

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/CS/SB 2412

INTRODUCER: Criminal Justice Committee, Regulated Industries Committee, and Senators Haridopolos and Crist

SUBJECT: Alcoholic Beverages and Tobacco Division

DATE: April 5, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends s. 20.165(9)(b), F.S., to provide that law enforcement employees of the Division of Alcoholic Beverage and Tobacco (division) must be certified as law enforcement officers by the Florida Department of Law Enforcement (FDLE) under ch. 943, F.S. Once certified, the division's law enforcement officers (ABT officers) have the same authority as provided for law enforcement officers generally under ch. 901, F.S. (warrants, arrests, searches, detention, etc.), and statewide jurisdiction. The ABT officers are also authorized to make warrantless arrests as provided in s. 901.15, F.S.

Each ABT officer possesses the full law enforcement powers granted to other Florida peace officers, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

The primary responsibility of an ABT officer includes investigating, enforcing, and prosecuting, throughout Florida, violations and violators of state laws relating to alcoholic beverage and tobacco (and rules adopted pursuant to those laws).

The secondary responsibility of each ABT officer is to enforce "all other state laws," provided that the enforcement is "incidental" to exercising the officer's primary responsibility to investigate, enforce, and prosecute violations and violators of state laws relating to alcoholic beverage and tobacco (and rules adopted pursuant to those laws) and the officer exercises the powers of a deputy sheriff only after consultation or coordination with the appropriate local sheriff's office or municipal police department or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

The bill deletes a provision of current law that limits an ABT officer's powers to investigate, enforce, and prosecute state laws not relating to alcoholic beverage and tobacco to violations of those laws that could result in an administrative proceeding against a license or permit issued by the division. It also deletes a provision of current law that provides that an ABT officer can enforce all Florida criminal laws within specified jurisdictions when the division is a party to a written mutual aid agreement with a state agency, sheriff, or municipal police department.

The bill amends s. 561.422, F.S., to authorize the director of the division to issue a temporary alcoholic beverage permit to a nonprofit civic organization more than three times per calendar year, but not more than 15 times per calendar year, upon the approval of the incorporated city, town, or board of county commissioners that have jurisdiction over the location of the premises.

This bill substantially amends sections 20.165 and 561.422 of the Florida Statutes.

II. Present Situation:

The Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (department) is the agency authorized to enforce the provisions of the Beverage Law in chs. 561, 562, 563, 564, 565, 567, and 568, F.S. The division also enforces the tobacco laws in ch. 210, F.S.

Law Enforcement Authority

All division employees have the legal authority to access and inspect premises licensed by the division for the purpose of collecting taxes and examining the books and records of all licensees.¹ Some of these employees are law enforcement officers certified under ch. 943, F.S. Section 20.165(9)(b), F.S., provides that these employees have "felony arrest powers under s. 901.15(10), F.S."²

Section 20.165(9)(b), F.S., also limits law enforcement authority of the division's law enforcement certified employees (ABT officers). It provides that ABT officers shall have all the powers of deputy sheriffs to investigate, enforce, and prosecute, throughout the state, violations and violators of:

- a. Parts I and II of chapter 210; part VII of chapter 559; and chapters 561-569; and the rules promulgated thereunder, as well as other state laws which the division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.
- b. All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate

¹ Section 20.165(9)(a), F.S.

² However, s. 901.15(10), F.S., does not relate to felony arrests. It provides for warrantless arrests for a misdemeanor violation based upon a signed affidavit by a federal law enforcement officer or U.S. military law enforcement officer when the misdemeanor was committed in that officer's presence on federal military property over which Florida has maintained exclusive jurisdiction for such misdemeanor. The footnote to s. 20.165, F.S., notes that s. 901.15(10), F.S., was redesignated as s. 901.15(13), F.S., by s. 57, ch. 99-193, L.O.F., and further redesignated as s. 901.15(12), F.S., pursuant to the repeal of former subsection (1) by s. 4, ch. 2004-17, L.O.F.

local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the division.

2. Enforce all criminal laws of the state within specified jurisdictions when the division is a party to a written mutual aid agreement with a state agency, sheriff, or municipal police department, or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

According to the division, its ABT officers routinely assist local police and sheriffs in law enforcement activities away from alcoholic beverage-licensed premises. The ABT officers have provided traffic control and security assistance after a hurricane. They have also conducted investigations at events frequented by youth, e.g., spring break activities, relating to consumption of alcoholic beverages by persons under the age of 21. The division represents that they frequently witness law violations or potential violations, e.g., a physical altercation between belligerents, and are unable to adequately respond or assist law enforcement officers from other agencies because of the current limitations under s. 20.165(9)(b), F.S.

According to the division, it is currently entering into memorandums of understanding (MOUs) with Florida's county sheriffs. The MOUs allow an ABT officer to have the authority of a deputy sheriff under s. 20.165(9)(b)2., F.S.

Temporary Permits for Nonprofit Civic Organizations

Section 561.422, F.S., authorizes the director of the division to issue temporary alcoholic beverage permits to bona fide nonprofit civic organizations to sell alcoholic beverages for consumption on the premises only. To obtain the permit, the civic organization must file an application with the division, present a local building and zoning permit, and pay a fee of \$25 per permit. The temporary permit is subject to the following additional conditions:

- The permitted period cannot exceed three days;
- The permit is subject to any state law or municipal or county ordinance regulating the time for selling such beverages;
- All net profits from sales of alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization; and
- The nonprofit civic organization may be issued only three such permits per year.

Section 561.422, F.S., authorizes the civic organization licensed under this provision to purchase alcoholic beverages from a distributor or vendor licensed under the Beverage Law.

III. Effect of Proposed Changes:

Law Enforcement Authority

The bill amends s. 20.165(9)(b), F.S., to provide that law enforcement employees of the Division of Alcoholic Beverage and Tobacco (division) must be certified as law enforcement officers by the Florida Department of Law Enforcement (FDLE) under ch. 943, F.S. Once certified, the division's law enforcement officers (ABT officers) have the same authority as provided for law enforcement officers generally under ch. 901, F.S. (warrants, arrests, searches, detention, etc.), and statewide jurisdiction. The ABT officers are also authorized to make warrantless arrests as provided in s. 901.15, F.S.

Each ABT officer possesses the full law enforcement powers granted to other Florida peace officers, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

The primary responsibility of an ABT officer includes investigating, enforcing, and prosecuting, throughout Florida, violations and violators of state laws relating to alcoholic beverage and tobacco³ (and rules adopted pursuant to those laws).

The secondary responsibility of each ABT officer is to enforce “all other state laws,” provided that the enforcement is “incidental” to exercising the officer’s primary responsibility to investigate, enforce, and prosecute violations and violators of state laws relating to alcoholic beverage and tobacco (and rules adopted pursuant to those laws) and the officer exercises the powers of a deputy sheriff, only after consultation or coordination with the appropriate local sheriff’s office or municipal police department or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

The limitations placed on an ABT officer’s enforcement of “other state laws” appear to be inconsistent with the intent to provide ABT officers with “the full law enforcement powers granted other peace officers of this state,” and appear to be more restrictive than current law. (See “Technical Deficiencies” section of this analysis.)

The bill deletes a provision of current law that limits an ABT officer’s powers to investigate, enforce, and prosecute state laws not relating to alcoholic beverage and tobacco to violations of those laws that could result in an administrative proceeding against a license or permit issued by the division. It also deletes a provision of current law that provides that an ABT officer can enforce all Florida criminal laws within specified jurisdictions when the division is a party to a written mutual aid agreement with a state agency, sheriff, or municipal police department.

Temporary Permits for Nonprofit Civic Organizations

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The bill takes effect on July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³ The applicable laws are parts I and II of ch. 210, F.S.; part VII of ch. 559, F.S.; and chs. 561-569, F.S.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Business and Professional Regulation states that no fiscal impact on the department or state government is anticipated.

VI. Technical Deficiencies:

The bill specifies that the secondary responsibility of each ABT officer is to enforce “all other state laws,” provided that the enforcement is “incidental” to exercising the officer’s primary responsibility to investigate, enforce, and prosecute violations and violators of state laws relating to alcoholic beverage and tobacco (and rules adopted pursuant to those laws) and the officer exercises the powers of a deputy sheriff only after consultation or coordination with the appropriate local sheriff’s office or municipal police department or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

According to American Heritage Dictionary of the English Language, Fourth Edition,⁴ the adjective “incidental” means:

1. Occurring or likely to occur as an unpredictable or minor accompaniment: *the snags incidental to a changeover in upper management*. See synonyms at accidental.
2. Of a minor, casual, or subordinate nature: *incidental expenses*.

AskOxford.com,⁵ defines the adjective “incidental” as:

1. occurring as a minor accompaniment or by chance in connection with something else.
2. (incidental to) liable to happen as a consequence of.

Based on these definitions, it appears the bill is limiting an ABT officer’s powers to enforce “other state laws” to those instances in which violations of “other state laws” happen as a consequence of the officer’s investigation, enforcement, or prosecution of violations or violators of state laws relating to alcoholic beverage and tobacco (and rules adopted pursuant to those laws). This appears to be contrary to the intent to provide ABT officers with “the full law

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⁵ © 2006 by Oxford University Press.

enforcement powers granted other peace officers of this state.” In fact, it appears to be even more restrictive than current law because under current law the ABT officer can acquire the powers of a peace officer of this state through MOUs with local sheriffs (the officer cannot acquire these powers by MOUs under the bill). If it was not the intent to so limit an ABT officer’s power to enforce “other state laws,” this is a technical deficiency that needs to be corrected.

In two provisions of the bill there is a reference to the ABT officer being “appointed under this section” (“this section” referring to s. 20.165, F.S.). It appears that what s. 20.165, F.S., actually does is *authorize* or *grant* the ABT officer enforcement powers specified in the bill.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
