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**By: Senators Van Hollen, Hoffman, Forehand, Conway, Teitelbaum, McFadden, Ruben, Pinsky, Lawlah, Currie, and Frosh**

Introduced and read first time: January 31, 1997

Assigned to: Budget and Taxation and Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Taxation of Smokeless Tobacco Products - Tobacco Awareness Fund**

3 FOR the purpose of creating a Tobacco Awareness Fund to be administered by the  
4 Secretary of Health and Mental Hygiene; providing for the use of the Fund;  
5 prohibiting the unspent portions of the Fund from reverting to the General Fund of  
6 the State; allowing moneys to be expended from a certain fund or on a certain  
7 program only if there is an appropriation in the annual State budget; requiring the  
8 Secretary of Agriculture to develop and implement a program to encourage and  
9 assist tobacco growers in the State to convert tobacco farmland to other productive  
10 uses; extending the tobacco tax to certain smokeless tobacco products; prohibiting a  
11 political subdivision of the State from imposing a tax on smokeless tobacco  
12 products; setting the rate of the tobacco tax for smokeless tobacco products;  
13 defining certain terms and altering certain definitions under the tobacco tax law;  
14 requiring the Comptroller to establish by regulation a system of administering,  
15 collecting, and enforcing the tobacco tax on smokeless tobacco products; altering  
16 the distribution of the tobacco tax revenue; making smokeless tobacco products  
17 subject to certain enforcement provisions applicable to cigarettes; prohibiting  
18 certain acts relating to smokeless tobacco products; imposing certain requirements  
19 relating to certain transportation of smokeless tobacco products; providing for the  
20 application of this Act; and generally relating to the Tobacco Awareness Fund and  
21 the extension of the tobacco tax to certain smokeless tobacco products.

22 BY adding to

23 Article - Agriculture  
24 Section 7-501 to be under the new subtitle "Subtitle 5. Tobacco Crop Conversion"  
25 Annotated Code of Maryland  
26 (1985 Replacement Volume and 1996 Supplement)

27 BY adding to

28 Article - Health - General  
29 Section 24-901 through 24-903, inclusive, to be under the new subtitle "Subtitle 9.  
30 Tobacco Awareness Fund"  
31 Annotated Code of Maryland  
32 (1996 Replacement Volume and 1996 Supplement)

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1 BY repealing and reenacting, with amendments,  
2 Article - Tax - General  
3 Section 2-1603, 12-101(f), 12-102 through 12-105, 12-202, 12-203, 13-408,  
4 13-834(c) and (e)(1), 13-835(a), 13-836(a)(1) and (b)(2), 13-837, 13-839,  
5 13-841(b), 13-842, 13-1014(a), and 13-1015  
6 Annotated Code of Maryland  
7 (1988 Volume and 1996 Supplement)

8 BY repealing and reenacting, without amendments,  
9 Article - Tax - General  
10 Section 12-101(a)  
11 Annotated Code of Maryland  
12 (1988 Volume and 1996 Supplement)

13 BY adding to  
14 Article - Tax - General  
15 Section 12-101(c-1) and (e-1), 12-302(c), and 12-306  
16 Annotated Code of Maryland  
17 (1988 Volume and 1996 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article - Business Regulation  
20 Section 16-219  
21 Annotated Code of Maryland  
22 (1992 Volume and 1996 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article - Agriculture**

26 **SUBTITLE 5. TOBACCO CROP CONVERSION.**

27 7-501.

28 (A) THE SECRETARY SHALL DEVELOP AND IMPLEMENT A PROGRAM TO  
29 ENCOURAGE AND ASSIST TOBACCO GROWERS IN THE STATE TO CONVERT TOBACCO  
30 FARMLAND TO PRODUCTIVE USES OTHER THAN THE GROWING OF TOBACCO.

31 (B) MONEYS MAY BE EXPENDED FOR THE PROGRAM ONLY IF AN  
32 APPROPRIATION IS INCLUDED IN THE ANNUAL STATE BUDGET.

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1           **Article - Health - General**

2           SUBTITLE 9. TOBACCO AWARENESS FUND.

3 24-901.

4           IN THIS SUBTITLE, "FUND" MEANS THE TOBACCO AWARENESS FUND  
5 ESTABLISHED UNDER § 24-902 OF THIS SUBTITLE.

6 24-902.

7           (A) THERE IS A TOBACCO AWARENESS FUND.

8           (B) THE FUND SHALL CONSIST OF THE TOBACCO TAX REVENUE  
9 DISTRIBUTED TO THE FUND UNDER § 2-1603 OF THE TAX - GENERAL ARTICLE.

10          (C) THE SECRETARY SHALL ADMINISTER THE FUND AND SHALL DEDUCT  
11 FROM THE FUND THE AMOUNT NECESSARY TO ADMINISTER THE FUND.

12          (D) THE FUND SHALL BE USED ONLY AS PROVIDED IN § 24-903 OF THIS  
13 SUBTITLE.

14          (E) THE FUND SHALL BE MAINTAINED FOR THE PURPOSES STATED IN THIS  
15 SUBTITLE AND UNSPENT PORTIONS OF THE FUND SHALL REMAIN IN THE FUND AND  
16 MAY NOT REVERT TO THE GENERAL FUND OF THE STATE.

17          (F) MONEYS MAY BE EXPENDED FROM THE FUND ONLY IF AN  
18 APPROPRIATION IS INCLUDED IN THE ANNUAL STATE BUDGET.

19 24-903.

20          (A) THE SECRETARY SHALL USE THE FUND AS PROVIDED IN SUBSECTION (B)  
21 OF THIS SECTION FOR DISSEMINATING CANCER PREVENTION MESSAGES DESIGNED  
22 TO DISCOURAGE THE USE OF SMOKELESS TOBACCO PRODUCTS AS DEFINED IN §  
23 12-101 OF THE TAX - GENERAL ARTICLE.

24          (B) THE SECRETARY SHALL ACQUIRE BROADCAST TIME ON RADIO OR  
25 TELEVISION THAT PROVIDES FOR BROADCASTING, WITH SPECIFIC EMPHASIS ON  
26 YOUTH AUDIENCES, INFORMATION FOR PUBLIC AWARENESS ON THE HEALTH  
27 EFFECTS OF SMOKELESS TOBACCO PRODUCTS AS DEFINED IN § 12-101 OF THE TAX -  
28 GENERAL ARTICLE.

29           **Article - Tax - General**

30 2-1603.

31          After making the distributions required under §§ 2-1601 and 2-1602 of this subtitle,  
32 the Comptroller shall distribute:

33           (1) 10% OF THE REMAINING TAX REVENUE FROM SMOKELESS TOBACCO  
34 PRODUCTS TO A TOBACCO CROP CONVERSION ACCOUNT WITHIN THE DEPARTMENT  
35 OF AGRICULTURE TO BE USED ONLY TO DEVELOP AND IMPLEMENT A TOBACCO  
36 CROP CONVERSION PROGRAM UNDER § 7-501 OF THE AGRICULTURE ARTICLE.

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1 (2) 50% OF THE REMAINING TOBACCO TAX REVENUE FROM SMOKELESS  
2 TOBACCO PRODUCTS TO THE TOBACCO AWARENESS FUND ESTABLISHED UNDER §  
3 24-902 OF THE HEALTH - GENERAL ARTICLE; AND

4 (3) the remaining tobacco tax revenue to the General Fund of the State.

5 12-101.

6 (a) In this title the following words have the meanings indicated.

7 (C-1) "SMOKELESS TOBACCO PRODUCT" MEANS ANY TOBACCO OR PRODUCT  
8 MADE PRIMARILY FROM TOBACCO INTENDED FOR CONSUMPTION BY CHEWING OR  
9 AS SNUFF.

10 (E-1) "WHOLESALE PRICE" MEANS THE PRICE FOR WHICH A WHOLESALER  
11 SELLS SMOKELESS TOBACCO PRODUCTS TO A RETAILER, EXCLUSIVE OF ANY  
12 DISCOUNT, TRADE ALLOWANCE, REBATE, OR OTHER REDUCTION.

13 (f) "Wholesaler" means, unless the context requires otherwise[,]:

14 (1) a person who acts as a wholesaler as defined in § 16-201 of the Business  
15 Regulation Article; OR

16 (2) A PERSON WHO:

17 (I) HOLDS SMOKELESS TOBACCO PRODUCTS FOR SALE TO  
18 ANOTHER PERSON FOR RESALE; OR

19 (II) SELLS TOBACCO PRODUCTS TO ANOTHER PERSON FOR  
20 RESALE.

21 12-102.

22 (a) Except as provided in § 12-104 of this title, a tax is imposed on cigarettes AND  
23 SMOKELESS TOBACCO PRODUCTS in the State.

24 (b) A county, municipal corporation, special taxing district, or other political  
25 subdivision of the State may not impose a tax on cigarettes OR SMOKELESS TOBACCO  
26 PRODUCTS.

27 12-103.

28 (a) A rebuttable presumption exists that any cigarette OR SMOKELESS TOBACCO  
29 PRODUCT in the State is subject to the tobacco tax.

30 (b) Cigarettes OR SMOKELESS TOBACCO PRODUCTS are contraband  
31 [cigarettes] TOBACCO PRODUCTS if they:

32 (1) are possessed or sold in the State in a manner that is not authorized  
33 under this title or under Title 16 of the Business Regulation Article; or

34 (2) are transported by vehicle in the State by a person who does not have, in  
35 the vehicle, the records required by § 16-219 of the Business Regulation Article for the  
36 transportation of cigarettes OR SMOKELESS TOBACCO PRODUCTS.

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1 (c) A person who possesses cigarettes OR SMOKELESS TOBACCO PRODUCTS has  
2 the burden of proving that the cigarettes OR SMOKELESS TOBACCO PRODUCTS are not  
3 subject to the tobacco tax.

4 12-104.

5 (a) "Consumer" means a person who possesses cigarettes OR SMOKELESS  
6 TOBACCO PRODUCTS for a purpose other than selling or transporting the cigarettes OR  
7 SMOKELESS TOBACCO PRODUCTS.

8 (b) The tobacco tax does not apply to:

9 (1) cigarettes that[:

10 (1)] a licensed wholesaler under Title 16 of the Business Regulation Article  
11 is holding for sale outside the State or to a United States armed forces exchange or  
12 commissary;

13 (2) SMOKELESS TOBACCO PRODUCTS THAT A WHOLESALER IS HOLDING  
14 FOR SALE OUTSIDE THE STATE OR TO A UNITED STATES ARMED FORCES EXCHANGE  
15 OR COMMISSARY; OR

16 (3) CIGARETTES OR SMOKELESS TOBACCO PRODUCTS THAT:

17 [(2)] (I) a consumer brings into the State:

18 [(i)] 1. if the quantity brought from another state does not exceed:

19 [1.] A. for a nonresident consumer traveling through this  
20 State, SMOKELESS TOBACCO PRODUCTS HAVING A RETAIL VALUE OF \$25 OR 1 carton  
21 OF CIGARETTES; or

22 [2.] B. for any other consumer, SMOKELESS TOBACCO  
23 PRODUCTS HAVING A RETAIL VALUE OF \$5 OR 2 packages OF CIGARETTES; or

24 [(ii)] 2. if the quantity brought from a United States armed forces  
25 installation or reservation does not exceed:

26 [1.] A. for a consumer who is a member of an armed forces  
27 unit or who is entitled by law to make a purchase at an armed forces exchange,  
28 SMOKELESS TOBACCO PRODUCTS HAVING A RETAIL VALUE OF \$50 OR 2 cartons OF  
29 CIGARETTES; or

30 [2.] B. for any other consumer, SMOKELESS TOBACCO  
31 PRODUCTS HAVING A RETAIL VALUE OF \$5 OR 2 packages OF CIGARETTES that were  
32 bought at an armed forces exchange or commissary;

33 [(3)] (II) a person is transporting by vehicle in the State if the person has, in  
34 the vehicle, the records required by § 16-219 of the Business Regulation Article for the  
35 transportation of cigarettes OR SMOKELESS TOBACCO PRODUCTS; or

36 [(4)] (III) are held in storage in a licensed storage warehouse.

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1 12-105.

2 (A) The tobacco tax rate FOR CIGARETTES is:

- 3 (1) 18 cents for each package of 10 or fewer cigarettes;
- 4 (2) 36 cents for each package of at least 11 and not more than 20 cigarettes;
- 5 (3) 1.8 cents for each cigarette in a package of more than 20 cigarettes; and
- 6 (4) 1.8 cents for each cigarette in a package of free sample cigarettes.

7 (B) THE TOBACCO TAX RATE FOR SMOKELESS TOBACCO PRODUCTS IS 25% OF  
8 THE WHOLESALE PRICE OF THE SMOKELESS TOBACCO PRODUCTS.

9 12-202.

10 (a) A wholesaler shall complete and file with the Comptroller a tobacco tax  
11 return:

12 (1) FOR CIGARETTES:

13 (I) on or before the 21st day of the month that follows the month in  
14 which the wholesaler has the first possession, in the State, of unstamped cigarettes for  
15 which tax stamps are required; and

16 [(2)] (II) if the Comptroller so specifies, by regulation, on other dates for  
17 each month in which the wholesaler does not have the first possession of any unstamped  
18 cigarettes in the State; AND

19 (2) FOR SMOKELESS TOBACCO PRODUCTS, ON THE DATES AND FOR THE  
20 PERIODS THAT THE COMPTROLLER SPECIFIES BY REGULATION.

21 (b) Each return shall state the quantity of cigarettes OR THE WHOLESALE PRICE  
22 OF SMOKELESS TOBACCO PRODUCTS sold during the period that the return covers.

23 12-203.

24 (a) Each wholesaler shall:

- 25 (1) keep an invoice for each purchase of tax stamps;
- 26 (2) maintain a daily record of the tax stamps affixed to cigarette packages;
- 27 and

28 (3) maintain a complete and accurate record of each sale of cigarettes OR  
29 SMOKELESS TOBACCO PRODUCTS for resale outside of the State.

30 (b) A wholesaler shall:

- 31 (1) keep the records required under subsection (a) of this section for a  
32 period of 6 years or for a shorter period that the Comptroller authorizes; and
- 33 (2) allow the Comptroller to examine the records.

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1 12-302.

2 (C) (1) THE TOBACCO TAX ON SMOKELESS TOBACCO PRODUCTS SHALL BE  
3 PAID BY THE WHOLESALER WHO SELLS THE SMOKELESS TOBACCO PRODUCTS TO A  
4 RETAILER OR CONSUMER IN THE STATE.

5 (2) IF A RETAILER OR CONSUMER POSSESSES SMOKELESS TOBACCO  
6 PRODUCTS IN THE STATE ON WHICH THE SMOKELESS TOBACCO PRODUCTS TAX HAS  
7 NOT BEEN PAID, THE RETAILER OR CONSUMER SHALL PAY THE TOBACCO TAX ON  
8 THOSE SMOKELESS TOBACCO PRODUCTS.

9 12-306.

10 (A) THE COMPTROLLER SHALL ESTABLISH, BY REGULATION, A SYSTEM OF  
11 ADMINISTERING, COLLECTING, AND ENFORCING THE TOBACCO TAX ON SMOKELESS  
12 TOBACCO PRODUCTS.

13 (B) REGULATIONS ADOPTED UNDER THIS SECTION MAY INCLUDE:

14 (1) SELF-ASSESSMENT, FILING OF RETURNS, AND MAINTENANCE AND  
15 RETENTION OF RECORDS BY WHOLESALERS OR RETAILERS;

16 (2) PAYMENT OF THE TAX BY:

17 (I) A WHOLESALER WHO SELLS SMOKELESS TOBACCO PRODUCTS  
18 TO A RETAILER OR CONSUMER IN THE STATE; OR

19 (II) A RETAILER OR CONSUMER WHO POSSESSES SMOKELESS  
20 TOBACCO PRODUCTS IN THE STATE ON WHICH THE TOBACCO TAX HAS NOT BEEN  
21 PAID; AND

22 (3) ANY OTHER PROVISION THAT THE COMPTROLLER CONSIDERS  
23 NECESSARY TO EFFICIENTLY AND ECONOMICALLY ADMINISTER, COLLECT, AND  
24 ENFORCE THE TAX.

25 13-408.

26 (a) If the Comptroller determines that a person has failed to keep the records of  
27 out-of-state cigarette OR SMOKELESS TOBACCO PRODUCT sales required under §  
28 12-203 of this article, the Comptroller shall:

29 (1) compute the tobacco tax as if the cigarettes OR SMOKELESS TOBACCO  
30 PRODUCTS were sold in the State; and

31 (2) assess the tax due.

32 (b) If the Comptroller determines that a person has possessed or transported  
33 cigarettes OR SMOKELESS TOBACCO PRODUCTS on which the tobacco tax has not been  
34 paid as required under Title 12 of this article, the Comptroller shall assess the tobacco tax  
35 due.

36 13-834.

37 (c) "Contraband [cigarettes] TOBACCO PRODUCTS" means cigarettes OR  
38 SMOKELESS TOBACCO PRODUCTS, as defined in § 12-101 of this article:

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1 (1) on which tobacco tax is not paid; and

2 (2) that are delivered, possessed, sold, or transported in the State in a  
3 manner not authorized under Title 12 of this article or Title 16 of the Business  
4 Regulation Article.

5 (e) "Conveyance" means:

6 (1) an aircraft, vehicle, or vessel used to transport alcoholic beverages [or],  
7 cigarettes, OR SMOKELESS TOBACCO PRODUCTS; and

8 13-835.

9 (a) The Comptroller or a peace officer of the State may:

10 (1) seize contraband alcoholic beverages or contraband [cigarettes ]  
11 TOBACCO PRODUCTS in the State without a warrant;

12 (2) stop and search a conveyance in the State if the Comptroller or officer  
13 knows or has reason to suspect that the conveyance is being used to transport IN THE  
14 STATE CONTRABAND TOBACCO PRODUCTS HAVING A RETAIL VALUE OF \$100 OR  
15 MORE OR contraband alcoholic beverages [or 5 or more cartons of contraband cigarettes  
16 in the State]; and

17 (3) seize a conveyance being used in the State to transport contraband  
18 alcoholic beverages or contraband [cigarettes]TOBACCO PRODUCTS.

19 13-836.

20 (a) (1) If contraband alcoholic beverages or contraband [cigarettes] TOBACCO  
21 PRODUCTS are seized:

22 (i) the Comptroller or police officer shall give a notice of seizure to  
23 the person from whom the property is seized at the time of the seizure; and

24 (ii) The Comptroller shall:

25 1. where possible, give a notice of seizure to the registered  
26 owner of a seized conveyance; and

27 2. publish a notice of seizure of the conveyance in a newspaper  
28 of general circulation in the county where the seizure occurred.

29 (b) (2) A police officer who seizes any contraband [cigarettes] TOBACCO  
30 PRODUCTS or conveyance used to transport contraband [cigarettes] TOBACCO  
31 PRODUCTS shall deliver the seized cigarettes OR SMOKELESS TOBACCO PRODUCTS and  
32 conveyance to the Comptroller.

33 13-837.

34 The owner or another person with an interest in seized property may file a claim for  
35 the return of the property with the Comptroller within 30 days after:

36 (1) the seizure of alcoholic beverages, cigarettes, SMOKELESS TOBACCO  
37 PRODUCTS, motor fuel or conveyances used to transport motor fuel; or

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1 (2) a notice of seizure of a conveyance used to transport alcoholic beverages  
2 [or], cigarettes, OR SMOKELESS TOBACCO PRODUCTS is published.

3 13-839.

4 (a) If a person files a claim for return of seized alcoholic beverages, cigarettes,  
5 SMOKELESS TOBACCO PRODUCTS, or a conveyance used for their transportation under  
6 § 13-837 of this subtitle, the Comptroller or the Comptroller's designee shall:

7 (1) promptly act on the request and hold an informal hearing;

8 (2) direct the return of alcoholic beverages [or], cigarettes, OR  
9 SMOKELESS TOBACCO PRODUCTS unless the Comptroller or Comptroller's designee has  
10 satisfactory proof that the person was not in compliance with any provisions of Title 5 or  
11 Title 12 of this article at the time of seizure; and

12 (3) direct the return of the conveyance if the Comptroller or Comptroller's  
13 designee has satisfactory proof that the owner of the conveyance was not willfully evading  
14 any provisions of Title 5 or Title 12 of this article at the time of seizure.

15 (b) The Comptroller or Comptroller's designee shall grant or deny the application  
16 for return of seized alcoholic beverages, cigarettes, SMOKELESS TOBACCO PRODUCTS,  
17 or a conveyance in accordance with subsection (a) of this section by mailing the person a  
18 notice of final determination.

19 13-841.

20 (b) (1) The Comptroller shall sell contraband [cigarettes] TOBACCO  
21 PRODUCTS seized under this title and forfeited to a State institution, a nonprofit  
22 charitable institution, a licensed cigarette wholesaler, or a licensed cigarette  
23 manufacturer in the manner the Comptroller determines.

24 (2) The Comptroller shall sell at public auction a conveyance that is seized  
25 under this title in connection with contraband [cigarettes] TOBACCO PRODUCTS and  
26 forfeited.

27 13-842.

28 A person who possessed contraband alcoholic beverages, contraband [cigarettes]  
29 TOBACCO PRODUCTS, or contraband motor fuel that are seized and sold under this  
30 section is not relieved from any penalty under this title.

31 13-1014.

32 (a) A person who willfully possesses, sells, or attempts to sell unstamped or  
33 improperly stamped cigarettes OR SMOKELESS TOBACCO PRODUCTS ON WHICH THE  
34 TOBACCO TAX HAS NOT BEEN PAID in the State in violation of Title 12 of this article is  
35 guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or  
36 imprisonment not exceeding 1 year or both.

37 13-1015.

38 A person who willfully transports in the State unstamped cigarettes OR SMOKELESS  
39 TOBACCO PRODUCTS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID in violation

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1 of § 16-219 of the Business Regulation Article is guilty of a felony and, on conviction, is  
2 subject to a fine not exceeding \$25 for each carton of cigarettes transported or  
3 imprisonment not exceeding 1 year or both.

4 **Article - Business Regulation**

5 16-219.

6 (A) IN THIS SECTION, "SMOKELESS TOBACCO PRODUCTS" HAS THE MEANING  
7 STATED IN § 12-101 OF THE TAX - GENERAL ARTICLE.

8 (B) A person who transports cigarettes OR SMOKELESS TOBACCO PRODUCTS by  
9 vehicle on a public road shall have in the vehicle a delivery ticket or invoice that states:

10 (1) the name and address of the seller or consignor;

11 (2) the name and address of a buyer or consignee who is:

12 (i) a person in the State authorized by Title 12 of the Tax - General  
13 Article to hold unstamped cigarettes OR SMOKELESS TOBACCO PRODUCTS ON WHICH  
14 THE TOBACCO TAX HAS NOT BEEN PAID; or

15 (ii) a person in another jurisdiction authorized to hold cigarettes OR  
16 SMOKELESS TOBACCO PRODUCTS on which the tax imposed by that jurisdiction has not  
17 been paid; and

18 (3) the quantity and brands of the cigarettes OR SMOKELESS TOBACCO  
19 PRODUCTS that are being transported.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 1997 and shall be applicable to all smokeless tobacco products that are sold by  
22 a wholesaler to a retailer in the State on or after October 1, 1997.