

Date of State Budget Office Approval:

Date Requested: Friday, March 18, 2016

Date Due: Monday, March 28, 2016

<i>Impact on Expenditures</i>		<i>Impact on Revenues</i>	
FY 2016	n/a	FY 2016	n/a
FY 2017	n/a	FY 2017	\$(1,986,880)
FY 2018	n/a	FY 2018	\$(3,995,767)

Explanation by State Budget Office:

This bill amends Rhode Island General Law Chapter 11-9 entitled "Children" in several ways. First, the bill repeals Rhode Island General Law Section 11-9-13 titled "Purchase, sale or delivery of tobacco products to persons under age eighteen – Posting notice of law" and Rhode Island General Law Section 11-9-13.1 titled "Cigarette and tobacco vending machines".

Second, the bill amends Rhode Island General Law Section 11-9-13.3 titled "Legislative intent – Purpose" by updating data relevant to youth smoking and tobacco use.

Third, the bill amends Rhode Island General Law Section 11-9-13.4 titled "Definitions" by adding definitions for an 'electronic nicotine-delivery system' (ENDS) and 'little cigars'. An ENDS is defined as "an electronic device that may be used to simulate smoking in the delivery of nicotine or other substance to a person inhaling from the device". Little cigars are defined as "any roll, made wholly or in part of tobacco, ..., where such roll has a wrapper or cover made of tobacco ..., except where such wrapper is wholly or in greater part made of tobacco and such roll weighs" over 4.5 pounds per 1,000. Further, the bill expands the definition of "tobacco products" and redefines the term "underage individual" to mean any person under 21 years of age. Under current law, there is no definition of an electronic nicotine-delivery system in Rhode Island General Law; little cigars only include rolls that weigh 4.0 pounds or less per 1,000; 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.

Fourth, the bill amends Rhode Island General Law 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)", and 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" to conform these sections to the proposed minimum age of 21. In addition, the bill

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It should be noted that the bill as written would be in conflict with the provisions of Rhode Island General Law Chapter 44-20.2 entitled "Little Cigar Tax". In particular, Rhode Island General Law Section 44-30.2-1 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 definition of little cigars in the bill also increases the total weight of the roll under which a tobacco roll becomes classified as a little cigar without addressing the lower weight limit contained in Rhode Island General Law Section 44-20.2-1. 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. ORA also recommends that the weight limit per 1,000 below which a tobacco roll is defined as a little cigar in Rhode Island General Law Section 44-20.2-1 be increased to 4.5 pounds per 1,000. The revenue estimates contained in this fiscal note assume that these legislative changes are adopted.

Comments on Sources of Funds:
Summary of Facts and Assumptions:

The effective date of the bill is January 1, 2017.

All tobacco taxes are considered to be general revenue.

ENDS can be purchased.

Requirements to the higher minimum age of 21 at which tobacco products and 44-20.1-3 titled "Age verification requirements", and 44-20.1-5 titled "Shipping", "Delivery sales of cigarettes" by conforming Sections 44-20.1-1 titled "Definitions", Finally, the bill amends Rhode Island General Law Chapter 44-20.1 entitled ENDS via vending machines to persons under that age of 21 among other conditions. system product vending machines" prohibiting the sale of tobacco products and Section 11-9-13.10.1 titled "Tobacco product and electronic nicotine-delivery selling ENDS to any person under the age of 21; and Rhode Island General Law and their employees and agents" prohibiting retailers and their employees from system products to persons under twenty-one (21) years of age, by license holders Section 11-9-13.7.2 titled "Purchase, sale or delivery of electronic nicotine-delivery products and ENDS to any person under the age of 21; Rhode Island General Law to persons under twenty-one (21) years of age" prohibiting the sale of tobacco sale or delivery of tobacco products or electronic nicotine-delivery system products. Fifth, the bill adds Rhode Island General Law Section 11-9-13.7.1 titled "Purchase, violations of the sale of tobacco products to underage individuals.

"Nature and size of penalties" to provide for escalating fines of \$250 to \$1,500 for cigarettes. The bill also amends Rhode Island General Law Section 11-9-13.13 titled tobacco products" to prohibit the sale of cigarettes in packs that contain less than 20 to license holders and their employees and agents. - Minimum sales amounts for amends Rhode Island General Law Section 11-9-13.8 titled "Prohibitions applicable

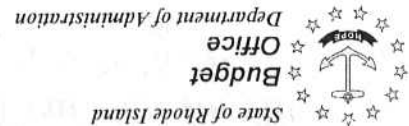
By expanding the definition of little cigars to include all cigars that weigh not more than 4.5 pounds per 1,000, this bill would subject little cigars that currently weigh more than 4.0 pounds per 1,000 but not more than 4.5 pounds per 1,000 to the state's cigarette excise tax rate of 187.5 mills (i.e., \$0.1875) per cigar or \$3.75 per pack of 20 little cigars. Under current law, Rhode Island General Law Chapter 44-20-13.2 entitled "Cigarette Tax – Tax imposed on smokeless tobacco, cigars, and pipe tobacco products", cigars are taxed at 80.0 percent of their wholesale cost up to a maximum cap of \$0.50 per cigar. Thus, any cigar with a wholesale cost of less than \$0.63 (i.e. \$0.50/0.80) is taxed at 80.0 percent of the wholesale cost and any cigar with a wholesale cost greater than \$0.63 is taxed at the maximum of \$0.50. Additionally under current law, Rhode Island General Law Chapter 44-20.2, cigars that weigh not more than 4.0 pounds per 1,000 are classified as little cigars and are taxed at the cigarette tax rate of 187.5 mills per little cigar (i.e., \$0.1875 per cigar) and must be affixed with a cigarette excise tax stamp before they can be sold.

The Office of Revenue Analysis (ORA) first obtained population estimates from the 2014 American Community Survey (ACS) provided by the U.S. Census Bureau for Rhode Island and determined there were approximately 34,809 residents between the ages of 18-19 years old and 20,082 residents that were 20 years old. As published by Tobacco Free Kids, according to the Centers for Disease Control and Prevention, from 2005-2014, 16.3 percent of adults in Rhode Island smoked. 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 8,947 smokers in Rhode Island between the ages of 18 and 20 years old, or more specifically 5,674 18 and 19 year old smokers and 3,273 20 year old smokers. ORA assumed an equal distribution of 18 and 19 year old smokers.

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 since 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

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year old smokers were estimated to consume 101 packs of cigarettes per year (i.e., $5.531 \times 365 / 20$), and 20 year old smokers were estimated to consume 106 packs of cigarettes per year (i.e., $5.826 \times 365 / 20$). 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 295,048 total packs for 18 year olds, (i.e., $104 \times 2,837$); 286,537 total packs for 19 year olds, (i.e., $101 \times 2,837$); and 346,938 total packs for 20 year olds, (i.e., $106 \times 3,273$). The number of yearly packs was multiplied by Rhode Island's current cigarette excise tax rate of \$3.75 per pack of cigarettes to estimate decreased excise taxes projected from the passage of this bill of \$3,481,961 (i.e., $928,523 \times \$3.75$).

To estimate the reduction in sales and use taxes received from a reduction in cigarette consumption, ORA utilized the Division of Taxation's Excise Tax Section estimate for the average retail price of a pack of cigarettes in Rhode Island before the imposition of the sales and use taxes of \$8.59. ORA then calculated that the State receives \$0.60 in sales tax per pack of cigarettes sold (i.e., $\$8.59 \times 0.07$). 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 \$557,114 (i.e., $928,523 \times \$0.60$).

To estimate the impact on smokeless tobacco, ORA used the report "Behavioral Health Trends in the United States: Results from the 2014 National Survey on Drug Use and Health" (NSDUH) obtained from the Substance Abuse and Mental Health Services Administration's website. Particularly, ORA utilized a table entitled, "Past Month Smokeless Tobacco Use among People Aged 12 or Older, by Age Group: Percentages, 2002-2014." The Office of Revenue Analysis took the 2014 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 20,082 20 year olds. This was multiplied by the NSDUH survey data that 5.6 percent of 18 to 25 year olds used smokeless tobacco products to arrive at 1,125 20 year olds users of smokeless tobacco products (i.e., $20,802 \times 0.056$). This process was repeated for all available age groups provided by ACS. Following this methodology, ORA estimated there were a total of 32,196 Rhode Islanders who use smokeless tobacco products. Of this total, ORA estimated that 3,074 were 18, 19 or 20 years old. ORA determined that 18, 19 and 20 year olds comprise 9.5478 percent of the total users of smokeless tobacco in the state (i.e., $3,074 / 32,196$).

The percent of 18, 19, and 20 year smokeless tobacco users was multiplied by the November 2015 Revenue Estimating Conference's adopted FY 2017 estimate for smokeless tobacco products of \$5,800,000 to arrive at a revenue loss of \$553,772 from increasing the minimum legal age at which smokeless tobacco products may be purchased (i.e., $\$5,800,000 \times 0.095478$). For the FY 2018 fiscal impact estimate, the Office of Management and Budget's FY 2018 smokeless tobacco revenues projected growth rate of 2.8725 percent was applied. Thus, passage of the bill would decrease other tobacco products tax revenue by \$569,680 in FY 2018 (i.e., $\$553,772 \times$

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1.028725).

The fiscal impact for the definition change for little cigars is based on FY 2015 data. The Division of Taxation's Excise Tax Section reports that the wholesale cost of all cigars sold in Rhode Island that were less than \$0.63 each and therefore being taxed at 80 percent of wholesale cost was \$217,739 for the month of June. The Excise Tax Section also did a survey of three distributors and found that the total number of little cigar packs sold were 7,070. The tobacco tax paid on such packs was \$6,080; and the whole sale cost of all cigars which were less than \$0.63 from these three distributors was \$90,647.

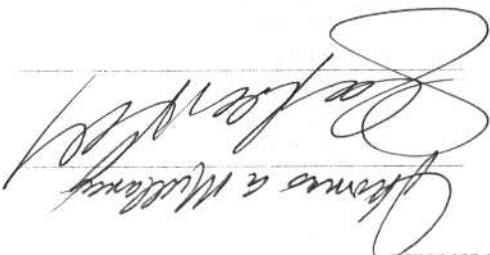
For the month of June 2015, the wholesale cost of little cigars from the three distributors surveyed was calculated by the total tobacco tax paid divided by 80 percent to arrive at \$7,600 (i.e., \$6,080 * 0.80). This was compared to the total wholesale cost of all cigars less than \$0.63 from the distributors surveyed to arrive at a little cigar percentage of 8.38 percent (i.e., \$7,600 / \$90,647). To determine the wholesale cost of all little cigars sold in Rhode Island the percentage of little cigars for the three distributors was multiplied by the total wholesale cost reported for all filers with other tobacco tax liability greater than \$1,000 that sell cigars less than \$0.63 to obtain a wholesale cost of \$18,256 (i.e., \$217,739 * 0.083845).

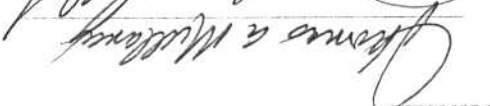
It is necessary to convert the wholesale cost of little cigars to a total number of packs. The number of packs reported by the three distributors surveyed was divided by the wholesale cost calculated for little cigars from the same distributors (i.e., 7,070/\$7,600) to obtain a ratio of 93.02 percent of packs of little cigars to the wholesale cost of little cigars. This percentage was multiplied by the total wholesale cost for all little cigars sold in Rhode Island to yield an estimate of 16,983 packs of little cigars (i.e., 0.9302 x \$18,256).

ORA assumed that the current wholesale cost of a pack of little cigars is \$1.94 calculated as the assumed manufacturer's price (i.e., \$7,600/7,070 = \$1.07496) plus the other tobacco products tax (i.e., \$1.07496 x 80% = \$0.8599). Applying the minimum wholesale price markup of 2.0 percent, the cartage fee of 0.75 percent and the minimum retail price mark up of 6.0 percent to the this wholesale cost yields a retail price of \$2.25 per pack of 20 little cigars. Applying the sales tax to this retail price yields a final sales price for a pack of little cigars of \$2.41.

Under the bill, the retail price of a pack of little cigars would increase to \$5.26 which includes the minimum price markup of 8.93 percent that is applied to cigarettes (i.e. [$\$1.07496 + \3.75] x (1.02) x (1.0075) x (1.06)). The additional cigarette tax would be \$63,686 (i.e. 16,983 x \$3.75). There would also be additional sales tax with a new higher price of \$3,947 (i.e., [16,983 x \$5.26 x 7%] - [16,983 x \$1.94 x 7%]). It is necessary to deduct the tobacco tax that would have been paid under current law of \$14,605 (i.e., \$18,256 x 80%). This yields net additional revenue of \$53,028 in the month of June (i.e., \$63,686 + \$3,947 - \$14,605). To annualize the estimate, ORA multiplied the monthly estimate by 12 months, to arrive at an annual estimated of \$636,336 (i.e., \$53,028 * 12).

According to the November 2015 Revenue Estimating Conference, the growth rate

Fiscal Advisor Signature: 

Budget Office Signature: 

FY 2018: A revenue loss of \$3,995,767 is forecast.

FY 2017: A revenue loss of \$1,986,880 is forecast.

Summary of Fiscal Impact:

FY 2016: Not applicable due to the implementation date of the bill.

Recommended Budget out of balance.

The Governor's FY 2017 Recommended Budget projects a closing surplus of \$519,565 in FY 2017. Passage of this bill will put the Governor's FY 2017 Recommended Budget out of balance.

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

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Due to the implementation date of the bill this yields budgetary revenue losses for FY 2017 of \$1.97 million (i.e., 0.5 * \$3,973,760) and for FY 2018 of \$3,995,767. The estimates of decreased revenues from cigarette excise taxes and sales and use taxes from a decrease in cigarette consumption, a decrease in smokeless tobacco consumption, as well as the estimated increase in revenue received from the definition change of little cigars were summed to arrive at a FY 2017 decrease in revenues of \$3.97 million from increasing the legal minimum age to buy tobacco products to 21 years old and changing the definition of little cigars (i.e., \$(3,481,961) + \$(557,114) + \$(553,772) + \$619,087). Similarly, for the FY 2018 impact the above calculated estimates were summed to arrive at a \$4.0 million estimated decrease in revenues (i.e., \$(3,481,961) + \$(557,114) + \$(569,680) + \$612,987). Due to the implementation date of the bill this yields budgetary revenue losses for FY 2017 of \$1.97 million (i.e., 0.5 * \$3,973,760) and for FY 2018 of \$3,995,767.

The estimates of decreased revenues from cigarette excise taxes and sales and use taxes from a decrease in cigarette consumption, a decrease in smokeless tobacco consumption, as well as the estimated increase in revenue received from the definition change of little cigars were summed to arrive at a FY 2017 decrease in revenues of \$3.97 million from increasing the legal minimum age to buy tobacco products to 21 years old and changing the definition of little cigars (i.e., \$(3,481,961) + \$(557,114) + \$(553,772) + \$619,087). Similarly, for the FY 2018 impact the above calculated estimates were summed to arrive at a \$4.0 million estimated decrease in revenues (i.e., \$(3,481,961) + \$(557,114) + \$(569,680) + \$612,987). Due to the implementation date of the bill this yields budgetary revenue losses for FY 2017 of \$1.97 million (i.e., 0.5 * \$3,973,760) and for FY 2018 of \$3,995,767.

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