

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1271 CS

Division of Alcoholic Beverages and Tobacco

SPONSOR(S): Cannon

TIED BILLS:

IDEN./SIM. BILLS: SB 2412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division), housed within the Department of Business and Professional Regulation (DBPR), licenses the alcoholic beverage and tobacco industries, collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries.

Currently, employees of the Division may be certified as law enforcement officers. Such officers (ABT officers) have *felony* arrest powers statewide. ABT officers also have all of the powers of a deputy sheriff to:

- Enforce all criminal laws of the state within specified jurisdictions where the Division is a party to a written mutual aid agreement with a state agency, sheriff, or municipal police department;
- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
 - o Laws *relating to alcoholic beverages and tobacco products*; and
 - o All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.

This bill provides that ABT officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc...), and have statewide jurisdiction. The bill specifies that the primary responsibilities of an ABT officer include enforcing the laws relating to alcoholic beverages and tobacco products, and all other state laws, provided the ABT officer exercises the powers of a deputy sheriff in coordination with the local sheriff's office.

There does not appear to be a significant fiscal impact.

This bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division of Alcoholic Beverages and Tobacco.

Maintain Public Security → This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division of Alcoholic Beverages and Tobacco.

B. EFFECT OF PROPOSED CHANGES:

The Division of Alcoholic Beverages and Tobacco (Division), housed within the Department of Business and Professional Regulation (DBPR), licenses the alcoholic beverage and tobacco industries¹, collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries, pursuant to chapters 210, 561-565, and 567-569, F.S.² The Division carries out these responsibilities through three bureaus: Licensing, Auditing and Enforcement.³

Currently, employees of the Division may be certified as law enforcement officers under chapter 943, F.S.⁴ (for purposes of this analysis, such employees will be referred to as ABT officers). ABT officers currently have statewide *felony* arrest powers, described in s. 901.15, F.S., which authorize them to arrest a person without a warrant if:

- they reasonably believe that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing a felony;
- while engaged in the exercise of his or her state law enforcement duties, the ABT officer reasonably believes that a felony has been or is being committed; or
- a felony warrant for the arrest has been issued and is being held for execution by another peace officer.⁵

ABT officers also have all of the powers of a deputy sheriff to:

- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
 - o Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.
 - o All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.
- 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

¹ Florida has approximately 71,000 active alcoholic beverage and tobacco license holders.

² <http://www.myflorida.com/dbpr/abt/index.shtml>

³ *Id.*

⁴ In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of law enforcement officers (LEO). Every prospective LEO must successfully complete a CJSTC-developed Basic Recruit Training Program and pass a statewide certification exam in order to receive their certification. <http://www.fdle.state.fl.us/cjst/commission/index.html>

⁵ See ss. 20.165 and 901.15, F.S.

department, or when the Division participates in the Florida Mutual Aid Plan during a declared state of emergency.⁶

A careful read of the above authorities reveals that ABT officers do not currently have the authority to enforce certain laws or respond (e.g. pursue, detain, and arrest) to certain crimes. For example, an ABT officer may not enforce misdemeanor violations when not on the premises of a Division-licensed entity. In such instances, the ABT officer would be limited to simply notifying local law enforcement of the crime. This limited authority has also caused concern in that ABT officers must consider whether responding to a crime is within the scope of their authorized duties, whether the Division would support their actions, whether they will incur any liability for their actions, etc...

Effect of the Bill

The bill provides that Division employees serving as law enforcement officers must meet the qualifications for employment as a law enforcement officer set forth under s. 943.13, F.S.⁷, and must be certified as a law enforcement officer by the Florida Department of Law Enforcement (FDLE). This portion of the bill appears to have little effect in that ABT officers who are currently certified as law enforcement officers are certified as such by FDLE and must meet the requirements of s. 943.13, F.S.

The bill also provides that ABT officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc...), and have statewide jurisdiction. The bill specifies that ABT officers also have the arrest authority provided for state law enforcement officers in s. 901.15, F.S. (discussed above). The bill further provides that an ABT officer has full law enforcement powers granted to other peace officers in the state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

Although the bill expands an ABT officer's powers and jurisdiction, the bill specifies that the primary responsibilities of an ABT officer include enforcing the laws relating to Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce. An ABT officer's primary responsibilities also include enforcing all other state laws, provided the ABT officer exercises the powers of a deputy sheriff in consultation or coordination with the local sheriff's office.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.165, F.S., requiring ABT officers serving as law enforcement officers to meet certain qualifications; requiring ABT officers to be certified as law enforcement officers; providing ABT officers with certain powers, authority, and jurisdiction; specifying primary responsibilities of ABT officers.

Section 2. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR's analysis stated that that no fiscal impact is anticipated.

⁶ s. 20.165, F.S.

⁷ Section 943.13, F.S. provides minimum employment qualifications for officers.

2. Expenditures:

DBPR's analysis stated that that no fiscal impact is anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment provides that an ABT officer's primary responsibilities also include enforcing all other state laws, provided the ABT officer exercises the powers of a deputy sheriff in consultation or coordination with the local sheriff's office.