

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1778

INTRODUCER: Senator Bogdanoff

SUBJECT: Clove Cigarettes

DATE: April 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill repeals the statutory prohibition against the sale, use, possession, transfer, or otherwise disposing of clove cigarettes or similar products.

This bill repeals the following sections of the Florida Statutes: 859.058.

II. Present Situation:

Clove Cigarette Ban

Clove cigarettes, also called kreteks, generally contain 60 percent to 80 percent tobacco and 40 percent to 20 percent ground clove.¹

Clove cigarettes are statutorily banned in Florida under s. 859.058, F.S., which states that “No person shall sell, use, possess, give away, or otherwise dispose of cigarettes or similar products designed or intended for smoking, made in whole or in part from, or containing, cloves, clove oil, or eugenol,² or any derivative thereof.”

The provisions of s. 859.058, F.S., were adopted in 1985 as an amendment to HB 1365, which also enacted a tax on smokeless tobacco products and loose smoking tobacco.³ This bill repeals only the statutory ban on clove cigarettes.

¹ See <http://www.nlm.nih.gov/medlineplus/druginfo/natural/251.html> (last visited April 8, 2011)

² *Id.* Eugenol, one of the chemicals in clove, acts like menthol to reduce the harshness of tobacco smoke.

³ See ch. 85-141, L.O.F.

On August 10, 2003, the St. Petersburg Times published an article on the prohibition of clove cigarettes.⁴ The article contained a history of the statutory ban, including the issuance of an injunction prohibiting the Division of Alcoholic Beverages and Tobacco within what is now the Department of Business and Professional Regulation from enforcing the statute. This injunction was reportedly issued weeks after the law was passed in 1985.⁵ The judge issuing the injunction was concerned because the law did not specify if the infraction was a civil or criminal violation or the level of such a violation but rather was silent as to how violators should be punished.⁶

Despite the injunction prohibiting the enforcement of the clove cigarette ban, the statute was never amended or repealed.

The Florida Department of Law Enforcement (FDLE) reports, as of February 15, 2011, no arrests have been entered in the FDLE Computerized Criminal History database for a violation of s. 859.058, F.S. For an arrest to be entered into the database, a person would have to be arrested and fingerprinted on a criminal charge. Similarly, the FDLE reports no convictions under this statute.

III. Effect of Proposed Changes:

Section 1 repeals the clove cigarette ban, removing the provision from Florida Statutes. The bill will align the statutes with state practice and with the judicial injunction prohibiting the enforcement of the ban.

Section 2 provides an effective date for the bill of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

⁴ http://www.sptimes.com/2003/08/10/Pasco/History_clouds_case_o.shtml (last visited April 8, 2011)

⁵ *Id.*

⁶ *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.