be made accessible to, and subject to examination by, the division and any peace officer of this state.

(6) It is unlawful for any person knowingly to withhold information or to make any false or fictitious entry or misrepresentation upon any sales invoice, sales ticket, or account of inventories.

History.—s. 4, ch. 29944, 1955; s. 5, ch. 59-83; ss. 13, 35, ch. 69-106; s. 8, ch. 77-84.

552.112 Maintenance of records by users; inspection.—

(1) It is unlawful for any user of explosives to purchase, store, or use explosives without maintaining an accurate and current written inventory of all explosives purchased, possessed, stored, or used.

(2) Such records shall include, but not be limited to, invoices or sales tickets from purchases, location of blasting sites, dates and times of firing, the amount of explosives used for each blast or delay series, the name of the person in charge of loading and firing, and the license or permit number and name of the person making such entry into the records. Such records shall be maintained by users for a period of 5 years.

(3) Such records shall be made accessible to, and subject to examination by, the division and any peace officer of this state.

(4) It is unlawful for any person knowingly to withhold information or make any false or fictitious entry or misrepresentation upon any such records.

History.—s. 6, ch. 59-83; ss. 13, 35, ch. 69-106; s. 9, ch. 77-84.

552.113 Reports of thefts, illegal use, or illegal possession.—

(1) Any sheriff, police department, or peace officer of this state shall give immediate notice to the division of any theft, illegal use, or illegal possession of explosives within the purview of this chapter, coming to his or her attention, and shall forward a copy of his or her final written report to the division.

(2) It is unlawful for any holder of an explosives license or permit who incurs a loss, unexplained shortage, or theft of explosives, or who has knowledge of a theft or loss of explosives, to fail to report such loss or unexplained shortage or theft, within 12 hours after discovery thereof, to the nearest county sheriff or police chief and the division. Such report shall include the amount and type of explosives missing, the manufacturer's mark, if available, the approximate time of occurrence, if known, and any other information such licensee or permittee may possess. Any other person who has knowledge or information concerning a theft shall immediately inform the nearest county sheriff or police chief of such occurrence.

(3) The division shall investigate, or be certain that a qualified law enforcement agency investigates, the cause and circumstances of each theft, illegal use, or illegal possession of explosives which occurs within the state. A report of each such investigation shall be made and maintained by the division.

History.—s. 6, ch. 59-83; ss. 13, 35, ch. 69-106; s. 10, ch. 77-84; s. 795, ch. 97-103.

552.114 Sale, labeling, and disposition of explosives; unlawful possession.—No person shall sell, accept, or deliver any explosives unless each carton and each individual piece of such explosive is plainly labeled, stamped, or marked with the manufacturer's mark. It shall only be necessary for such identification marks to be on the containers used for packaging such explosives for explosive materials of such small size as not to be suitable for marking on the individual item. It is unlawful for any person to use or possess any explosives not marked as required in this section. All unmarked explosives found in the possession of any person shall be confiscated and disposed of in accordance with the provisions of this chapter.

History.—s. 11, ch. 77-84; s. 796, ch. 97-103.

552.12 Transportation of explosives without license prohibited; exceptions.—No person shall transport any explosive into this state or within the boundaries of this state over the highways, on navigable waters or by air, unless such person is possessed of a license or permit; provided, there is excepted from the effects of this sentence common, contract and private carriers, as mentioned in the next succeeding sentence. Common carriers by air, highway, railroad, or water transporting explosives into this state, or within the boundaries of this state (including ocean-plying vessels loading or unloading explosives in Florida ports), and contract or private carriers by motor vehicle transporting explosives on highways into this state, or within the boundaries of this state, and which contract or private carriers are engaged in such business pursuant to certificate or permit by whatever name issued to them by any federal or state officer, agency, bureau, commission or department, shall be fully subject to the provisions of this chapter; provided, that in any instance where the Federal Government, acting through the [1]Interstate Commerce Commission or other federal officer, agency, bureau, commission or department, by virtue of federal laws or rules or regulations promulgated pursuant thereto, has preempted the field of regulation in relation to any activity of any such common, contract or private carrier sought to be regulated by this chapter, such activity of such a carrier is excepted from the provisions of this chapter.

History.—s. 5, ch. 29944, 1955; s. 7, ch. 59-83.

[1]**Note.**—Abolished by s. 101, Pub. L. No. 104-88.

552.13 Promulgation of regulations by the Division of State Fire Marshal.—The division shall make, promulgate, and enforce regulations setting forth minimum general standards covering manufacture; transportation other than on a public street, road, or highway (including loading and unloading); use; sale; handling; and storage of explosives. Said regulations shall be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons possessing, handling, and using such materials and shall be in substantial conformity with generally accepted standards of safety concerning such subject matters. Such regulations shall be adopted by the division pursuant to the provisions of chapter 120.

History.—s. 6, ch. 29944, 1955; s. 8, ch. 59-83; ss. 13, 35, ch. 69-106; s. 1, ch. 70-299; s. 12, ch. 77-84; s. 26, ch. 82-186.

552.151 Procedure for cease and desist orders; administrative fine.—

(1) Whenever the division shall have reason to believe that any person is or has been violating the provisions of this chapter or any rules or regulations adopted and promulgated pursuant thereto, it shall proceed to determine the matter.

(2) If the division shall determine that the acts complained of are in violation of the provisions of this law, or the rules and regulations adopted and promulgated in pursuance thereto, it shall issue to the person charged with the violation an order requiring such person to cease and desist from such violation or imposing an administrative fine, or both.

History.—s. 9, ch. 65-59; ss. 13, 35, ch. 69-106; s. 13, ch. 77-84; s. 21, ch. 78-95.

552.161 Administrative fines.—

(1) If any person violates any provision of this chapter or any rule or regulation adopted pursuant thereto, or

violates a cease and desist order, the division may impose an administrative fine, not to exceed $1,000 for each violation, or suspend or revoke the license or permit issued to such person. The division may allow the licensee or permittee a reasonable period, not to exceed 30 days, within which to pay to the division the amount of the penalty so imposed. If the licensee or permittee fails to pay the penalty in its entirety to the division at its office in Tallahassee within the period so allowed, the licenses or permits of the licensee or permittee shall stand revoked upon expiration of such period.

(2) All such fines, monetary penalties, and costs received by the division in connection with this chapter shall be deposited in the Insurance Regulatory Trust Fund.

History.—s. 10, ch. 65-59; ss. 13, 35, ch. 69-106; s. 14, ch. 77-84; s. 21, ch. 78-95; s. 7, ch. 89-233; s. 659, ch. 2003-261.

552.171 Suspension or revocation of license or permit.—

(1) The violation, by any person possessed of a license or permit as provided in s. 552.091, of any provision of this chapter or any rule or regulation adopted pursuant thereto or of a cease and desist order shall be cause for revocation or suspension of such license or permit by the division after it shall determine said person guilty of such violation.

(2) If the division should find said violation proved, it shall enter its order suspending or revoking the license or permit of the person charged. An order of suspension shall state the period of time of such suspension, which period shall not be in excess of 2 years from the date of such order. An order of revocation may be entered for a period not exceeding 5 years, and such order shall effect the revocation of all licenses or permits then held by said person, and during such period of time no license or permit shall be issued to said person. If during the period between the beginning of proceedings and entry of an order of suspension or revocation by the division a new license or permit has been issued the person so charged, any order of suspension or revocation shall operate effectively with respect to said new license or permit held by such person.

(3) The provisions of this section are cumulative and shall not affect the penalty and injunctive provisions of ss. 552.22 and 552.23.

History.—s. 11, ch. 65-59; ss. 13, 35, ch. 69-106; s. 15, ch. 77-84; s. 21, ch. 78-95; s. 8, ch. 89-233.

552.181 Conduct of hearings.— All hearings shall be conducted in accordance with the provisions of chapter 120.

History.—s. 12, ch. 65-59; ss. 13, 35, ch. 69-106; s. 16, ch. 77-84.

552.20 Review of order of the division.— All review of orders of the division shall be in accordance with the provisions of chapter 120.

History.—s. 14, ch. 65-59; ss. 13, 35, ch. 69-106; s. 1, ch. 69-267; s. 17, ch. 77-84.

552.21 Confiscation and disposal of explosives.—

(1) Whenever the division shall have reason to believe that any person is or has been violating the provisions of this chapter or any rules or regulations adopted and promulgated pursuant thereto, the division may, without further process of law, confiscate the explosives in question and cause them to be stored in a safe manner, or, if any explosives are deemed by the division to be in such a state or condition as to constitute a hazard to life or property, the division may dispose of such explosives without further process of law. The division is authorized to dispose of any abandoned explosives that it deems to be hazardous to life or property.

(2) If the person so charged is found guilty of violating the provisions of this chapter or any rule or regulation adopted pursuant thereto with regard to the possession, handling, or storage of explosives, the division is authorized to dispose of the confiscated materials in such a way as it shall deem equitable.

(3) Costs incurred in the confiscation and disposal of such explosives shall be paid from the Insurance Regulatory Trust Fund.

History.—s. 15, ch. 65-59; ss. 13, 35, ch. 69-106; s. 18, ch. 77-84; s. 21, ch. 78-95; s. 660, ch. 2003-261.

552.211 Explosives; general.—

(1) All explosive materials shall be stored in magazines which are in conformity with the rules or regulations of the division, except when they are in the process of manufacture, being used, or being loaded or unloaded into or from transportation vehicles, or while in the course of transportation.

(2) Use of explosives, except by written consent of the division, shall be conducted only during daylight hours.

(3) The division may restrict the quantity and use of explosives at any location within the state when the division deems the use of such explosives is likely to cause injury to life or property.

History.—s. 19, ch. 77-84.

552.212 Inspection of buildings, vehicles, vessels, aircraft, equipment, or premises.— The division may, when it deems necessary, inspect, at any reasonable hour, any building, storage facility, vehicle, vessel, aircraft, equipment, or premises where explosive materials are stored, kept, transported, used, manufactured, distributed, or sold, to determine if there is any violation of this chapter or of any rule or regulation of the division.

History.—s. 20, ch. 77-84.

552.22 Penalties.—

(1) Any person who manufactures, purchases, transports, keeps, stores, possesses, distributes, sells, or uses any explosive with the intent to harm life, limb, or property is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Manufacturing, purchasing, possessing, distributing, or selling an explosive under circumstances contrary to the provisions of this chapter or such regulations as are adopted pursuant thereto shall be prima facie evidence of an intent to use the explosive for destruction of life, limb, or property.

(2) Any person who possesses any explosive material, knowing or having reasonable cause to believe that such explosive material was stolen, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who knowingly withholds information or presents to the division any false, fictitious, or misrepresented application, identification, document, information, statement, or data, intended or likely to deceive, for the purpose of obtaining an explosives license or permit is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who knowingly withholds information or makes any false or fictitious entry or misrepresentation upon any records required by s. 552.111 or s. 552.112 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Any person who is the holder of an explosives license or permit and who fails to report the loss, theft, or unexplained shortage of any explosive material as required by s. 552.113 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any person who violates any order, rule, or regulation of the division, an order to cease and desist, or an order to correct conditions issued pursuant to this chapter is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Any person who is the holder of an explosives license or permit and who abandons any explosive material is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) The license or permit of any person convicted of violating subsection (1) or subsection (2) is automatically and permanently revoked upon such conviction.

(9) The license or permit of any person convicted of violating subsection (3), subsection (4), subsection (5), subsection (6), or subsection (7) is automatically revoked upon such conviction, and the division shall not issue a license or permit to such person for 2 years from the date of such conviction.

(10) Any person who knowingly possesses an explosive in violation of the provisions of s. 552.101 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 29944, 1955; s. 9, ch. 59-83; s. 2, ch. 65-59; s. 548, ch. 71-136; s. 21, ch. 77-84; s. 224, ch. 79-400; s. 1, ch. 84-17; s. 145, ch. 91-224.

Note.—Former s. 552.14.

552.23 Injunction.—In addition to the penalties and other enforcement provisions of this chapter, in the event any person engaged in any of the activities covered by this chapter shall violate any provision of this chapter or any rule or regulation adopted or promulgated in pursuance thereto, the division is authorized to resort to proceedings for injunction in the circuit court of the county where such person shall reside or have her or his or its principal place of business, and therein apply for such temporary and permanent orders as the division may deem necessary to restrain such person from engaging in any such activities, until such person shall have complied with the provisions of this chapter and such rules and regulations.

History.—s. 16, ch. 65-59; ss. 13, 35, ch. 69-106; s. 22, ch. 77-84; s. 797, ch. 97-103.

552.24 Exceptions.—Nothing contained in this chapter shall apply to the regular military or naval forces of the United States; or to the duly organized military force of any state or territory thereof; or to police or fire departments in this state, provided they are acting within their respective official capacities and in the performance of their duties.

History.—s. 9, ch. 29944, 1955; s. 4, ch. 65-59.

Note.—Former s. 552.16.

552.241 Limited exemptions.—The licensing, permitting, and storage requirements of this chapter shall not apply to:

(1) Dealers who purchase, sell, possess, or transport:

(a) Smokeless propellant or commercially manufactured sporting grades of black powder in quantities not exceeding 150 pounds, provided such dealer holds a valid federal firearms dealer's license.

(b) Small arms ammunition primers, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers intended to be used solely for sporting, recreational, and cultural purposes, provided such dealer holds a valid federal firearms dealer's license.

(2) Users who are natural persons and who purchase, possess, or transport:

(a) Smokeless propellant powder in quantities not to exceed 150 pounds, or commercially manufactured sporting grades of black powder not to exceed 25 pounds, provided such powder is for the sole purpose of handloading cartridges for use in pistols or sporting rifles, or handloading shells for use in shotguns, or for a combination of these or other purposes strictly confined to handloading or muzzle-loading firearms for sporting, recreational, or cultural use.

(b) Small arms ammunition primers, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers, provided such small arms ammunition primers are for the sole purpose of handloading cartridges for use in pistols or sporting rifles, or handloading shells for use in shotguns, or for a combination of these or other purposes strictly confined to handloading or muzzle-loading firearms for sporting, recreational, or cultural use.

History.—s. 1, ch. 67-145; s. 23, ch. 77-84.

552.25 Municipal and county ordinances, rules, and regulations.—Nothing contained in this chapter shall affect any existing ordinance, rule or regulation pertaining to explosives of any incorporated city, town, county, or other local governmental entity in this state not less restrictive than the provisions of this chapter and rules promulgated pursuant thereto, or affect, modify or limit the power of such incorporated cities, towns, counties, or other local governmental entities to make ordinances, rules or regulations hereunder pertaining to explosives within their respective corporate limits.

History.—s. 10, ch. 29944, 1955; s. 5, ch. 65-59; s. 9, ch. 89-233.

Note.—Former s. 552.17.

552.26 Administration of chapter; personnel; fees to be deposited in Insurance Regulatory Trust Fund.—

(1) The division is authorized to employ such persons as it may deem qualified and necessary, and incur such other expenses as may be required, in connection with the administration of this chapter.

(2) All fees collected for licenses and permits and competency examination filing fees required by this chapter shall be deposited in the Insurance Regulatory Trust Fund and are appropriated for the use of the division in the administration of this chapter.

History.—s. 11, ch. 29944, 1955; s. 6, ch. 65-59; ss. 13, 35, ch. 69-106; s. 24, ch. 77-84; s. 661, ch. 2003-261.

Note.— Former s. 552.18.

552.27 Construction of chapter.— The provisions of this chapter are cumulative and shall not be construed as repealing or affecting any powers, duties, or authority of the division under any other law of this state, except that with respect to the regulation of explosives as herein provided, in instances in which the provisions of this chapter may conflict with any other such law, the provisions of this chapter shall control.

History.—s. 12, ch. 29944, 1955; s. 7, ch. 65-59; ss. 13, 35, ch. 69-106; s. 25, ch. 77-84.

Note.— Former s. 552.19.

552.30 Construction materials mining activities.—

(1) Notwithstanding the provisions of s. 552.25, the State Fire Marshal shall have the sole and exclusive authority to promulgate standards, limits, and regulations regarding the use of explosives in conjunction with construction materials mining activities. Such authority to regulate use shall include, directly or indirectly, the operation, handling, licensure, or permitting of explosives and setting standards or limits, including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast and time, date, occurrence, and notice restrictions. As used in this section, "construction materials mining activities" means the extraction of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials for shipment offsite by any person or company primarily engaged in the commercial mining of any such natural resources.

(2) The State Fire Marshal shall establish statewide ground vibration limits for construction materials mining activities which conform to those limits established in the United States Bureau of Mines, Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria (Figure B-1). The State Fire Marshal may, at his or her sole discretion, by rule or formal agreement, delegate to the applicable municipality or county, the monitoring and enforcement components of regulations governing the use of explosives, as recognized in this section, by construction materials mining activities. Such delegation may include the assessment and collection of reasonable fees by the municipality or county for the purpose of carrying out the delegated activities.

(3) The State Fire Marshal is directed to conduct or contract for a study to review whether the established statewide ground vibration limits for construction materials mining activities are still appropriate and to review any legitimate claims paid for damages caused by such mining activities. The study must include a review of measured vibration amplitudes and frequencies, structure responses, theoretical analyses of material strength and strains, and assessments of home damages.

(a) The study shall be funded using the specified portion of revenues received from the water treatment plant upgrade fee pursuant to s. 373.41492.

(b) The State Fire Marshal shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2016, which contains the findings of the study and any recommendations.

History.—s. 30, ch. 2000-266; s. 1, ch. 2003-62; s. 3, ch. 2015-141.

552.32 Short title.— Sections 552.32-552.44 may be cited as the "Florida Construction Materials Mining Activities Administrative Recovery Act."

History.—s. 2, ch. 2003-62.

552.34 Legislative findings; public purpose.—The Legislature finds and declares that:

(1) Construction materials mining activities require the use of explosives to fracture the material prior to excavation.

(2) The use of explosives results in physical ground vibrations and air blasts that may affect other property owners in the vicinity of the mining site.

(3) It is in the best interests of the public to provide a specific administrative remedy for complaints related to the use of explosives in construction materials mining activities.

History.—s. 3, ch. 2003-62.

552.36 Exclusive jurisdiction; Division of Administrative Hearings.—

(1) The Division of Administrative Hearings has exclusive jurisdiction over all claims for damages to real or personal property caused by the use of explosives in connection with construction materials mining activities. This chapter does not affect any claim seeking recovery for personal injury, emotional distress, or punitive damages. Any cause of action that involves both a claim for damage to real or personal property and another claim that is not addressed by this chapter must be bifurcated so that any claim seeking recovery for damage to real or personal property is adjudicated by the Division of Administrative Hearings.

(2) Notwithstanding s. 552.25, the review procedures set forth in this chapter preempt any claims, recovery, or similar procedure of any municipality, agency, board, or county or any other subdivision, entity, or special district of the state which would otherwise address a claim for damage caused by the use of explosives in connection with construction materials mining activities.

History.—s. 4, ch. 2003-62.

552.38 Security requirement.—

(1) As a prerequisite to obtaining or renewing a valid user license as required by s. 552.091(5)(a), or obtaining or renewing a valid license or permit under s. 552.30, a person who uses explosives in connection with construction materials mining activities must post and maintain a bond or letter of credit as security as required under subsection (2). Evidence that the bond has been posted and maintained in compliance with this section must be maintained by any licensee or permitholder for the use of explosives in connection with construction materials mining activities as part of the mandatory record maintenance requirements of s. 552.112. The person must maintain, in a format approved by the Division of State Fire Marshal of the Department of Financial Services, a completed form that shows the amount and location of the bond or identifies the bond surety and the current bond value.

(2) The bond or letter of credit required under subsection (1) must be in an amount not less than $100,000, notwithstanding an award made by an administrative law judge under s. 552.40(7). In the case of a multiple licenseholder or multiple permitholder, a single bond in the aggregate amount of not less than $100,000 may be provided as security for the individual permits or licenses. If the user of explosives has not been identified as a respondent in any pending claim for damages under this chapter, and if renewal of the license or permit is not sought, the bond required under this section may be released upon the expiration of the license or permit or 181 days after the final use of explosives under the license, whichever occurs later, if the bond to be released is not security for other permits.

(3) The State Fire Marshal may adopt rules for the administration of this section.

History.—s. 5, ch. 2003-62.

552.40 Administrative remedy for alleged damage due to the use of explosives in connection with construction materials mining activities.—

(1) A person may initiate an administrative proceeding to recover damages resulting from the use of explosives in connection with construction materials mining activities by filing a petition with the Division of Administrative Hearings by electronic means through the division's website on a form provided by it and accompanied by a filing fee

of $100 within 180 days after the occurrence of the alleged damage. If the petitioner submits an affidavit stating that the petitioner's annual income is less than 150 percent of the applicable federal poverty guideline published in the Federal Register by the United States Department of Health and Human Services, the $100 filing fee must be waived.

(2) The petition must include:

(a) The name and address of the petitioner;

(b) The name and address of the respondent, including the applicable user licenseholder under s. 552.091(5) and permitholder under s. 552.30;

(c) The approximate time, date, and place of the use of explosives which is alleged to have resulted in damage to the petitioner; and

(d) A description of the damage caused and the amount sought for recovery.

(3) Within 5 business days after the Division of Administrative Hearings receives a petition, it shall issue and serve on the petitioner and the respondent an initial order that assigns the case to a specific administrative law judge and provides general information regarding the practice and procedure before the Division of Administrative Hearings. The initial order must advise that a summary hearing is available upon the agreement of the parties under subsection (6) and must briefly describe the expedited time sequences, limited discovery, and final order provisions of the summary procedure. The initial order must also contain a statement advising the petitioner and the respondent that a mandatory, nonbinding mediation is required before a summary administrative hearing or a formal administrative hearing may be held.

(4) The administrative judge shall issue an order directing mediation under Rule 1700 et seq., Florida Rules of Civil Procedure. The parties shall jointly select a mediator and the location of mediation. If the parties fail to do so within 30 days after the order for mediation is issued, the administrative law judge shall designate the mediator and the location of mediation. Petitioner and respondent shall each pay one-half of the cost of mediation. If the petitioner's annual income is less than 150 percent of the applicable federal poverty guideline published in the Federal Register by the United States Department of Health and Human Services, the respondent shall bear the full cost of mediation. The mediation must be concluded within 60 days after the date of designation of the mediator unless the parties agree upon a different date.

(5) If the parties have not reached a settlement within 30 days after the conclusion of the mediation, the administrative law judge shall set the matter for formal administrative hearing as soon thereafter as possible at a location in the county where the alleged damage occurred. However, a formal administrative hearing may not be scheduled sooner than 30 days after the conclusion of the mediation.

(6) In lieu of proceeding directly to a formal administrative hearing scheduled in accordance with subsection (5), upon agreement of the parties, the parties may, within 15 days after the conclusion of unsuccessful mediation, file a motion for summary hearing. The summary hearing must be held at a location in the county where the alleged damage occurred, and all procedural requirements related to the hearing must be governed by s. 120.574 and any rules implementing that section.

(7) If the administrative law judge finds that the preponderance of the evidence presented demonstrates that the petitioner's damages were caused by the respondent's use of explosives, the administrative law judge shall set forth in a final order precise findings as to the damages attributable to the respondent and shall direct the respondent to pay damages in an amount supported by the preponderance of the evidence presented within 30 days after the final order is issued, unless the matter is appealed in accordance with s. 552.42. If the respondent fails to pay the damages within 30 days after the final order is issued or within 30 days after the entry of an appellate mandate affirming a final order awarding damages, the petitioner may request and the administrative law judge may order that the petitioner be paid from the security posted by the respondent under s. 552.38 the amount of the damages awarded. To the extent the security does not satisfy the full amount of the damages awarded, the administrative law judge may enter a judgment directly against the respondent for the amount of the difference.

(8) If the administrative law judge finds that the preponderance of the evidence presented demonstrates that the

petitioner's alleged damages were not caused by the respondent's use of explosives, the administrative law judge shall set forth in a final order precise findings as to the lack of responsibility of the respondent.

(9) The prevailing party is entitled to recover taxable costs, including reasonable expert witness fees and any incidental administrative costs directly associated with the case. The prevailing party is entitled to an award of reasonable attorney's fees if the administrative law judge determines that the claim or defense of the nonprevailing party:

(a) Was not supported by the material facts necessary to establish the claim or defense;

(b) Would not be supported by the application of then-existing law to those material facts; or

(c) Was brought or advanced primarily to harass or cause unnecessary delay, for frivolous purposes, or to needlessly increase the cost incurred by the opposition.

The losing party has up to 120 days to pay the total amount of attorney's fees and taxable costs assessed. This subsection does not apply to a petitioner who is the nonprevailing party if the petitioner's annual income is less than 150 percent of the applicable federal poverty guideline published in the Federal Register by the United States Department of Health and Human Services.

(10) Except as otherwise provided in this chapter, the procedure for the administrative proceedings provided by this act must be governed by the uniform rules of procedure for decisions determining substantial interests which are authorized by s. 120.54(5), notwithstanding the fact that those rules implement provisions of chapter 120 which are applicable to proposed or final agency action.

(11) The filing fees paid pursuant to subsection (1) shall be deposited into the Operating Trust Fund of the Division of Administrative Hearings to defray the expenses and costs associated with the administration of ss. 552.32-552.44.

History.—s. 6, ch. 2003-62; s. 95, ch. 2004-5; s. 16, ch. 2006-79; s. 13, ch. 2011-208.

552.42 Appeal.— The petitioner or the respondent may appeal the final order of the administrative law judge to the district court of appeal with jurisdiction over the county where the hearing was held by filing a notice, accompanied by the required filing fee, as provided by the Florida Rules of Appellate Procedure. The payment of any award shall be stayed during the pendency of an appeal.

History.—s. 7, ch. 2003-62.

552.44 Prior claims.— This act does not affect any claim filed in any tribunal before the effective date of this act.

History.—s. 8, ch. 2003-62.

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