
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0850.1/23

ATTY/TYPIST: RR:akl

BRIEF DESCRIPTION: Ensuring commerce and workplaces are safe from product theft.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (8) For the purposes of this section:

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

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

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

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

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

1 **(b)(i)** The cannabis excise tax established in (a) of this
2 subsection is 32 percent for cannabis retailers that spend \$3,000 or
3 more for physical security improvements to prevent theft at any
4 single cannabis retail establishment in a calendar year. The reduced
5 rate begins the month after the \$3,000 threshold is met and expires
6 after 12 months. The reduced tax rate established in this section
7 only applies to cannabis retail stores at which the physical security
8 improvements were implemented. The reduced tax may be applied to
9 multiple cannabis retail stores owned by the same person if the
10 \$3,000 threshold is met at each individual retail store. The reduced
11 tax rate established in this subsection (1)(b)(i) may only be claimed
12 once for each cannabis retail establishment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (6) The legislature does not intend and does not authorize any
40 person or entity to engage in activities or to conspire to engage in

1 activities that would constitute per se violations of state and
2 federal antitrust laws including, but not limited to, agreements
3 among retailers as to the selling price of any goods sold.

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

5 NEW SECTION. **Sec. 6.** (1) It shall be an unfair practice for a
6 retail establishment with 50 or more employees to discipline or
7 terminate from employment, or to discriminate against such individual
8 in promotion, compensation, or in terms, conditions, or privileges of
9 employment, because that individual, on or in the immediate vicinity
10 of the premises of a mercantile establishment, engaged, intervened,
11 or attempted to intervene with a person for the purpose of
12 investigation or questioning as to the ownership of any merchandise,
13 provided:

14 (a) The employee does not physically detain or restrain said
15 person;

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

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

23 (2) For the purposes of this section:

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

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

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

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

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

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

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

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