2019 SESSION

19-0566
10/03

HOUSE BILL   *416*

AN ACT   relative to the collection of private customer information of New Hampshire retailers by foreign states.

SPONSORS: Rep. Cordelli, Carr. 4; Rep. Hinch, Hills. 21; Rep. McGuire, Merr. 29; Rep. L. Ober, Hills. 37; Rep. Weyler, Rock. 13; Rep. Baldasaro, Rock. 5; Sen. Bradley, Dist 3

COMMITTEE: Ways and Means

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ANALYSIS

This bill clarifies New Hampshire's prohibition on requiring New Hampshire retailers from providing customer information for use in determining sales and use tax liability in a foreign state.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [in brackets and struckthrough.]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT   relative to the collection of private customer information of New Hampshire retailers by foreign states.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1   1 Findings and Purpose. The general court finds that:

2   I. On June 21, 2018, the United States Supreme Court issued its decision in *South Dakota*

3 *v. Wayfair, Inc., et al.* By a 5-4 majority, the Court overturned over 50 years of precedent that a

4 retail seller must be physically present in a state before the state could impose its sales and use tax

5 collection requirements. This decision potentially exposes remote retail businesses, including those

6 located within New Hampshire, to assertions by thousands of foreign taxing jurisdictions of various

7 collection and remission requirements on remote retail businesses that were previously protected by

8 the longstanding physical presence rule or to requiring retail businesses to provide them with

9 private customer information.

10   II. New Hampshire has a compelling governmental interest in protecting the privacy of an

11 individual's personal information that may be used to facilitate the sale of goods and services within

12 this state.

13   III. New Hampshire also has a strong governmental interest in protecting its remote sellers

14 and the private, personal information they possess from consumers from persons who may attempt

15 to steal money or sensitive information from remote sellers by impersonating a foreign taxing

16 jurisdiction or foreign taxing authority.

17   2 Qualifying Foreign Sales and Use Tax Statute; Prohibition. Amend RSA 78-D:2, II to read as

18 follows:

19   II. No retailer shall provide to a foreign state any private customer information for use in

20 the determination of sales or use tax liability of the customer in the foreign state or for use in the

21 determination, collection, and remittance of sales or use tax by the retailer [with respect to a New

22 Hampshire retail purchase transaction, unless the foreign state has first provided to the retailer

23 written confirmation that the foreign state provided prior written notice of its intent to collect a use

24 tax on such retail transaction to the commissioner of revenue administration, and no later than 60

25 days following the commissioner's receipt of such notice by the foreign state, the department of

26 justice has submitted to the commissioner its determination that the foreign state's sales and use

27 tax statutes:

28   (a) Impose upon its residents a requirement to individually pay sales or use tax on the

29 use, storage, or consumption of goods or services purchased in any other state;

30   (b) Specifically identify the goods and services to which the use tax applies and

1   exemptions to the use tax;

2   (c) Require that the retailer or its affiliates have adequate physical presence to establish

3   nexus with the foreign state for the imposition of an obligation of the retailer to determine, collect,

4   and remit a sales and use tax with respect to purchases by foreign state residents;

5   (d) Require every resident to submit annually to the foreign state a statement (i)

6   identifying each and every item subject to such foreign state's sales and use tax purchased outside

7   such foreign state for storage, use or consumption within such foreign state during an applicable

8   period, (ii) stating the value of such items purchased, and (iii) including a statement under penalties

9   of perjury that such resident complied with the requirement stated in this chapter;

10   (e) Require its residents or the foreign state to provide the retailer at the time of a New

11   Hampshire retail purchase transaction with information establishing whether or not the goods or

12   services purchased in the state are intended to be used, stored, or consumed within the foreign

13   state, and provide that any information supplied by its residents is irrefutably presumed to be

14   correct and complete, and that the retailer may rely on such information regardless of the accuracy

15   or completeness of such information;

16   (f) Require that any agency of such foreign state responsible for enforcing such foreign

17   state's sales or use tax shall annually audit, investigate, or examine not less than 10 percent of the

18   total use tax returns filed by residents of such foreign state with respect to each year;

19   (g) Require that any agency of such foreign state responsible for enforcing such foreign

20   state's use tax shall conduct its audit, investigation, or examination practices with respect to

21   residents' use tax returns in a manner that ensures that such practices are applied equally

22   regardless of the state in which the sales transaction occurs, and that requires any such agency to

23   file a public report annually demonstrating compliance with this nondiscrimination requirement;

24   (h) Create an irrebutable presumption that, in the absence of voluntary information by

25   the resident, the goods or services purchased are intended to be used in the state in which they are

26   purchased; and

27   (i) Explicitly impose use tax collection requirements on out-of-state retailers with

28   respect to retail purchase transactions that are completed in those other states].

29   3 Effective Date. This act shall take effect upon its passage.