

FINAL BILL ANALYSIS

BILL #: HB 4121

FINAL HOUSE FLOOR ACTION:

114 Y's 3 N's

SPONSOR: Rep. Artiles

GOVERNOR'S ACTION: Approved

COMPANION BILLS: SB 1778

SUMMARY ANALYSIS

HB 4121 passed the House on April 28, 2011, and subsequently passed the Senate on May 2, 2011. The bill was approved by the Governor on June 2, 2011, chapter 2011-130, Laws of Florida, and became effective on that date. The bill repeals the statutory prohibition against the sale, use, possession, transfer, or otherwise disposing of clove cigarettes or similar products.

The sale of clove cigarettes was first banned in 1985. However, a court held this ban unconstitutional, thus the ban is unenforceable. 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.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Clove cigarettes, in addition to having typical cigarette characteristics, are approximately one-third scented clove buds and flavoring.¹

Section 859.058, F.S., was adopted in 1985 as an amendment to HB 1365.² House Bill 1365 levied a tax on smokeless tobacco products and loose smoking tobacco.³ 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.⁴ It stated that clove cigarettes pose a greater health risk than normal tobacco cigarettes.⁵ The article contained a history of the statutory ban, including the issuance of an injunction by the Circuit Court in Leon County prohibiting the Division of Alcoholic Beverages and Tobacco from enforcing the statute.⁶ This injunction was reportedly issued weeks after the law was passed in 1985.⁷ 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; and was silent as to how violators should be punished.⁸

Despite the injunction prohibiting the enforcement of the clove cigarette ban, the law was never removed from the statutes. The St. Petersburg Times article recounts the experience of an individual cited in 2003 by a sheriff's deputy for having a pack of clove cigarettes in his car.⁹ 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.¹⁰

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 report of an adjudication withheld in Volusia County in 2001.¹¹

¹ http://www.ehow.com/list_7447398_clove-cigarette-alternatives.html (last visited March 8, 2011).

² Section 2, ch. 85-141, L.O.F.

³ Chapter 85-141, L.O.F.

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

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ 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.

Effect of Proposed Changes

The 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.” The bill aligns the statutes with state practice and with the judicial injunction prohibiting the enforcement of the ban.

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.