

Governor's FY 2021 Budget: Articles

Staff Presentation to the House Finance Committee
February 12, 2020

Introduction – Article 21

- Regulatory
 - Min purchase age from 18 -21 to match Feds
 - Ban on some vape products
 - E-liquid regulatory authority transfer to Taxation
 - Expands other regulatory authority
- Tax Changes
 - Raises cigarette tax by \$0.35 per pack
 - Applies excise tax to e-liquid products
 - Raises cigar tax cap by \$0.30 per cigar
 - Raises licensing fees and fines

Article 21 – Minimum Age

- Incorporates federal increase in minimum purchase age for tobacco products & electronic delivery systems from 18 to 21
 - Budget assumes revenue loss of \$3.7 million
 - Federal law passed December 20, 2019
 - USFDA has 6 months to amend policies
 - Once that occurs, increase is within 90 days
 - Effective date assumed to be July 1, 2020

Article 21 – Fines

- Increases current fines

| Type | Current | Article 21 |
|-----------------------------------------------|---------|------------|
| Failure to display proper signage | \$35 | \$100 |
| Selling in improper packaging | \$500 | \$1,000 |
| Selling to underage person: | | |
| 1 st offense w/in 36 month pd. | \$250 | \$500 |
| 2 nd offense | \$500 | \$1,000 |
| 3 rd violation = 14 day suspension | \$1,000 | \$2,000 |
| >3 violations = 90 day suspension | \$1,500 | \$3,000 |

Article 21 - Flavored ENDS

- Governor's Sept. 25 executive order
 - Dept. of Health to promulgate emergency regulations to prohibit sale of flavored electronic nicotine delivery systems (ENDS)
 - State Police to investigate sale & distribution of ENDS
 - Other agencies tasked w/ developing recommendations
 - Reducing availability
 - Establishing standards for disclosures & uniform packaging

Article 21 - Flavored ENDS

- DOH emergency regulations effective October 4
 - Bans manufacturing, distribution, sale of flavored ENDS in RI
 - Compassion centers & licensed cultivators exempt
 - Was renewed for another 60 days
 - Current order will expire on April 1, 2020

Article 21 - Flavored ENDS

- DOH proposed permanent ban
 - Issued proposal 12/27/19
 - Public hearing on 1/7/20
 - Public comment period ended 1/26/20
 - Final rules must be filed within 180 days
- USFDA finalized partial ban on 1/2/20
 - Ban on fruit or mint flavors

Article 21 - Regulatory

- Article 21
 - Bans flavored e-cigarette products (ENDS)
 - Tastes or aromas imparted prior to or during consumption:
 - Fruit, mint, menthol, wintergreen, spice, etc.
 - Same language as DOH regulations
 - Bans products with > 35 milligrams per milliliter of nicotine content
 - Not part of prior ban/regulations
 - Authorizes DOH and Taxation to set rules on testing, ingredients and labeling

Article 21 - Regulatory

- Current law prohibits distribution of free products, coupons or vouchers to anyone under 18
 - Article 21 extends that to any age and includes “discounted” products
- BHDDH currently distributes signs relating to cigarette age enforcement
 - Article adds OTP to this

Article 21 - Regulatory

- Article 21 would allow municipalities to “regulate the use and sale of” Cigarettes, OTP, and ENDS
 - Effectively establishes the authority for a town or city council to ban sale of these items

Article 21 – Cigarette Tax

- Current law – tax on all cigarettes sold or held for sale in the state
 - Tax evidenced by stamps
 - Currently \$4.25 per pack of 20
 - Raised from \$3.75 in 2017
- Article 21 increases cigarette tax by \$0.35 to \$4.60 per pack of 20
 - Effective August 1, 2020
 - Last year's proposal was for \$0.25 increase

Article 21 – Cigarette Tax

- FY 2021 budget includes \$4.3 million
 - Cigarette tax - \$3.3 million
 - Floor Tax - \$1.0 million
 - Tax on existing inventory – difference between the two tax rates
- Estimate assumes 3.09% demand drop
 - Reduces sales tax collections \$13,938

Article 21 – Cigarette Tax

Recent Annual Collections

| Fiscal Year | 2017 | 2018 | 2019 | 2020 REC | 2021 REC | 2021 Gov. |
|--------------------|-------------|-------------|-------------|-----------------|-----------------|------------------|
| Increase | \$ - | \$ 0.50 | \$ - | \$ - | \$ - | \$ 0.35 |
| Per pack Tax | \$ 3.75 | \$ 4.25 | \$ 4.25 | \$ 4.25 | \$ 4.25 | \$ 4.60 |
| Total | \$ 134.4 | \$137.8 | \$129.0 | \$127.0 | \$122.8 | \$125.3 |
| Change to Prior | \$ (3.9) | \$ 3.4 | \$ (8.8) | \$ (2.0) | \$ (4.2) | \$ (1.7)* |

\$ in millions *Change to 2020 REC

Article 21 – Cigarette Tax

- Each state/territory has own tax
 - Highest – D.C. \$4.50/pack
 - Increased \$2.00 October 1, 2018
 - CT & NY 2nd at \$4.35/pack
 - Lowest – Missouri, \$0.17/pack

| States & DC | Tax |
|------------------------|-------------------|
| 16 | At or over \$1.00 |
| 13 | At or over \$2.00 |
| 9 | Over \$3.00 |

Article 21 – Cigarette Tax

- Rhode Island would have the highest state tax nationwide

| New England States | Tax | U.S. Rank | N.E. Rank |
|---------------------------|------------|------------------|------------------|
| Connecticut | \$ 4.35 | 2 | 1 |
| Rhode Island | \$ 4.25 | 4 | 2 |
| Massachusetts | \$ 3.51 | 5 | 3 |
| Vermont | \$ 3.08 | 7 | 4 |
| Maine | \$ 2.00 | 17 | 5 |
| New Hampshire | \$ 1.78 | 24 | 6 |

Source: Campaign for Tobacco-Free Kids, January 14, 2020

Article 21 – Cigarette Tax

- State cigarette tax not only factor in final price
- Federal tax - \$1.01 since 2009
- Local cigarette taxes in addition to state tax
 - Highest Chicago - \$1.18 local tax, \$3.00 county tax – Total \$7.16
 - New York City - \$1.50 local tax – Total \$5.85
- RI total cigarette tax burden rank: 17
 - Would move to 10th with proposed change

Article 21 – Cigarette Tax

- Base price of product
 - Product use/popularity
- Minimum markup – retail and wholesale
 - Lowest price at which product can be sold
 - To prevent sales below cost or unfair pricing
 - 1939 Assembly enacted initial minimum markup laws

Article 21 – Cigarette Tax

Manufacturer

Sets the product base price
Includes federal tax



Distributors (Wholesalers)

Pay cigarette tax
Must include wholesale minimum markup in price to dealers



Dealers (Retailers)

Must include retail minimum markup in price to consumers

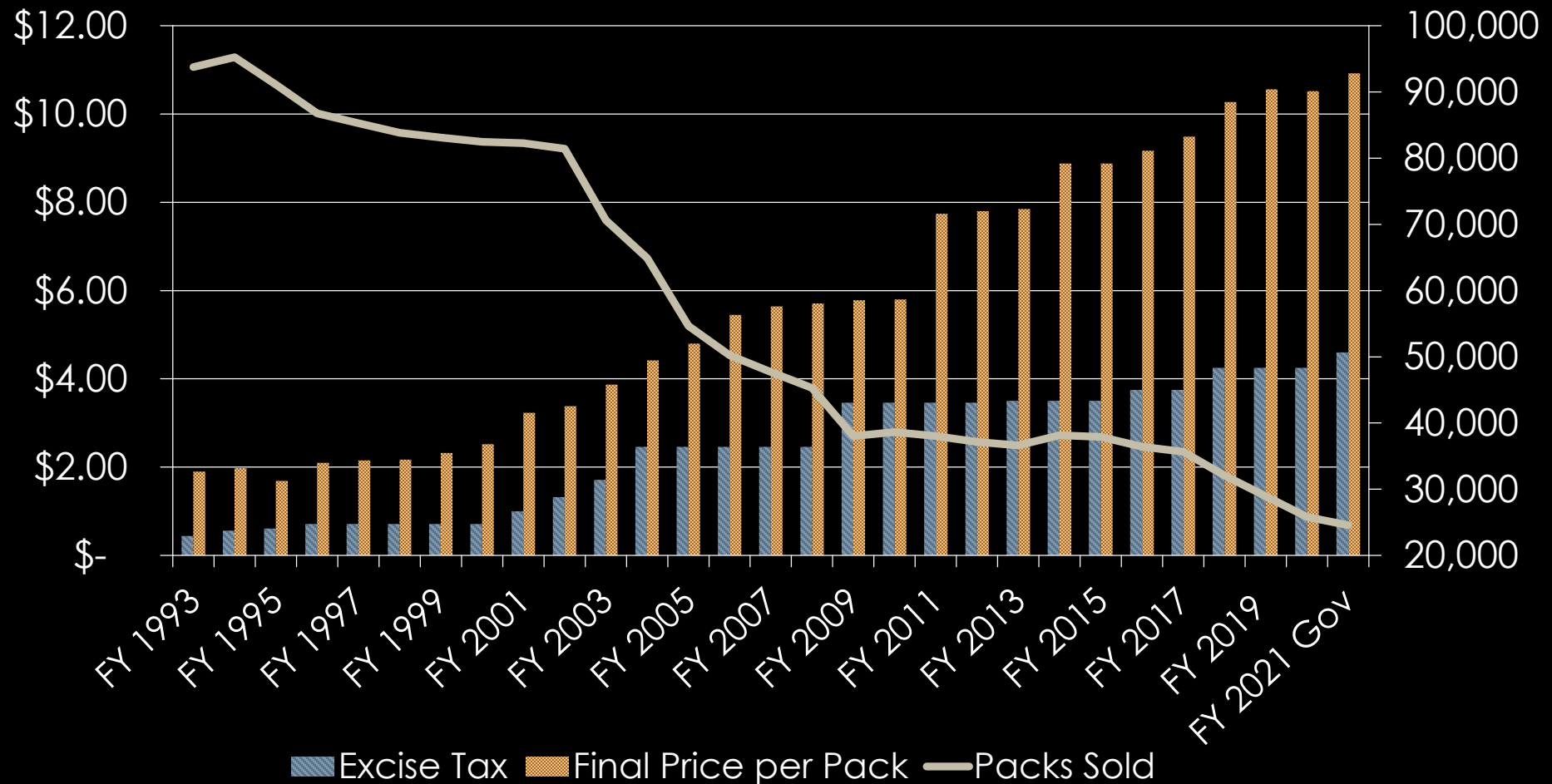


Consumer – Pays retail price plus sales tax

Article 21 – Cigarette Tax

| Current Prices | RI | CT | MA |
|-----------------------------------------------|----------------|----------------|----------------|
| Base price/pack of 20 (incl. fed. excise tax) | \$4.33 | \$4.14 | \$4.14 |
| State Cigarette Tax | 4.25 | 4.35 | 3.51 |
| Total Base Price/pack of 20 | \$8.58 | \$8.49 | \$7.65 |
| Minimum Markup – Wholesaler | 2.75% | 6.50% | 2.75% |
| Minimum Markup – Retailer | 6.00% | 8.00% | 25.00% |
| Total Markup/pack of 20 | 8.93% | 15.02% | 28.44% |
| Post Markup Price/pack of 20 | \$9.35 | \$9.76 | \$9.82 |
| Sales Tax Rate | 7.0% | 6.35% | 6.25% |
| Final Minimum Retail Price | \$10.00 | \$10.38 | \$10.43 |

Article 21 – Cigarette Tax



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| Post Markup Price/pack of 20 | \$9.73 | \$9.76 | \$9.82 |
| Sales Tax Rate | 7.0% | 6.35% | 6.25% |
| Final Minimum Retail Price | \$10.41 | \$10.38 | \$10.43 |

Article 21 – Other Tobacco Products

- Other Tobacco Products – “OTP”
 - Taxed at 80% of wholesale cost
 - Includes cigars, little cigars, cheroots, stogies, smoking tobacco, chewing tobacco, hookah, shisha, mu'assel, tobacco & snuff
 - Cigar tax capped at \$0.50 per cigar
 - Does not currently apply to e-liquid products
 - Only sales tax
- OTP and cigarettes subject to both excise tax & sales tax

Article 21 – E-liquid Products

- Expands products subject to 80% OTP tax
 - E-liquid products
 - Liquid used in an electronic nicotine delivery system with nicotine or a derivative
 - Device only included if sold with liquid
 - Effective September 1, 2020
 - Last year's proposal was for 40% tax
- Budget assumes revenues of \$0.3 million
 - \$0.2 million to implementation and compliance staff

Article 21 – E-liquid Products

- 21 states and D.C. have excise taxes on e-Cigarettes
 - 13 new states since July 2019
 - Two taxation methodologies
 - Percentage of wholesale cost of taxed product
 - Flat amount on volume sold (per milliliter)
 - 4 states apply both
 - 1 method for closed system, 1 method for open
 - Refers to the way e-liquid is delivered to the heating mechanism

Article 21 – E-liquid Products

- Estimated collections based on Minnesota experience
 - First state to institute the tax, best data
 - Assumes use will be about 7.6% of estimated OTP collections
 - Vapor products already subject to 7.0% sales tax

Article 21 – Minnesota

- Taxes at 95% of wholesale cost
 - Wholesale is distributor's purchase price
 - One-time use e-cigarettes & cartridges containing nicotine
 - Not refillable devices or cartridges w/o nicotine
- Entities' Responsibilities
 - Distributors pay tax on product purchases
 - Retailers collect and remit sales tax
 - Consumers pay use tax on out-of-state purchases, including online sales

Article 21 – OTP Cigar Cap Increase

- Other Tobacco Products
 - Rate & cigar cap changes

| Assembly | Rate | Per Cigar Cap |
|----------|------|---------------|
| 2004 | 30% | n/a |
| 2005 | 40% | n/a |
| 2006 | 40% | \$ 0.50 |
| 2009 | 80% | \$ 0.50 |

- Massachusetts
 - 40% of wholesale – not capped
- Connecticut
 - 50% of wholesale with \$0.50 cap

Article 21 – OTP Cigar Cap Increase

- Article 21 raises the tax cap on cigars from 50 cents to 80 cents
 - Currently approximately 3.3 million cigars costing 63 cents or more are taxed at cap
 - Also proposed for FY 2019 & FY 2020 Budget
- FY 2021 budget includes \$0.7 million of revenue
 - Assumes 70% or 2.4 million cigars reach cap
 - Cigars costing more than \$1
 - No adjustment for consumer behavior change

Article 21 – Licensing

- Article 21 increases license fees
 - There are different fees depending on the role in the market
 - Applies to all product types
 - Increases application, license, & renewal
- Fees for importers & distributors who affix tax stamps unchanged at \$1,000
 - Manufacturers are added as being required to pay this fee and be licensed

Article 21 – Licensing

- Article 21
 - Subjects e-liquid product manufacturers, distributors & retailers to tobacco licensing standards
 - ENDS, cigarettes, & OTP merged into one license instead of two
 - Many retailers sell all products
 - Transfers regulatory authority over electronic nicotine systems to Division of Taxation
 - Currently licensed through the Dept. of Health

Article 21 – OTP Licensing Standards

- Current law requires cigarette & OTP dealers & distributors to be licensed
 - Also current law: 44-20-13.2(b) allows retailers to purchase from unlicensed dealers and self report within 5 days
 - Undercuts compliance
 - This is unchanged in Article 21 – contradicts intent

Article 21 – Licensing

| Type | Current | Article 21 |
|---------------------------|---------|------------|
| Retailer/Dealer App. Fee. | \$25 | \$75 |
| Distributor Initial Fee | \$100 | \$400 |
| Renewal Fee | \$25 | \$400 |

- Budget assumes \$0.4 million of revenues
 - Similar to last year's proposal

Article 21 – Fiscal Impact

- Estimated annual fiscal impact

| Fiscal Year | 2021 | 2022 | 2023 | 2024 | 2025 |
|-----------------------|---------------|--------------|--------------|--------------|--------------|
| E-liquid & products | \$0.3 | \$0.3 | \$0.3 | \$0.4 | \$0.4 |
| Licensing | 0.4 | 0.4 | 0.4 | 0.4 | 0.4 |
| Cigar cap | 0.7 | 0.8 | 0.9 | 1.0 | 1.0 |
| Cigarette taxes | 4.3 | 3.5 | 3.4 | 3.3 | 3.2 |
| Min. Purchase Age | (3.7) | (3.7) | (3.7) | (3.7) | (3.8) |
| Total Revenues | \$ 2.0 | \$1.3 | \$1.3 | \$1.4 | \$1.2 |
| Expenses | (0.2) | (0.2) | (0.2) | (0.2) | (0.2) |
| Net Impact | \$1.8 | \$1.1 | \$1.3 | \$1.2 | \$1.0 |

\$ in millions

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