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**SENATE BILL 5259**

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

**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; 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.

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) 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 changes to a mercantile establishment 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.

**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" may include, but are 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.

NEW SECTION. **Sec.**  (1) It shall be an unfair practice for a retail establishment with 50 or more employees to discipline or terminate from employment, or to discriminate against such individual in promotion, compensation, or in terms, conditions, or privileges of employment, 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 physically detain or restrain said person;

(b) 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

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

(2) For the purposes of this section:

(a) "Reasonable grounds" includes, but is not limited to, knowledge that a person has concealed 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.

(3) An employer who violates this section is liable 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.

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 5 of this act constitute a new chapter in Title 19 RCW.

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

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