THE COLE-BISHOP RIDER

SECTION 753 OF THE AGRICULTURAL APPROPRIATIONS BILL

SEC. 753 (a) None of the funds appropriated or otherwise made available by this Act or any other Act with respect to any fiscal year may, for each tobacco product which the Secretary of Health and Human Services by regulation under section 901(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387a(b)) deems to be subject to chapter IX of such Act, be used to treat—

(1) any reference in sections 905(j) or 910(a) of such Act (21 U.S.C. 387e(j), 387j(a)) to February 15, 2007, as other than a reference to the effective date of the regulation under which the tobacco product is deemed to be subject to the requirements of such chapter pursuant to section 901(b) of such Act (21 U.S.C. 387a(b)); and

(2) any reference in such sections to 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act as other than a reference to 21 months after the effective date of such deeming regulation.

(b) (1) Notwithstanding any other provision of law, not later than 21 months after the date of enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking to establish a product standard for vapor products pursuant to section 907 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387g) to include but not limited to—

(A) characterizing flavors; and

(B) batteries.

(2) Notwithstanding any other provision of law, not later than 36 months after the date of enactment of this Act, the Secretary shall promulgate a final rule pursuant to such notice.

(c) A vapor product shall be deemed to be misbranded under section 903(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387c(a)) if the advertising with respect to the vapor product is disseminated by a manufacturer, distributor, or retailer of the product in a newspaper, magazine, periodical, or other publication (including any publication of periodic or limited distribution) other than an adult publication.

(d) (1) A retailer may only sell any vapor product in a direct face-to-face exchange without the assistance of any electronic or mechanical device (such as a vending machine).

(2) This subsection shall not apply with respect to sales of vapor products conducted through—

(A) mail-order; or

(B) a vending machine or self-service display if, with respect to the facility in which such vending machine or display is located, the retailer of such products ensures that no person under 18 years of age is present or permitted to enter.

(3) A violation of this section is deemed to constitute a violation of the Federal Food, Drug, and Cosmetic Act relating to a tobacco product for purposes of section 303(f)(9) of such Act (21 U.S.C. 333(f)(9)).

(e) (1) Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to require that the labeling of vapor products contain—

(A) the phrase "Keep Out of Reach of Children";

(B) the phrase "Underage Sale Prohibited"; and

(C) an accurate statement of the nicotine content of the vapor product.

(2) A vapor product whose label is in violation of the regulations required by paragraph (1) is deemed to be misbranded under section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387c).

(f) (1) Every person who owns or operates an establishment in any State engaged in the retail sale of a vapor product shall register that establishment with the Secretary of Health and Human Services within the later of 60 days after the date of enactment of this Act, or 30 days after first engaging in such retail sale.

(2) The requirements of this subsection do not apply with respect to any establishment subject to an active registration under—

(A) any State law relating to tobacco products; or

(B) section 905 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387e).

(3) The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

(g) In this section:

(1) The term "adult publication" means any newspaper, magazine, periodical, or other publication—

(A) whose readers younger than 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence; and

(B) that is read by fewer than 2 million persons younger than 18 years of age as measured by competent and reliable survey evidence.

(2) The terms "label" and "labeling" have the meanings given to such terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(3) The term "tobacco product" has the meaning given to such term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(4) The term “vapor product”—

(A) means any non-combustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to produce vapor from nicotine in a solution or other form;

(B) includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any vapor cartridge or other container of nicotine in a solution or other form; and

(C) does not include any product regulated as a drug or device by the Food and Drug Administration under chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et. seq.).