

# Washington Retail 2023 Legislative Priorities

## **1. Public Safety, Retail Theft, INFORM, Organized Retail Crime**

WR's top priority will be implementing a "multi-pronged" approach to increasing public safety, reducing retail theft, and increasing prosecution of ORC. Key to this goal is passage of the INFORM Act which will disincentivize the "fencing" of stolen and counterfeit products in the shadows of the internet. Preferably a national INFORM law should be enacted for a clear and effective 50 state solution. Barring that, WR is prepared to introduce our own state INFORM act. We have already met with key legislators and secured sponsors and pre-session meetings. We have promoted this statewide through our contacts with chambers of commerce, law enforcement, and the Washington Organized Retail Crime Association. WR will also lead the growing coalition to advance ORC enhancements, funding for and ORC Task Force, adding concealment to the definition of theft, protecting our cannabis retailers from robbery, backing law enforcement efforts to roll back the restrictions on pursuit, and provide our members and the community with tools and resources to navigate public safety and retail crime.

*This is WR's main focus, and we will deploy all and any resources available to ensure our positions and priorities are understood and advanced. In addition to testifying and meeting with key legislators, we will be utilizing our call to action for both WR members and the public at strategic moments during the session.*

## **2. Ergonomics**

Washington voters enacted an initiative prohibiting the Department of Labor and Industries from regulating musculoskeletal injuries (ergonomic related injuries) because many of these injuries are due to personal behaviors, are non-work related and extraordinarily difficult to diagnose. In 2022, Legislation was introduced to repeal the voter approved prohibition. WR anticipates the bill will be reintroduced in 2023.

*WR will actively oppose any legislative attempts to allow LNI to adopt ergo regulations. We will testify, meet with key legislators, participate in the employer coalition and do a member call to action.*

## **3. Expanding Access to Return to Work Programs (RTW)**

RTW programs have proven effective at reducing long term disability and improving injured workers' outlook for transitioning back to work. Under current law, however, RTW programs are limited to the "employer of injury". With this limitation, many small businesses, frontline workers and out of state workers cannot participate in RTW programs. WR is proposing to expand access to RTW programs by allowing injured workers to be placed with local non-profits to perform light duty volunteer work.

*WR drafted the legislation and has run the proposal by several Labor and Industries decision makers as well as key legislators on both sides of the aisle and on the Labor Committees. We will build a large employer and worker support group to ensure passage of this beneficial measure.*

#### **4. Long Term Care (LTC)**

In response to concerns over eligibility, “opt-outs”, and solvency, Washington’s LTC program was delayed until July 2023. Recent actuarial studies show the 0.58% payroll tax to fund the program will be sufficient to fund benefit payments under most, but not all, scenarios examined. WR expects numerous proposals to reform, or even repeal, the LTC program in 2023.

*WR supports efforts to reform and repeal the flawed and costly LTC program. We will work with employer and legislative stakeholders on key strategies to address our members significant concerns.*

#### **5. “Qui-Tam” or PAGA**

Legislation to allow a third party to sue employers on behalf of the state to enforce wage, hour, meal, rest break, anti-retaliation, discrimination, safety, and other workplace laws has been introduced in the past four sessions. The proposals, modeled after California’s Private Attorney General’s Act, also allow for the third party to receive up to 40% of any settlements or judgements. WR expects Qui-Tam to be reintroduced in the 2023 session.

*WR will oppose this legislation and will be an active member of the employer and liability reform coalition formed to fight it. We will testify in opposition and do a call to action as well as meet with key legislators that will determine if this passes.*

#### **6. Packaging and Extended Producer Responsibility (EPR)**

Senator Christine Rolfes and Rep. Liz Berry are preparing to introduce comprehensive EPR packaging legislation similar to what has recently passed in California seeking to reduce and eventually eliminate harmful packaging being improperly disposed of or if possible recycled – mostly targeted at plastics. The bill will create a statewide program that will be administered by the Department of Ecology and paid for by assessments or taxes paid by producers of the packaging – which could include retailers if the producer cannot be identified or held responsible. WR has significant concerns about the scope and complexity of the proposal. Key to our associations neutrality or potential support are clear definitions particularly as it relates to producers and covered products. Additionally, reasonable implementation timelines must be included to allow processes for compliance to be created.

*WR has already met with the sponsors and key stakeholders and will continue to share our priorities for a workable bill. We will testify at the hearings and meet with legislative leaders and committee members. WR board and PGAC will be fully engaged in the strategy – including separate EPR stakeholder meetings.*

#### **7. Data Privacy**

Senator Reuven Carlyle, the prime sponsor of the Washington Data Privacy Act, has announced his retirement at the end of 2022. At this point, it is unclear if another legislator from either the House or Senate will pick up the issue to continue the debate. Sen. Carlyle’s bill was written in part by WR and its members. We were a strong proponent for its passage for several sessions. While the bill enjoyed broad bi-partisan support in the Senate, it ran into many roadblocks in the House including the ACLU, trial attorneys, and extreme privacy advocates. Competing proposals in the House included an unacceptable private right of action rather than sole attorney general enforcement and jeopardized our consumer popular loyalty programs. Additionally, unequal data protection and handling requirements for processors and collectors made the bills untenable. Detrimental federal data privacy legislation is also pending before Congress which contains a PRA and lacks robust state pre-

emption. Several of our delegation are closely involved including Senator Cantwell, Congresswoman DelBene and Congresswoman and incoming committee of jurisdiction chair, McMorris-Rodgers. *WR is carefully monitoring all activity both in Washington and at the national level. We are active participants with the National Retail Federation Data Privacy Workgroup – charged with navigating the federal bills. If a state general data privacy bill is introduced we will engage appropriately including re-activating our WR Data Privacy Workgroup and potentially our privacy attorney expert.*

## **8. Paid Family and Medical Leave (PFML)**

In 2022 the Employment Security Department (ESD) alerted the Legislature that the PFML trust fund would be in a deficit position by the end of 2022. The Legislature responded by appropriating about \$300 million to “backfill” the program and authorized actuarial studies and a task force to bring forward recommendations. Premium rates on taxable wages were 0.4% in 2021 and increased to 0.6% in 2022. In accordance with the actuarial study, premiums will increase to 0.8% in 2023 to regain solvency. The Legislature will have numerous proposals to reform benefit eligibility and levels in the 2023 session.

*WR was part of the original negotiating team on behalf of the employer community. We will work to (1) maintain the division in premiums between employers and employees; (2) avoid adding new costs and benefits to the program. WR will meet with ESD, key legislators, and stakeholders to ensure the security of the program now and in the future.*

## **9. Margins Tax – vs – Business and Occupation Tax**

The Washington State Tax Structure Workgroup has been meeting for several years and one of their likely proposals to the legislature is replacing the Business and Occupation Tax with a Texas style Margins Tax. While the B and O Tax has long been loathed as unfair based on gross receipts without deductions, the one saving benefit is that it is very easy to calculate and understand. A Texas style Margins Tax would likely allow deductions for costs of goods sold and/or payroll – both of which are significant in the retail industry. So, a margins tax might benefit retailers in Washington depending on what the rate is set at. While legislators on the workgroup have said the intention is to be revenue neutral and make the tax system more equitable, there will undoubtedly be winners and losers. This legislation will pit industry against other industries.

*WR and its members have already met directly with the chair and lead members of the workgroup for several years. We will carefully review the draft proposal and disseminate through our membership for a careful analysis by our tax experts. Once a position is decided we will engage appropriately at the highest legislative and executive levels. A call to action potentially will be deployed if warranted.*

## **10. Warehouse Safety**

In 2022 the Senate considered adding new requirements on warehouse employee meals, rest break, safety, and quotas. The House Labor Committee held a work session on the issue in September 2022. The Washington Retail Association has repeatedly pointed out that the bill is unnecessary because an employer cannot impose work conditions, through quotas or any other requirements, that interfere with employee’s basic rest, meal, safety, and anti-retaliation rights.

*WR will testify in opposition to this measure and meet with the new chair of the House Labor Committee and the current chair of the Senate Labor Committee. We will coordinate member engagement and advocacy.*

## **11. Psychologists as Attending Providers**

The Department of Labor and Industries (L&I) is planning to re-introduce legislation that could authorize psychologists to be attending providers in workers compensation claims. The Legislature already authorized claims for post-traumatic stress syndrome for first responder. L&I's intent is to increase access to mental health care under those circumstances, however WR fears the bill could be broadened to include all workers or risk classes.

*WR will work to ensure that new authority for psychologists is limited to mental health care for first responders suffering from post-traumatic stress syndrome. We have already met with LNI and key employer stakeholders to build a coalition to deploy our legislative strategy.*