



**State Fiscal Note for Bill
Number: 2018-H-7647**

Date of State Budget Office Approval:

Date Requested: Monday, April 02, 2018

Date Due: Thursday, April 12, 2018

<i>Impact on Expenditures</i>		<i>Impact on Revenues</i>	
FY 2018	n/a	FY 2018	n/a
FY 2019	n/a	FY 2019	(\$4,956,382)
FY 2020	n/a	FY 2020	(\$5,073,313)

**Explanation by State
Budget Office:**

This bill amends Rhode Island General Laws Chapter 11-9 entitled "Children" in several ways. First, the bill amends Rhode Island General Laws Section 11-9-13 titled "Purchase, sale or delivery of tobacco products to persons under age eighteen – Posting notice of law" to increase the allowable age for sale or delivery of any tobacco product as defined in Section 11-9-13.4 and adds to this age limit the sale and delivery of electronic nicotine-delivery systems (ENDS) as defined in Section 11-9-13.4. A place of business that sells tobacco products or ENDS must post a notice of the law established by Section 11-9-13. Under current law, no person shall sell, give, or deliver to any person under eighteen years of age any tobacco product, and only a place of business that sells tobacco products must post a notice of the law established by Section 11-9-13.

Second, the bill amends Rhode Island General Laws Section 11-9-13.1 titled "Cigarette and tobacco vending machines" by prohibiting vending machines that sell tobacco products or ENDS from being placed in any area of a business that persons under the age of 21 are allowed to enter. Under current law, the vending machine must be placed in an area of a business that is continuously supervised and in direct line of sight of an authorized employee of the business. The machine also must also be equipped with an electronic locking device to be unlocked under the supervision of an authorized employee of the business.

Third, the bill amends Rhode Island General Laws Section 11-9-13.1 titled "Legislative intent – Purpose" with updated statistics related to cigarette, tobacco, and ENDS usage.

Fourth, the bill amends Rhode Island General Laws Section 11-9-13.4 titled "Definitions" by adding definitions for an 'electronic nicotine-delivery system license' and 'electronic nicotine-delivery system dealer'. An ENDS license is defined as "a license to sell electronic nicotine-delivery systems at retail as issued by the department of health." An ENDS dealer is defined as "the holder of a license to sell electronic nicotine-delivery systems at retail." This bill amends "dealer" and "person" to add ENDS to their respective definitions. Further, the bill expands the definition of "tobacco products" and redefines the term "underage individual" to mean any person under 21 years of age. "Little cigars" expands the definition of little cigars to include all cigars that weigh not more than 4.0 pounds per 1,000 cigars. Additionally, the bill removes from the definition of "electronic nicotine-delivery system" that a device must be used to simulate smoking. Under current law,

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little cigars, as defined in Rhode Island General Laws Section 44-20.2-1, includes all cigars with an integrated filter that weigh not more than 4.0 pounds per 1,000 cigars; tobacco products are limited to any product containing tobacco that can be used for smoking, sniffing, chewing or spitting; and an underage individual is any person less than 18 years of age.

Fifth, the bill amends Rhode Island General Laws Section 11-9-13.5 titled "Responsibility for tobacco or health issues" by adding ENDS to tobacco products as items for which the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) will "develop, monitor, and aggressively enforce" regulations to stop the illegal sale of to underage individuals. Further changes are made in Rhode Island General Law Section 11-9-13.6 titled "Duties of the department of behavioral healthcare, developmental disabilities and hospitals", Section 11-9-13.7 titled "Signs concerning sales to individuals under age eighteen (18)", Section 11-9-13.8 titled "Prohibitions applicable to license holders and their employees and agents", Section 11-9-13.10 titled "Prohibition on the distribution of free tobacco products [Effective January 1, 2018.]", Section 11-9-13.11 titled "Prohibition on the sale or distribution of tobacco products through the mail conveyance of tobacco products through the mail to children under eighteen (18) -- Proof of age of purchaser required -- General rule", and Section 11-9-13.13 titled "Nature and size of penalties" to conform these sections to the proposed minimum age of 21 and the addition of ENDS to this proposal.

Sixth, the bill repeals Rhode Island General Laws Section 11-9-14 titled "Use of tobacco by minors."

Finally, the bill amends Rhode Island General Laws Chapter 44-20.1 entitled "Delivery sales of cigarettes" by conforming Sections 44-20.1-1 titled "Definitions", 44-20.1-3 titled "Age verification requirements", and 44-20.1-5 titled "Shipping requirements" to the higher minimum age of 21 at which tobacco products and ENDS can be purchased.

*Comments on
Sources of Funds:*

All tobacco taxes are considered to be general revenue.

*Summary of Facts
and Assumptions:*

The effective date of this bill is upon passage, but the implementation date is assumed to be July 1, 2018.

It should be noted that the bill as written would be in conflict with the provisions of Rhode Island General Laws Chapter 44-20.2 entitled "Little Cigar Tax". In particular, Rhode Island General Laws Section 44-20.2-1 titled "Definitions" defines little cigars to include "any roll, made wholly or in part of tobacco, . . . , where such roll has a wrapper or cover made of tobacco . . . and where such roll has an integrated filter, except where such wrapper is wholly or in greater part made of tobacco and where such roll has an integrated filter and weighs" over 4.0 pounds per 1,000. The definition of little cigars included in the bill does not require that the little cigar have an integrated filter and would thereby expand the definition of little cigars beyond what has historically been the case. The Department of Revenue's Office of Revenue Analysis (ORA) recommends that the definition of little cigars contained in the bill be modified to require that any tobacco roll to be classified as a little cigar be

a tobacco roll that has an integrated filter. The revenue estimates contained in this fiscal note assume that this legislative change is adopted.

The revenue estimates provided below are static estimates and do not include any behavioral responses that might be engendered from the bill.

The Office of Revenue Analysis (ORA) first obtained Rhode Island population estimates from the 2016 American Community Survey (ACS), provided by the U.S. Census Bureau, and determined there were approximately 35,367 residents between the ages of 18-19 years old and 17,805 residents that were 20 years old. According to the Centers for Disease Control and Prevention (CDC), 14.4 percent of adults in Rhode Island smoked in 2016. The population estimates for Rhode Island for 18-19 year olds and 20 year olds was multiplied by the percentage of adult smokers to obtain an estimate of 7,657 smokers in Rhode Island between the ages of 18 and 20 years old, or more specifically 5,093 18 and 19 year old smokers and 2,564 20 year old smokers. ORA assumed an equal distribution of 18 and 19 year old smokers of 2,546 for each age group (i.e., $5,093 / 2$).

ORA then obtained data from a report titled "Public health implication of raising the minimum age of legal access to tobacco products" published by the Institute of Medicine. Particularly, ORA utilized a 2014 table that provided responses by 18, 19, and 20 year olds to the following question, "On the days you smoked cigarettes during the past 30 days, how many cigarettes did you smoke per day, on average?" ORA took the percentage of respondents for the following categories: less than one cigarette of which ORA assumed one half of one cigarette; one cigarette; 2-5 cigarettes of which ORA assumed 3.5 cigarettes per day; 6-15 cigarettes of which ORA assumed 10 cigarettes per day; 16-25 cigarettes of which ORA assumed 20 cigarettes per day; 26-35 cigarettes of which ORA assumed 30 cigarettes per day; and 35 plus cigarettes of which ORA assumed 40 cigarettes per day to obtain an average number of cigarettes smoked per day by each age category. ORA found that 18 year olds on average smoked 5.684 cigarettes per day, 19 year olds on average smoked 5.531 cigarettes per day, and 20 year olds on average smoked 5.826 cigarettes per day.

ORA then utilized the cigarettes per day estimates and multiplied them by 365 days to obtain a yearly cigarette number per age of smoker. The annual number of cigarettes was then divided by 20 because each pack of cigarettes contains 20 cigarettes per pack to obtain an annual number of packs by age estimate. Eighteen year old smokers were estimated to consume 104 packs per year (i.e., $(5.684 * 365) / 20$), 19 year old smokers were estimated to consume 101 packs of cigarettes per year (i.e., $(5.531 * 365) / 20$), and 20 year old smokers were estimated to consume 106 packs of cigarettes per year (i.e., $(5.826 * 365) / 20$).

Finally, the estimate of Rhode Islanders who smoked at each age category was multiplied by the annual number of packs of cigarettes to arrive at total packs by age. ORA estimated 264,148 total packs for 18 year olds, (i.e., $104 * 2,546$), 257,038 total packs for 19 year olds, (i.e., $101 * 2,546$), and 272,608 total packs for 20 year olds, (i.e., $106 * 2,564$), for a total of 793,794 estimated packs for 18 to 20 year olds (i.e., $264,148 + 257,038 + 272,608$). The number of yearly packs was

multiplied by Rhode Island's current cigarette excise tax rate of \$4.25 per pack of 20 cigarettes to estimate decreased excise taxes projected from the passage of this bill of \$3,373,623 (i.e., $793,794 * \$4.25$).

To estimate the reduction in sales and use taxes received from a reduction in cigarette sales, ORA calculated the difference in the final retail price per pack of 20 cigarettes of \$10.27 and the post retail markup price per pack of 20 cigarettes of \$9.60 to be \$0.67 and then applied that figure to the estimated total number of yearly cigarette packs consumed by 18 to 20 year olds. Thus, ORA estimates that increasing the minimum age to legally buy cigarettes from 18 years old to 21 years old will reduce sales and use taxes by \$531,842 (i.e., $793,794 * \$0.67$).

To estimate the impact on smokeless tobacco, ORA used the report "Behavioral Health Trends in the United States: Results from the 2016 National Survey on Drug Use and Health" (NSDUH) obtained from the Substance Abuse and Mental Health Services Administration's website. Particularly, ORA utilized tables that provided the percentages of smokeless users aged 12 and older. ORA took the 2016 percentages of individuals who used smokeless tobacco products in the past month and applied them to the ACS census population estimates for Rhode Island to obtain a number of smokeless tobacco users by age group. For example, according to the ACS, Rhode Island has 17,805 20 year olds. This was multiplied by the NSDUH survey data that 4.9 percent of 18 to 20 year olds used smokeless tobacco products to arrive at 872 20 year old users of smokeless tobacco products (i.e., $17,805 * 0.049$). This process was repeated for all available age groups provided by ACS. Following this methodology, ORA estimated there were a total of 30,299 Rhode Islanders who use smokeless tobacco products. Of this total, ORA estimated that 2,605 were 18 to 20 years old. ORA determined that 18 to 20 year olds comprise 8.5991 percent of the total users of smokeless tobacco in the state (i.e., $2,605 / 30,299$).

The percent of 18 to 20 year old smokeless tobacco users was multiplied by the November 2017 Revenue Estimating Conference's adopted FY 2019 estimate for smokeless tobacco products of \$10,200,000 to arrive at a revenue loss of \$877,110 from increasing the minimum legal age at which smokeless tobacco products may be purchased (i.e., $\$10,200,000 * 0.085991$). For the FY 2020 fiscal impact estimate, the above percentage was applied to the Office of Management and Budget's estimate of FY 2020 smokeless tobacco revenues to yield estimated FY 2020 other tobacco products (OTP) tax revenue loss of \$974,703 from the passage of this bill (i.e., $\$11,334,908 * 0.085911$).

To estimate the reduction in sales and use taxes received from a reduction in smokeless tobacco sales, ORA divided the FY 2019 estimated smokeless revenue loss by the OTP rate of 80 percent to yield estimated smokeless gross revenues of \$1,096,388 (i.e., $\$877,110 / 0.80$). The sales and use tax rate of 7.0 percent is applied to yield an estimated FY 2019 sales and use tax revenue loss from the reduction of in smokeless tobacco sales of \$76,747 (i.e., $\$1,096,388 * 0.07$). Using the same methodology for FY 2020, the estimated sales and use tax revenue loss from the reduction of smokeless tobacco sales is \$85,286 (i.e., $\$974,703 / 0.80 * 0.07$).



Finally, the reduction in sales and use taxes received from increasing the minimum age to legally buy ENDS (e-cigarettes) from 18 years old to 21 years old must be estimated. ECigIntelligence published data from the 2015 Project Vape Manifest Survey, which found that national average monthly revenues for vape shops was \$25,600. Thus, average annual revenues for vape shops was \$307,200 (i.e., \$25,600 * 12). Based on testimony at the House Finance Committee Hearing on March 28, 2018 by Elizabeth Suever of Smoke-Free Alternatives Trade Association, there are 30 vape shops in Rhode Island. ORA assumed the national average was true for Rhode Island and applied the annualized average revenues to the number of vape shops to yield total estimated Rhode Island vape shop revenues of \$9,216,000 (i.e., \$307,200 * 30). Applying the sales and use tax rate of seven percent yields estimates sales and use taxes paid by vape shops of \$645,120 (i.e., \$9,216,000 * 0.07). To estimate the sales and use tax revenue loss from the passage of this bill, ORA utilized data from the National Adult Tobacco Survey 2013 - 2014 published by the CDC. Based on the results from this survey, ORA determined that an estimated 7.9 percent of total e-cigarette users are 18 to 20 years old. Applying this percentage to the estimated sales and use taxes paid by vape shops yields estimated sales and use taxes paid by users 18 to 20 years old of \$50,868 (i.e., \$645,120 * 0.079).

ORA applied the growth rate in audited other tobacco products (OTP) taxes for FY 2016 and FY 2017 of 14.9740 percent and 30.3958 percent, respectively, to estimate the sales and use taxes paid by to users 18 to 20 years old of \$76,263 in FY 2017 (i.e., \$50,868 * (1 + 0.149740) * (1 + 0.303958)). According to the November 2017 Revenue Estimate Conference, the growth rates for OTP tax revenues for FY 2018 and FY 2019 are 11.0495 percent and 14.6067 percent, respectively. Applying these percentages yields estimated sales and use taxes paid from sales of e-cigarettes to users 18 to 20 years old of \$84,689 for FY 2018 (i.e., \$76,263 * (1 + 0.110495)) and \$97,059 for FY 2019 (i.e., \$84,689 * 0.146067). The Office of Management and Budget's estimated growth rate for OTP tax in FY 2020 is 11.1265 percent. Applying this growth rate, yields an estimated e-cigarette sales and use tax revenue loss from the passage of this bill of \$107,859 for FY 2020 (i.e., \$97,059 * 0.111265).

The total estimated reduction in sales and use tax from the passage of this bill is \$705,648 for FY 2019 (i.e., \$531,842 + \$76,747 + \$97,059) and \$724,987 for FY 2020 (i.e., \$531,842 + \$85,286 + \$107,859). The total FY 2019 estimated revenue loss from the passage of this bill is \$4,956,382, which is comprised of the following parts: cigarette excise tax, \$3,373,623; OTP tax, \$877,110; sales and use tax, \$705,648. The total FY 2020 estimated revenue loss from the passage of this bill is \$5,073,313, which is comprised of the following parts: cigarette excise tax, \$3,373,623; OTP tax, \$974,703; sales and use tax, \$724,987.

The Governor's FY 2019 Recommended Budget projects a closing surplus of \$268,461 in FY 2018 and \$887,503 in FY 2019. Passage of this bill would have no impact on the FY 2018 closing surplus, but it would put the Governor's FY 2019 Recommended Budget out of balance and increase the projected deficit for FY 2020.

*Summary of Fiscal
Impact:*

FY 2018: Not applicable due to the assumed implementation date of the bill.

FY 2019: A revenue loss of \$4,956,382 is forecast. The loss is comprised of revenue losses in cigarette excise tax of \$3,373,623, OTP tax of \$877,110, and sales

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and use tax of \$705,648.

FY 2020: A revenue loss of \$5,073,313 is forecast. The loss is comprised of revenue losses in cigarette excise tax of \$3,373,623, OTP tax of \$974,703, and sales and use tax of \$724,987.

Budget Office Signature: _____

Fiscal Advisor Signature: _____