
SUBSTITUTE SENATE BILL 5259

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)

READ FIRST TIME 02/14/23.

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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