

# SENATE BILL REPORT

## SHB 2938

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As of February 22, 2016

**Title:** An act relating to encouraging participation in Washington trade conventions by modifying tax provisions related to establishing substantial nexus.

**Brief Description:** Encouraging participation in Washington trade conventions by modifying tax provisions related to establishing substantial nexus.

**Sponsors:** House Committee on Finance (originally sponsored by Representatives Orcutt and Walkinshaw).

**Brief History:** Passed House: 2/15/16, 96-1.

**Committee Activity:** Trade & Economic Development: 2/24/16.

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### SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

**Staff:** Jeff Olsen (786-7428)

**Background:** The commerce clause of the United States Constitution prohibits states from imposing sales or use tax collection obligations on out-of-state businesses unless the business has a substantial nexus with the taxing state. Under the United States Supreme Court's decision in *Quill Corp. v. North Dakota* (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state. Physical presence can be established through a taxpayer's own activities in the taxing state, or indirectly, through independent contractors, agents, or other representatives that act on behalf of the taxpayer in the taxing state.

In 2010 Washington adopted an economic presence test for nexus with respect to service-related activities. For these classifications, a business does not need to have a physical presence to have nexus and be subject to Washington tax. Economic nexus is established by having sales in excess of \$267,000 to Washington customers. The threshold is adjusted from year to year.

Until 2015 Washington could not impose the wholesaling Business and Occupation Tax (B&O) on sales of goods that originated outside the state unless the goods were:

- received by the purchaser in this state; and
- the out-of-state seller had physical presence nexus (i.e., the same physical nexus requirement that is used for sales tax purposes).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

In 2015 Engrossed Second Substitute Bill 6138 extended economic nexus standards to out-of-state businesses with no physical presence in Washington, but who make wholesale sales into Washington. If these businesses have more than \$267,000 of receipts from this state, then economic nexus standards with Washington will apply and these businesses will be required to remit the wholesaling B&O tax at the rate of 0.484 percent.

Engrossed Second Substitute Bill 6138 also modified nexus standards to include remote sellers who:

- enter into agreements with Washington residents who, for a commission or other consideration, refer potential customers to the remote seller such as by a link on a website; and
- generate more than \$10,000 in gross receipts during the prior calendar year under such agreements from sales into this state.

**Summary of Bill:** For purposes of B&O taxes and sales and use taxes, the DOR may not consider the attendance of one or more representatives of a business at a single trade convention per year in Washington in determining if the person is physically present in this state for the purposes of establishing substantial nexus with this state. This exclusion does not apply if the business makes retail sales at the trade convention.

A tax preference performance statement is included that specifies the bill's public policy objective is to encourage participation in Washington trade conventions. By the end of 2025, the Joint Legislative Audit and Review Committee (JLARC) is required to evaluate whether the number of businesses participating in trade conventions has increased above 2015 levels.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on July 1, 2016.