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**SENATE BILL 5259**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Keiser, King, Conway, and Lovick

1 AN ACT Relating to ensuring commerce and workplaces are safe from  
2 product theft; amending RCW 69.50.535; adding a new section to  
3 chapter 82.04 RCW; adding a new chapter to Title 19 RCW; and  
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the safety  
7 of our retail commerce and our retail workforce are threatened by  
8 increased product theft. Washington retailers are estimated to have  
9 lost \$2,700,000,000 to organized retail crime in 2021. Federal crime  
10 statistics show that the number of assaults in retail establishments  
11 increased at a faster pace than the national average between 2018 and  
12 2020. Washington's retail cannabis businesses reported increased  
13 armed robberies throughout 2022. These crimes endanger employees and  
14 cause substantial economic harm to our state.

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

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

4 NEW SECTION. **Sec. 2.** (1) The organized retail theft task force  
5 is established to improve coordination and collaboration among law  
6 enforcement agencies.

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

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

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

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

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04  
23 RCW to read as follows:

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

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

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

33 (3) For the purposes of this section:

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

36 (b) "Physical security improvements" means physical improvements,  
37 additions, or other changes to a mercantile establishment for the  
38 purposes of preventing the theft of merchandise including, but not

1 limited to: Security cameras, antitheft mirrors, antitheft signage,  
2 merchandising security equipment such as secure stands or mounts,  
3 locking display cases or display locks, electronic article  
4 surveillance, and storefront crash barriers or safety bollards.

5 **Sec. 4.** RCW 69.50.535 and 2022 c 16 s 101 are each amended to  
6 read as follows:

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

18 (b) (i) The cannabis excise tax established in (a) of this  
19 subsection is 32 percent for cannabis retailers that spend \$3,000 or  
20 more for physical security improvements to prevent theft at any  
21 single cannabis retail establishment in a calendar year. The reduced  
22 rate begins the month after the \$3,000 threshold is met and expires  
23 after 12 months. The reduced tax rate established in this section  
24 only applies to cannabis retail stores at which the physical security  
25 improvements were implemented. The reduced tax may be applied to  
26 multiple cannabis retail stores owned by the same person if the  
27 \$3,000 threshold is met at each individual retail store. The reduced  
28 tax rate established in this subsection (1) (b) (i) may only be claimed  
29 once for each cannabis retail establishment.

30 (ii) For the purposes of this subsection (1) (b), "physical  
31 security improvements" may include, but are not limited to: Security  
32 cameras, antitheft mirrors, antitheft signage, merchandising security  
33 equipment such as secure stands or mounts, locking display cases or  
34 display locks, electronic article surveillance, and storefront crash  
35 barriers or safety bollards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 NEW SECTION. **Sec. 5.** (1) It shall be an unfair practice for a  
21 retail establishment with 50 or more employees to discipline or  
22 terminate from employment, or to discriminate against such individual  
23 in promotion, compensation, or in terms, conditions, or privileges of  
24 employment, because that individual, on or in the immediate vicinity  
25 of the premises of a mercantile establishment, engaged, intervened,  
26 or attempted to intervene with a person for the purpose of  
27 investigation or questioning as to the ownership of any merchandise,  
28 provided:

29 (a) The employee does not physically detain or restrain said  
30 person;

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

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

38 (2) For the purposes of this section:

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

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

9 (3) An employer who violates this section is liable in a civil  
10 cause of action for actual or statutory damages of \$10,000, whichever  
11 is more, as well as reasonable attorneys' fees and costs.

12 NEW SECTION. **Sec. 6.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 7.** Sections 1, 2, and 5 of this act  
17 constitute a new chapter in Title 19 RCW.

18 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of  
20 the state government and its existing public institutions, and takes  
21 effect immediately.

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