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**SUBSTITUTE SENATE BILL 5259**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Keiser, King, Conway, Lovick, Hunt, Kuderer, Nobles, and C. Wilson)

AN ACT Relating to ensuring commerce and workplaces are safe from product theft; amending RCW 69.50.535; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 19 RCW; creating a new section; providing an effective date; providing expiration dates; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that the safety of our retail commerce and our retail workforce are threatened by increased product theft. Washington retailers are estimated to have lost $2,700,000,000 to organized retail crime in 2021. Federal crime statistics show that the number of assaults in retail establishments increased at a faster pace than the national average between 2018 and 2020. Washington's retail cannabis businesses reported increased armed robberies throughout 2022. These crimes endanger employees and cause substantial economic harm to our state.

(2) The legislature intends to establish an organized retail theft task force to improve coordination and collaboration among law enforcement agencies to address organized retail theft. It also intends to increase required safety measures in retail workplaces and protect retail workers from certain employment actions when product theft occurs at their workplace, with certain conditions.

(3) The legislature also intends to provide relief to retailers impacted by the cost of physical security improvements to prevent theft at cannabis retail establishments.

NEW SECTION. **Sec.**  (1) The organized retail theft task force is established to improve coordination and collaboration among law enforcement agencies.

(2) The attorney general must appoint members on the task force and may increase or decrease the size of the task force as deemed necessary by the attorney general.

(3) Staff support for the task force must be provided by the office of the attorney general.

(4) The task force must work with mercantile establishments and associations representing mercantile establishments on collecting and aggregating data on incidents of organized retail theft. Mercantile establishments that experience incidents of organized retail theft must report incidents to the task force.

(5) The task force must work with the liquor and cannabis board and their retail licensees to collect and aggregate data on significant incidents of theft, burglary, and robbery. Liquor and cannabis board retail licensees must report significant incidents of theft, burglary, and robbery to the task force.

(6) The attorney general must regularly transmit to the Washington association of sheriffs and police chiefs any data received by the task force regarding incidents of organized retail theft under RCW 9A.56.350 reported pursuant to this section. The Washington association of sheriffs and police chiefs must remit such information to the appropriate Washington law enforcement agencies. Incidents of organized retail theft under RCW 9A.56.350 reported, transmitted, or remitted pursuant to this section are exempt from public inspection and disclosure under chapter 42.56 RCW.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in sections 4 and 5, chapter . . ., Laws of 2023 (sections 4 and 5 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers as provided in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to reduce theft at retailers in Washington. The legislature further acknowledges that security improvements are expensive, and the cost may not be feasible for all businesses. The tax preferences under this act are intended to incentivize retailers to implement security precautions that reduce or prevent theft and ensure that such measures are accessible to all retailers.

(4)(a) The joint legislative audit and review committee must review the effectiveness of the tax preferences in sections 4 and 5 of this act in achieving the public policy objectives described in subsection (3) of this section. The review must include an evaluation of the following:

(i) The amount of retailers in this state that make security improvements and use the tax preference in section 4 or 5 of this act; and

(ii) The type and cost of security improvements; and

(iii) The amount of theft incidents occurring at retailers identified under (a)(i) of this subsection prior to and after using the tax preference in section 4 or 5 of this act.

(b) If a review finds that the number of retailers implementing security improvements in this state has increased, and corresponds with a decrease in retail theft, then the legislature intends to extend the expiration date of these tax preferences.

(5) The joint legislative audit and review committee may use any data source it deems necessary in performing the evaluation under this section.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

(1)(a) A person is allowed a credit against the tax due under this chapter for physical security improvements to a mercantile establishment, as provided in this section.

(b) The credit equals the amount spent by the person on physical security improvements to a mercantile establishment owned by the person claiming the credit.

(2) The credit established in this section may be claimed on physical security improvements made by the person in the previous four quarters and may not exceed $3,000 in each calendar year.

(3) This section only applies to qualifying purchases made on or after the effective date of this section.

(4) Unused credit may be carried over and used in subsequent tax reporting periods, except that no credit may be claimed more than 12 months from the end of the tax reporting period in which the credit was earned.

(5)(a) To claim a credit under this section, a person must:

(i) Apply with the department in a form prescribed by the department prior to claiming the credit; and

(ii) Electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department.

(b) The department must approve or deny applications for the credit established in this section within 60 days of receipt of the application.

(c) A person may claim the credit established under this section once the department approves their application.

(6) The credit claimed under this section may not exceed the amount of tax due and may not be refunded.

(7) Credits may be claimed after June 30, 2030, for purchases made before June 30, 2030, subject to the eligibility criteria and limitations in this section.

(8) For the purposes of this section:

(a) "Mercantile establishment" means a place of business for retailing goods; and

(b) "Physical security improvements" means physical improvements, additions, or other similar changes to a mercantile establishment exclusively for the purposes of preventing the theft of merchandise including, but not limited to: Security cameras, antitheft mirrors, antitheft signage, merchandising security equipment such as secure stands or mounts, locking display cases or display locks, electronic article surveillance, and storefront crash barriers or safety bollards.

(9) This section expires June 30, 2030.

**Sec.**  RCW 69.50.535 and 2022 c 16 s 101 are each amended to read as follows:

(1)(a) ((~~There~~)) Except for retailers that qualify for the tax rate under (b) of this subsection, there is levied and collected a cannabis excise tax equal to thirty-seven percent of the selling price on each retail sale in this state of cannabis concentrates, useable cannabis, and cannabis-infused products. This tax is separate and in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property, and is not part of the total retail price to which general state and local sales and use taxes apply. The tax must be separately itemized from the state and local retail sales tax on the sales receipt provided to the buyer.

(b)(i) The cannabis excise tax established in (a) of this subsection is 32 percent for cannabis retailers that spend $3,000 or more for physical security improvements to prevent theft at any single cannabis retail establishment in a calendar year. The reduced rate begins the month after the $3,000 threshold is met and expires after 12 months. The reduced tax rate established in this section only applies to cannabis retail stores at which the physical security improvements were implemented. The reduced tax may be applied to multiple cannabis retail stores owned by the same person if the $3,000 threshold is met at each individual retail store. The reduced tax rate established in this subsection (1)(b)(i) may only be claimed once for each cannabis retail establishment.

(ii) For the purposes of this subsection (1)(b), "physical security improvements" means physical improvements, additions, or other similar changes to a cannabis retail establishment exclusively for the purposes of preventing the theft of merchandise including, but not limited to: Security cameras, antitheft mirrors, antitheft signage, merchandising security equipment such as secure stands or mounts, locking display cases or display locks, electronic article surveillance, and storefront crash barriers or safety bollards.

(c) The tax levied in this section must be reflected in the price list or quoted shelf price in the licensed cannabis retail store and in any advertising that includes prices for all useable cannabis, cannabis concentrates, or cannabis-infused products.

(2) All revenues collected from the cannabis excise tax imposed under this section must be deposited each day in the dedicated cannabis account.

(3) The tax imposed in this section must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable on each taxable sale. The tax collected as required by this section is deemed to be held in trust by the seller until paid to the board. If any seller fails to collect the tax imposed in this section or, having collected the tax, fails to pay it as prescribed by the board, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the state liquor and cannabis board.

(b) "Retail sale" has the same meaning as in RCW 82.08.010.

(c) "Selling price" has the same meaning as in RCW 82.08.010, except that when product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value, "selling price" means the true value of the product sold.

(d) "Product" means cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products.

(e) "True value" means market value based on sales at comparable locations in this state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. However, in the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributable to the product.

(5)(a) The board must regularly review the tax level established under this section and make recommendations, in consultation with the department of revenue, to the legislature as appropriate regarding adjustments that would further the goal of discouraging use while undercutting illegal market prices.

(b) The board must report, in compliance with RCW 43.01.036, to the appropriate committees of the legislature every two years. The report at a minimum must include the following:

(i) The specific recommendations required under (a) of this subsection;

(ii) A comparison of gross sales and tax collections prior to and after any cannabis tax change;

(iii) The increase or decrease in the volume of legal cannabis sold prior to and after any cannabis tax change;

(iv) Increases or decreases in the number of licensed cannabis producers, processors, and retailers;

(v) The number of illegal and noncompliant cannabis outlets the board requires to be closed;

(vi) Gross cannabis sales and tax collections in Oregon; and

(vii) The total amount of reported sales and use taxes exempted for qualifying patients. The department of revenue must provide the data of exempt amounts to the board.

(c) The board is not required to report to the legislature as required in (b) of this subsection after January 1, 2025.

(6) The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among retailers as to the selling price of any goods sold.

(7) This section expires June 30, 2030.

NEW SECTION. **Sec.**  (1) It is an unfair practice for a retail establishment with 50 or more employees to suspend without pay, terminate from employment, or to discriminate in employment against an individual, because that individual, on or in the immediate vicinity of the premises of a mercantile establishment, engaged, intervened, or attempted to intervene with a person for the purpose of investigation or questioning as to the ownership of any merchandise, provided:

(a) The employee does not single out, profile, or in any way select the person for the engagement, intervention, or attempted intervention based on the person's actual or perceived race, creed, color, national origin, citizenship or immigration status, sex, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability;

(b) The employee does not physically detain or restrain said person;

(c) The person is engaged in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the owner of the mercantile establishment or his or her authorized employee or designated agent; and

(d) The employee had reasonable grounds to believe that the person was committing or attempting to commit theft on such premises of such merchandise.

(2) It is an unfair practice for a retail establishment to suspend without pay, terminate from employment, or to discriminate in employment against an individual, because that individual:

(a) Notified or summoned law enforcement to report an incident of organized retail theft under RCW 9A.56.350; or

(b) Otherwise cooperates with an official law enforcement investigation into organized retail theft under RCW 9A.56.350.

(3) For the purposes of this section:

(a) "Reasonable grounds" includes, but is not limited to, knowledge that a person has possession of unpurchased merchandise of a mercantile establishment; and

(b) "Reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

(4)(a) After an employee or former employee has exhausted administrative remedies, an employer who violates this section is liable to the impacted employee or former employee in a civil cause of action for actual or statutory damages of $10,000, whichever is more, as well as reasonable attorneys' fees and costs.

(b) In any civil or administrative action, it is the employer's burden to establish that an adverse job action taken against an employee for having engaged, intervened, or attempted to intervene with a person for the purpose of investigation or questioning as to the ownership of any merchandise was lawful due to one or more of the conditions under subsection (1)(a) through (d) of this section.

(c) An employer is not liable for any civil claims or actions under the laws of this state resulting from an act by an employee that is protected by subsections (1) and (2) of this section. However, this subsection (4) does not apply if the protected action by the employee that resulted in the claim or action was at the direction of the employer or an agent of the employer.

(5) All retail establishments covered by this section must provide training at the commencement of their employment and at least annually to all employees who regularly have contact with customers regarding both the protections and limitations on protections established by this section and must post an appropriate notice regarding such protections and limitations. An employer may designate through policy certain employees, classes of employees, or both, who are not to engage with customers suspected of theft. The employer must provide training to its employees on the policy regarding who may engage with customers suspected of theft.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Sections 1, 2, and 6 of this act constitute a new chapter in Title 19 RCW.

NEW SECTION. **Sec.**  Sections 3, 4, and 5 of this act take effect January 1, 2024.

NEW SECTION. **Sec.**  Sections 1, 2, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

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