

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4121 Clove Cigarettes

**SPONSOR(S):** Artiles

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee	17 Y, 0 N	Johnson	Havlicak
2) Health & Human Services Committee	16 Y, 0 N	Guzzo	Gormley

### SUMMARY ANALYSIS

This bill repeals s. 859.058, F.S., the statutory prohibition against the sale, use, possession, transfer, or otherwise disposing of clove cigarettes or similar products.

Section 859.058, F.S., has banned clove cigarettes since 1985. However, in practice it is as though no ban were in place. Clove cigarettes are widely available, are subject to the state excise tax, and clove cigarette packages are affixed with a state tax stamp.

The bill does not appear to have a fiscal impact on state or local governments.

HB 4121 takes effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Clove cigarettes, in addition to normal cigarette characteristics, are approximately one-third scented clove buds and flavoring.<sup>1</sup>

Section 859.058, F.S., was adopted in 1985 as an amendment to HB 1365.<sup>2</sup> House Bill 1365 levied a tax on smokeless tobacco products and loose smoking tobacco.<sup>3</sup> This bill repeals only the prohibition on clove cigarettes.

On August 10, 2003, the St. Petersburg Times published an article on the prohibition of clove cigarettes.<sup>4</sup> It stated that clove cigarettes pose a greater health risk than normal tobacco cigarettes.<sup>5</sup> The article also contained a history of the statutory ban, including the issuance of an injunction prohibiting the Division of Alcoholic Beverages and Tobacco from enforcing the statute.<sup>6</sup> This injunction was reportedly issued weeks after the law was passed in 1985.<sup>7</sup> 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; rather was silent as to how violators should be punished.<sup>8</sup>

Despite the injunction prohibiting the enforcement of the clove cigarette ban, the law was never removed from the statutes.

The St. Petersburg Times article also recounts the experience of an individual cited in 2003 by a sheriff's deputy for having a pack of clove cigarettes in his car.<sup>9</sup> This occurred despite the pack of clove cigarettes having been purchased at a licensed tobacco distributor in Florida, including payment of the state's excise tax, and despite the presence of the "Class A" Florida tax stamp on the clove cigarette package.<sup>10</sup>

The Florida Department of Law Enforcement reports, as of February 15, 2011, no arrests have been entered in the Computerized Criminal History (CCH) database for a violation of s. 859.058, F.S. To be entered into the CCH, one would have to have been arrested and fingerprinted on a criminal charge. Similarly, FDLE reports no convictions under this statute; however there was one adjudication withheld in Volusia County in 2001.<sup>11</sup>

##### **Effect of Proposed Changes**

This bill repeals s. 859.058, F.S., which states that "[n]o 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, or any derivative thereof." This bill will align the statutes with state practice and with the judicial injunction prohibiting the enforcement of the ban.

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<sup>1</sup> [http://www.ehow.com/list\\_7447398\\_clove-cigarette-alternatives.html](http://www.ehow.com/list_7447398_clove-cigarette-alternatives.html) (last visited March 8, 2011)

<sup>2</sup> Section 2 of ch. 85-141, L.O.F.

<sup>3</sup> Chapter 85-141, L.O.F.

<sup>4</sup> [http://www.sptimes.com/2003/08/10/Pasco/History\\_clouds\\_case\\_o.shtml](http://www.sptimes.com/2003/08/10/Pasco/History_clouds_case_o.shtml) (last visited March 8, 2011)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> FDLE explains that the individual cited in the newspaper article for violations of this statute did not show up in the CCH database because they were issued a citation with a notice to appear in court. They were not formally arrested and fingerprinted.

**B. SECTION DIRECTORY:**

**Section 1:** Repeals s. 859.058, F.S., relating to prohibition against clove cigarettes.

**Section 2:** Provides that the act shall take effect upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**