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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)

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; creating a  
4 new section; providing an effective date; providing expiration dates;  
5 and declaring an emergency.

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

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

16 (2) The legislature intends to establish an organized retail  
17 theft task force to improve coordination and collaboration among law  
18 enforcement agencies to address organized retail theft. It also  
19 intends to increase required safety measures in retail workplaces and  
20 protect retail workers from certain employment actions when product  
21 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 (6) The attorney general must regularly transmit to the  
23 Washington association of sheriffs and police chiefs any data  
24 received by the task force regarding incidents of organized retail  
25 theft under RCW 9A.56.350 reported pursuant to this section. The  
26 Washington association of sheriffs and police chiefs must remit such  
27 information to the appropriate Washington law enforcement agencies.  
28 Incidents of organized retail theft under RCW 9A.56.350 reported,  
29 transmitted, or remitted pursuant to this section are exempt from  
30 public inspection and disclosure under chapter 42.56 RCW.

31 NEW SECTION. **Sec. 3.** (1) This section is the tax preference  
32 performance statement for the tax preferences contained in sections 4  
33 and 5, chapter . . ., Laws of 2023 (sections 4 and 5 of this act).  
34 This performance statement is only intended to be used for subsequent  
35 evaluation of the tax preference. It is not intended to create a  
36 private right of action by any party or be used to determine  
37 eligibility for preferential tax treatment.

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

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04  
31 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

26 (8) For the purposes of this section:

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

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

37 (9) This section expires June 30, 2030.

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

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

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

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

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

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

39           (3) The tax imposed in this section must be paid by the buyer to  
40 the seller. Each seller must collect from the buyer the full amount

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (7) This section expires June 30, 2030.

17 NEW SECTION. **Sec. 6.** (1) It is an unfair practice for a retail  
18 establishment with 50 or more employees to suspend without pay,  
19 terminate from employment, or to discriminate in employment against  
20 an individual, because that individual, on or in the immediate  
21 vicinity of the premises of a mercantile establishment, engaged,  
22 intervened, or attempted to intervene with a person for the purpose  
23 of investigation or questioning as to the ownership of any  
24 merchandise, provided:

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

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

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

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

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

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

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

11 (3) For the purposes of this section:

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

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

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

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

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

37 (5) All retail establishments covered by this section must  
38 provide training at the commencement of their employment and at least  
39 annually to all employees who regularly have contact with customers  
40 regarding both the protections and limitations on protections



1 established by this section and must post an appropriate notice  
2 regarding such protections and limitations. An employer may designate  
3 through policy certain employees, classes of employees, or both, who  
4 are not to engage with customers suspected of theft. The employer  
5 must provide training to its employees on the policy regarding who  
6 may engage with customers suspected of theft.

7 NEW SECTION. **Sec. 7.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 8.** Sections 1, 2, and 6 of this act  
12 constitute a new chapter in Title 19 RCW.

13 NEW SECTION. **Sec. 9.** Sections 3, 4, and 5 of this act take  
14 effect January 1, 2024.

15 NEW SECTION. **Sec. 10.** Sections 1, 2, and 6 of this act are  
16 necessary for the immediate preservation of the public peace, health,  
17 or safety, or support of the state government and its existing public  
18 institutions, and take effect immediately.

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