



COLE-BISHOP AMENDMENT: THE ESSENTIAL FIRST STEP TO SAVING THE VAPOR INDUSTRY

What's At Stake? Everyone knows that **99% of vapor companies will be run out of business** if we don't change the predicate date. The FDA won't do so. So, convincing Congress to **change the predicate date must be our #1 priority**.

HR 2058 Is No Longer An Option: Last year's attempt to change the predicate date by attaching a rider to the appropriations bill failed after public attention and unfavorable political dynamics led to the rider becoming "toxic" in the words of Leadership. When the appropriations rider failed in December 2015, the 2016 strategy had to be different. **A "clean" predicate date bill is no longer an option**, so with Rep. Cole we developed bipartisan language.

The Cole-Bishop Amendment Will Save the Vapor Industry: Very simply, the Cole-Bishop Amendment will move the predicate date from February 2007 to the effective date of the Deeming Regulation. This single change:

- Will keep 99% of vapor companies in the U.S. from closing down;
- Will allow *every vapor company* (small or large) to continue to sell its *existing* products *without* the having to file costly and burdensome applications; and
- Will literally keep our vibrant industry alive while we fight to create a rational regulatory scheme.

Common Sense Regulations Will Secure Our Industry's #1 Priority: By addressing three of Congress' key concerns, the Cole-Bishop Amendment has attracted, for the first time, **bipartisan support to change the predicate date**.

1. Product Safety: In light of all the recent news stories, everyone must acknowledge that the FDA, CPSC or Congress will not sit idly by on the topic of battery safety. (Importantly, the FDA already has the power to regulate batteries as a component of vapor products upon issuance of the deeming regulation.) **Cole-Bishop Solution:** Require the FDA to start their impending rulemaking process for product standards on batteries within 12 months. **Why is this important?** The provision creates bipartisan support for changing the predicate date and gives us time to work with the FDA to adopt reasonable battery standards for our products.

2. Protecting Youth: A top priority for legislators and regulators is restricting youth marketing and youth access to vapor products. **Cole-Bishop Solution:** The Cole-Bishop Amendment addresses these concerns in three ways:

- a. Limits newspaper, magazine or other print advertising of vapor products to adult publications (i.e., those with 85% readership over 18 or with fewer than 2M readers under 18).
- b. Requires face-to-face sales, thereby banning self-service displays and vending machines, except at age-restricted venues.
- c. Requires the FDA to issue labelling regulations within 12 months to include, "Keep Out of Reach of Children," "Underage Sale Prohibited," and accurate nicotine content.

Why is this important? These provisions demonstrate the industry's commitment to eliminating youth access to vapor products and, at the same time, create opportunities for bipartisan support for changing the predicate date.

3. Enforcement. Government always needs a way to enforce its laws. **Cole-Bishop Solution:** Require retailers to register their establishment, unless the retailer already is required to register under a state law or federal law. **Why this is important?** Without an enforcement mechanism, critics would question our industry's commitment to basic regulations and claim that the Cole-Bishop Amendment is toothless. This provision also ensures bipartisan support.

What the Cole-Bishop Amendment Does NOT Do: To avoid confusion, we want to note that the Cole-Bishop Amendment does NOT involve flavors in any way, does NOT ban or limit online sales, and does NOT require retailers in age-restricted stores to remove self-service displays.