

**AMENDMENT TO AGRICULTURE AND RURAL
DEVELOPMENT APPROPRIATIONS BILL
OFFERED BY MR. COLE OF OKLAHOMA AND MR.
BISHOP OF GEORGIA
[FY 2017 Appropriations]**

At the end of the bill (before the spending reduction account), insert the following:

- 1 SEC. _____. (a) None of the funds appropriated or
2 otherwise made available by this Act or any other Act with
3 respect to any fiscal year may, for each tobacco product
4 which the Secretary of Health and Human Services by
5 regulation under section 901(b) of the Federal Food,
6 Drug, and Cosmetic Act (21 U.S.C. 387a(b)) deems to
7 be subject to chapter IX of such Act, be used to treat—
8 (1) any reference in sections 905(j) or 910(a)
9 of such Act (21 U.S.C. 387e(j), 387j(a)) to Feb-
10 ruary 15, 2007, as other than a reference to the ef-
11 fective date of the regulation under which the to-
12 bacco product is deemed to be subject to the require-
13 ments of such chapter pursuant to section 901(b) of
14 such Act (21 U.S.C. 387a(b)); and
15 (2) any reference in such sections to 21 months
16 after the date of enactment of the Family Smoking

1 Prevention and Tobacco Control Act as other than
2 a reference to 21 months after the effective date of
3 such deeming regulation.

4 (b)(1) Notwithstanding any other provision of law,
5 not later than 12 months after the date on which vapor
6 products are deemed to be subject to the Federal Food,
7 Drug, and Cosmetic Act pursuant to section 901(b) of
8 that Act (21 U.S.C. 387a), the Secretary of Health and
9 Human Services shall issue a notice of proposed rule-
10 making to establish a product standard for vapor product
11 batteries pursuant to section 907 of that Act (21 U.S.C.
12 387g).

13 (2) Notwithstanding any other provision of law, not
14 later than 24 months after the date on which vapor prod-
15 ucts are deemed to be subject to the Federal Food, Drug,
16 and Cosmetic Act pursuant to section 901(b) of that Act
17 (21 U.S.C. 387a), the Secretary of Health and Human
18 Services shall promulgate a final tobacco product standard
19 for vapor product batteries pursuant to section 907 of that
20 Act (21 U.S.C. 387g).

21 (c) A vapor product shall be deemed to be misbranded
22 under section 903(a) of the Federal Food, Drug, and Cos-
23 metic Act (21 U.S.C. 387c(a)) if the advertising with re-
24 spect to the vapor product is disseminated by a manufac-
25 turer, distributor, or retailer of the product in a news-

1 paper, magazine, periodical, or other publication (includ-
2 ing any publication of periodic or limited distribution)
3 other than an adult publication.

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

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

10 (A) mail-order; or

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

16 (3) A violation of this section is deemed to constitute
17 a violation of the Federal Food, Drug, and Cosmetic Act
18 relating to a tobacco product for purposes of section
19 303(f)(9) of such Act (21 U.S.C. 333(f)(9)).

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

24 (A) the phrase “Keep Out of Reach of Children”;

25 (B) the phrase “Underage Sale Prohibited”; and

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

3 (2) A vapor product whose label is in violation of the
4 regulations required by paragraph (1) is deemed to be mis-
5 branded under section 903 of the Federal Food, Drug,
6 and Cosmetic Act (21 U.S.C. 387e).

7 (f)(1) Every person who owns or operates an estab-
8 lishment in any State engaged in the retail sale of a vapor
9 product shall register that establishment with the Sec-
10 retary of Health and Human Services within the later of
11 60 days after the date of enactment of this Act, or 30
12 days after first engaging in such retail sale.

13 (2) The requirements of this subsection do not apply
14 with respect to any establishment subject to an active reg-
15 istration under—

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

17 (B) section 905 of the Federal Food, Drug, and Cos-
18 metic Act (21 U.S.C. 387e).

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

22 (g) In this section:

23 (1) The term “adult publication” means a newspaper,
24 magazine, periodical, or other publication—

1 (A) whose readers younger than 18 years of age
2 constitute 15 percent or less of the total readership
3 as measured by competent and reliable survey evi-
4 dence; and

5 (B) that is read by fewer than 2 million persons
6 younger than 18 years of age as measured by com-
7 petent and reliable survey evidence.

8 (2) The terms “label” and “labeling” have the mean-
9 ings given to such terms in section 201 of the Federal
10 Food, Drug, and Cosmetic Act (21 U.S.C. 321).

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

14 (4) The term “vapor product”—

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

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

24 (C) does not include any product regulated as
25 a drug or device by the Food and Drug Administra-

1 tion under chapter V of the Federal Food, Drug,
2 and Cosmetic Act (21 U.S.C. 21 U.S.C. 351 et
3 seq.).

