SENATE BILL 242-FN

AN ACT requiring notice and approval of certain actions to commence audits of collection liabilities arising under certain sales and use tax statutes and prohibiting New Hampshire remote sellers from disclosing private customer information to foreign taxing authorities in connection with the collection of certain sales and use taxes.


COMMITTEE: Ways and Means

ANALYSIS

This bill prohibits foreign taxing jurisdictions from requesting information from, conducting examinations of, or imposing sales and use tax collection obligations on sellers in New Hampshire, unless the foreign taxing jurisdiction registers with and provides notice to the New Hampshire department of justice. This bill also prohibits sellers in New Hampshire from providing private customer information to any foreign taxing authority for purposes of determining liability for collection of certain sales or use taxes unless the seller has provided a written notice of the request for such information to the department of justice. This bill allows sellers to comply with any directive of a foreign taxing authority, while preserving the seller’s rights under the statute, if the seller determines that such compliance is in the seller’s best interest. The bill also establishes a commission to study ways to protect the New Hampshire advantage for New Hampshire businesses as a result of the uncertainty created from the United States Supreme Court decision in South Dakota v. Wayfair, which changed the long held view of the physical presence rule.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT requiring notice and approval of certain actions to commence audits of collection liabilities arising under certain sales and use tax statutes and prohibiting New Hampshire remote sellers from disclosing private customer information to foreign taxing authorities in connection with the collection of certain sales and use taxes.

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

1 New Chapter; Protection of Private Customer Information and Rights of Remote Sellers in Connection With Certain Foreign Sales and Use Taxes. Amend RSA by inserting after chapter 78-D the following new chapter:

CHAPTER 78-E
PROTECTION OF PRIVATE CUSTOMER INFORMATION AND RIGHTS OF REMOTE SELLERS IN CONNECTION WITH CERTAIN FOREIGN SALES AND USE TAXES

78-E:1 Findings and Purpose. The general court finds that:

I. Over 10,000 state and local jurisdictions within the United States impose sales and use taxes. Many of these jurisdictions have their own laws, regulations, policies and standards for determining sales and use tax obligations.

II. The state of New Hampshire does not impose a sales tax on customers making purchases of goods and services in New Hampshire, nor on goods and services purchased by its residents out of state for use, storage, or consumption in New Hampshire. New Hampshire law and policy does not require New Hampshire businesses to suffer the cost and burdens of establishing administrative systems to comply with the collection and remission provisions of a traditional sales and use tax law.

III. The state of New Hampshire is a year-round destination visited by millions of persons from various states that impose sales and use tax on their own residents. Complying with the complexities of these multiple and various sales and use tax laws and regulations would impose very costly burdens on all affected retail businesses. These burdens would be especially difficult to shoulder for smaller businesses that seek to expand their customer base by using old and new technologies such as traditional mail and communications using the Internet.

IV. On June 21, 2018, the United States Supreme Court issued its decision in South Dakota v. Wayfair, Inc., et al. By a 5-4 majority, the Court overturned over 50 years of precedent that a retail seller must be physically present in a state before the state could impose its sales and use tax collection requirements. This decision potentially exposes remote retail businesses, including those located within New Hampshire, to assertions by thousands of foreign taxing jurisdictions of various collection and remission requirements on remote retail businesses that were previously protected by
the longstanding physical presence rule.

V. The majority decision in *Wayfair* did not finally adjudicate that the assertion of sales tax collection liability against all remote retail businesses was constitutional and valid, but rather remanded the case for further proceedings. For example, the majority decision states: “The question remains whether some other principle in the Court’s Commerce Clause doctrine might invalidate the [South Dakota] Act.”

VI. New Hampshire’s decision not to enact a traditional broad-based sales and use tax law reflects a compelling governmental interest to encourage the establishment and expansion of small and “micro-businesses” that represent a particularly valuable segment of New Hampshire’s economy and comprise a majority of employers in the state. The high cost and practical difficulty of compliance with sales and use tax requirements would disproportionately and negatively impact these businesses and discourage other aspiring entrepreneurs from starting new businesses in New Hampshire.

VII. New Hampshire has a compelling governmental interest in protecting the privacy of an individual’s personal information that may be used to facilitate the sale of goods and services within this state.

VIII. New Hampshire also has a strong governmental interest in protecting its remote sellers and the private, personal information they possess from consumers from persons who may attempt to steal money or sensitive information from remote sellers by impersonating a foreign taxing jurisdiction or foreign taxing authority.

IX. Any foreign taxing jurisdiction that attempts to require a remote out-of-state business to collect a sales or use tax imposed on persons of such jurisdiction without having its own use tax or first seeking actively to enforce its use tax against its own persons is unfairly avoiding taxing its own persons while effectively imposing a direct tax on the remote out-of-state business in a manner that unlawfully discriminates against such out-of-state transactions in violation of the Commerce Clause of the United States Constitution.

X. The purpose of this chapter is to (a) ensure that no foreign taxing jurisdiction or authority imposes or attempts to impose sales and use tax collection obligations on a New Hampshire remote seller in a manner that violates the United States or New Hampshire Constitution and (b) protect New Hampshire remote sellers and the private, personal information they possess from consumers from persons who may attempt to steal money or sensitive information from remote sellers by impersonating a foreign taxing jurisdiction or foreign taxing authority.

78-E:2 Definitions. In this chapter:

I. “Foreign taxing authority” means an agency or other instrumentality of, or a person acting on behalf of, a foreign taxing jurisdiction that is authorized to administer, audit and enforce sales or use tax laws of the foreign taxing jurisdiction.

II. “Foreign taxing jurisdiction” means a state, territory, the District of Columbia, a local government, political subdivision, or any other entity which assesses retail sales tax or use tax on
its persons with respect to the use, storage, and consumption of goods and services.

III. “New Hampshire remote purchase transaction” means any sale of services or goods, or
both, for any purpose other than resale in the regular course of business where the customer takes
possession of the services or goods in a foreign taxing jurisdiction.

IV. (a) “New Hampshire remote seller” means any individual, trust, estate, fiduciary,
partnership, corporation, or other legal entity, including a retailer as defined in RSA 78-D, located
within the state, that engages in New Hampshire remote purchase transactions, and that does not
have a physical presence within the foreign taxing jurisdiction.

(b) For purposes of this paragraph, a person has a “physical presence” in a foreign
taxing jurisdiction only if such person’s business activities within the jurisdiction include any of the
following:

1. Maintains its commercial or legal domicile in the foreign taxing jurisdiction;
2. Owns, holds a leasehold interest in, or maintains real property for business
purposes such as a retail store, warehouse, distribution center, manufacturing operation, assembly
facility, or any other facility in the foreign taxing jurisdiction;
3. Leases or owns tangible personal property for business purposes (other than
computer software) of more than de minimis value in the foreign taxing jurisdiction;
4. Has one or more employees based in the foreign taxing jurisdiction or has
independent sales persons in the foreign taxing jurisdiction actively soliciting sales;
5. For purposes of this paragraph, the term “physical presence” shall not include:
   1. Entering into an agreement under which a person, for a commission or other
      consideration, directly or indirectly refers potential purchasers to a person outside the foreign
taxing jurisdiction, whether by an Internet-based link or platform, Internet Website or otherwise;
   2. Any presence in a foreign taxing jurisdiction, as described in this paragraph, for
      less than 15 days in a taxable year (or a greater number of days if provided by foreign taxing
      jurisdiction law);
   3. Product placement, setup, or other services offered in connection with delivery of
      products by an interstate or in-state carrier or other service provider;
   4. Internet advertising services provided by in-state residents which are not
      exclusively directed towards, or do not solicit exclusively, in-state customers;
   5. Ownership by a person outside the foreign taxing jurisdiction of an interest in a
      limited liability company or similar entity organized or with a physical presence in the foreign
taxing jurisdiction;
   6. The furnishing of information to customers or affiliates in such foreign taxing
      jurisdiction, or the coverage of events or other gathering of information in such foreign taxing
      jurisdiction by such person, or his or her representative, which information is used or disseminated
      from a point outside the foreign taxing jurisdiction; or
6. Business activities directly relating to such person's potential or actual purchase
of goods or services within the foreign taxing jurisdiction if the final decision to purchase is made
outside the foreign taxing jurisdiction.

(8) The placement of an order by a customer from a foreign taxing jurisdiction by
any means.

V. “Person” means any individual, trust, estate, fiduciary, partnership, corporation, or any
state, territory, the District of Columbia, a local government or political subdivision, or any other
legal entity.

VI. “Private customer transaction information” means, with respect to any New Hampshire
remote seller, any documents, records, and other information possessed or maintained by a New
Hampshire remote seller in any form which contain information concerning the name, address, or
telephone number of any customer, or any other information related to a customer such as credit
card, debit card, or checks used to complete a customer transaction, a description of the goods or
service purchased, the identity of any person for whom the goods or services were purchased, and
the identification of the point of transfer of any goods or services that comprise a transaction of
sales used for the calculation of sales or use tax liability.

VII. “Streamlined Sales and Use Tax Agreement” means the Streamlined Sales and Use
Tax Agreement as adopted and amended from time to time by the Streamlined Sales Tax Governing
Board.

VIII. “Written notice” means a notice in writing, by physical letter, addressed and
physically mailed to the New Hampshire department of justice. No other form of notice shall be
deemed to meet the requirements of this chapter.

78-E:3 Registration.

I. A foreign taxing authority shall register with the department of justice at least 120 days
prior to taking any action to determine or impose sales or use tax liability against a New Hampshire
remote seller.

II. The registration required in paragraph I shall be accompanied by a fee determined by
the department of justice to be sufficient to cover the reasonable costs incurred by the department of
justice in completing the administrative duties required by RSA 78-E:5 and RSA 78-E:6. All fees
collected by the department of justice under this section shall be for the exclusive use of the
department of justice in complying with the requirements of this chapter. The department of justice
shall establish procedures for a foreign taxing authority’s registration and the establishment of
these and any other necessary procedures or policies under this chapter, together with the
determination of a registration fee, in rules adopted by the attorney general under RSA 541-A.
Such rules may be adopted through emergency rulemaking under RSA 541-A:18.

78-E:4 Prohibitions; Notice.

I. No foreign taxing authority shall request from a New Hampshire remote seller any
private customer transaction information for use in the determination of sales or use tax liability of
the customer or for use in the determination, collection, and remittance of sales or use tax by the
seller with respect to a customer transaction, nor shall a foreign taxing authority proceed with
conducting such an examination or imposing sales and use tax collection obligations, unless the
foreign taxing authority has first registered with the department of justice pursuant to RSA 78-E:3
and provided the department of justice with written notice of its intent to request such information
or conduct such an examination from a particular New Hampshire remote seller and 120 days from
the date of such written notice have elapsed. The written notice regarding a particular New
Hampshire remote seller shall state that it is a “RSA 78-E Notice,” shall provide the full legal name
and address of the sellers, shall contain the reasons for the request or examination, shall cite the
legal authorities that authorize imposition of a tax collection obligation on the seller, and shall
explain why the seller is subject to those laws. A foreign taxing authority may not commence any
action to determine or impose sales or use tax liability against a New Hampshire remote seller
unless and until the department of justice has determined, pursuant to RSA 78-E:5, that the laws of
the foreign taxing jurisdiction meet the requirements of the United States and New Hampshire
Constitutions and, if they do, that they can be applied to the New Hampshire remote seller or
sellers based on the reasons provided in the required written notice.

II.(a) A New Hampshire remote seller should provide to the department of justice notice of
a foreign taxing authority’s first request for any private customer transaction information for use in
the determination of sales or use tax liability of the customer or for use in the determination,
collection, and remittance of sales or use tax by the seller with respect to a customer transaction, to
insure that the foreign taxing authority is registered under RSA 78-E:3.

   (b) Notwithstanding the provisions of subparagraph (a), a New Hampshire remote seller
may elect immediate compliance with a request or directive of a foreign taxing authority if the seller
determines that such compliance is in its best interests. If a New Hampshire remote seller elects
immediate compliance, that seller should remit notice to the department of justice after such
compliance to insure that the foreign taxing authority is registered under RSA 78-E:3. Immediate
compliance by a New Hampshire remote seller shall not relieve a foreign taxing authority’s
obligation to comply with the registration and notice requirements contained in RSA 78-E:3 and
RSA 78-E:4.

   (c) A New Hampshire remote seller may satisfy the notice requirement under this
paragraph through email, phone call, letter, or other method established and specified by the
department of justice.

III. A New Hampshire remote seller who elects immediate compliance under paragraph II
of this section may do so under protest while reserving all rights provided under this chapter, the
United States or New Hampshire Constitutions, or any other provision of law.

IV. No person shall impersonate or attempt to impersonate a foreign taxing jurisdiction,
foreign taxing authority, or any other government agency for any reason and, any person who does
shall be deemed to have committed an unfair or deceptive act or practice within the meaning of RSA
358-A:2. Any right, remedy, or power set forth in RSA 358-A, including those set forth in RSA 358-
A:4, II, may be used to enforce the provisions of this section. The exemptions provided for in RSA 358-A:3, I shall not apply to this paragraph.

78-E:5 Determination of Minimum Protections.

I. Upon registration of a foreign taxing authority and receipt of a written notice of a foreign taxing authority’s intent to request private customer information from, conduct an examination of, or impose sales and use tax collection obligations on one or more New Hampshire remote sellers, the department of justice shall determine within 120 days of receipt of such notice whether the laws of the foreign taxing jurisdiction meet the requirements of the United States and New Hampshire Constitutions and, if they do, whether they can be applied to the New Hampshire remote seller or sellers based on the reasons provided in the required written notice. In conducting the review required by this paragraph, the department of justice shall consider all laws and regulations existing as of the time of the review, and all applicable principles of the United States and New Hampshire Constitutions, including but not limited to: whether or not the foreign taxing jurisdiction’s laws provide a satisfactory safe harbor for New Hampshire remote sellers that conduct only limited business within the jurisdiction; whether or not the laws ensure that no obligation to remit sales or use tax may be applied retroactively; whether or not the foreign taxing jurisdiction has adopted the Streamlined Sales and Use Tax Agreement or otherwise adopted laws that are substantially compliant with each of the requirements set forth in the Streamlined Sales and Use Tax Agreement; whether or not the foreign taxing jurisdiction’s laws provide for deduction, reimbursement, or exemption for the cost of compliance of the New Hampshire remote seller in collecting, accounting, and remitting the foreign taxing jurisdiction’s sales or use taxes; whether or not the laws require substantial compliance and enforcement of the entirety of such laws, including whether or not the laws include a use tax and the requirement that persons report and pay use tax liability; whether or not the foreign taxing jurisdiction or authority is actively seeking to enforce its own requirement that persons report and pay use tax liability; and whether or not the application of such laws in practice are fairly related to the tangible benefits provided by such state to the New Hampshire remote seller.

II. Upon completion of the determination made pursuant to paragraph I, the department of justice shall send a letter to the New Hampshire remote seller and the foreign taxing authority informing them of what, if any, action the department of justice may take under this chapter. A foreign taxing authority shall comply with any applicable New Hampshire laws or rules in the event the foreign taxing authority is permitted to proceed with determining or imposing sales or use tax liability against a New Hampshire remote seller. Any determination made by the department of justice shall not be read to preclude a New Hampshire remote seller from bringing its own action under RSA 78-E:6, VII, or upon any other legal basis, and nothing in this chapter shall be construed to require or permit the department of justice to act as legal counsel or provide legal advice to a New Hampshire remote seller or any other person to whom the department of justice is not otherwise authorized by law to provide legal counsel.
78-E:6 Administration; Enforcement.

I. Whenever the department of justice has reason to believe that any provision of RSA 78-E:3 or RSA 78-E:4 has been, is being or is about to be violated by any person, including a foreign taxing authority or foreign taxing jurisdiction, the department of justice may bring an action in the name of the state against such person to restrain by temporary, preliminary, or permanent injunction the prohibited conduct and may petition the court for an order of restitution of money or property to any person or class of persons injured thereby. The department of justice may bring a declaratory judgment action against any foreign taxing authority or jurisdiction to establish that the proposed assertion of an obligation to remit sales tax by one or more New Hampshire remote sellers violates applicable state or federal law. The action shall be brought in the superior court of Merrimack County or any other court of competent jurisdiction. Any such action shall be deemed a civil action within the meaning of RSA 491:7. The superior court shall act on such actions as expeditiously as possible and such actions shall proceed with priority over any other action presenting the same questions in any other venue. Nothing in this chapter shall be construed as creating a cause of action against the state of New Hampshire or any of its officials or employees.

II. The department of justice shall have the power to subpoena and subpoena duces tecum in the name of the department for the purposes of this chapter. Witnesses summoned by the department of justice shall be paid the same fee and mileage that are paid witnesses in the superior court of the state. A subpoena or subpoena duces tecum of the department of justice may be served by any person designated in the subpoena or subpoena duces tecum to serve it. The department of justice may administer an oath or affirmation to any person and conduct hearings in aid of any investigation. The department of justice may also require any person to make a statement in writing under oath concerning any matter under investigation provided that the due date for receipt of such a statement shall be no sooner than 10 calendar days after receipt of such demand. Any testimony or statement given by any person so sworn shall be subject to the pains and penalties of perjury.

III. Without limiting the authority granted in paragraph IV, whenever the department of justice believes any person to be or to have been in violation of this chapter, the department of justice may examine or cause to be examined for that purpose any books, records, papers, or other documentary materials, or may examine any person under oath and subject to the pains and penalties of perjury that the department of justice thinks may have knowledge of such violation. For such examination, the department of justice may require the person to appear at such person's place of residence, place of business, or any place in this state.

IV.(a) The department of justice shall serve notice of the time, place, and cause of said examination at least 10 days prior to the date of the examination. Service of any such notice may be made by:

(1) Delivering a duly executed copy of the notice to the person to be served or an agent authorized by law to receive service of process;
(2) Delivering a duly executed copy of the notice to the person's principal place of business in this state, if any; or

(3) Registered mail, return receipt requested, to the person to be served, or an agent authorized by law to receive service of process. These limitations do not apply to a written statement required under paragraph II which can be required by a reasonable notice thereof.

(b) Such notice need not be given if the department of justice has reason to believe that any potential recipient of such notice may move, conceal, alter, or destroy, or cause to be moved, concealed, altered, or destroyed, any documents to which it refers, or move or conceal or cause to be moved or concealed any person whose testimony is sought pursuant thereto. In any of such cases, the notice served by the department of justice pursuant to this paragraph may require the immediate production or examination of any document or person therein referred to.

V. At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the superior court may, upon motion for good cause shown, extend said reporting date, or modify or set aside the demand.

VI. Any information, testimony, or documentary material obtained under the authority of this section shall be used only for one or more of the following purposes:

(a) In connection with investigations instituted under this chapter or for the prosecution of legal proceedings instituted under this chapter or any other provision of New Hampshire law; and

(b) In connection with any formal or informal program of or request for information exchange between the department of justice and any other local, state, or federal law enforcement agency. However, no information or material obtained or used pursuant to the authority of this section shall be released publicly by any governmental agency except in connection with the prosecution of legal proceedings instituted under this chapter or any other provision of New Hampshire law. In addition, any information, testimony, or documentary material obtained or used pursuant to a protective order shall not be exchanged or released, as provided herein, publicly except in compliance with such protective order.

VII. A New Hampshire remote seller who is subject to collection, audit, or examination by a foreign taxing authority may file an action in the superior court of Merrimack County or any other court of competent jurisdiction seeking immediate, emergency relief to enjoin any collection, audit, or examination attempt that is occurring or will occur in violation of RSA 78-E:3 or RSA 78-E:4 or to enforce any other rights provided by this chapter. Any New Hampshire remote seller who prevails in such an action shall be entitled to recover any damages suffered as a result of the violation of RSA 78-E:3 or RSA 78-E:4 and reasonable attorney fees and costs incurred in maintaining the action. Nothing in this paragraph is intended to limit a New Hampshire remote seller's judicial recourse to enforcement of this chapter.

78-E:7 Jurisdiction. A foreign taxing authority’s registration with the department of justice under RSA 78-E:3 shall constitute consent to the exclusive jurisdiction of New Hampshire state
courts for any and all claims, cases, or controversies related to any action brought under the provisions of this chapter. New Hampshire state courts shall have jurisdiction over any claim, case, or controversy brought under the provisions of this chapter even if a foreign taxing authority has failed to register with the department of justice pursuant to RSA 78-E:3.

78-E:8 Waiver of Sovereign Immunity. A foreign taxing authority’s registration with the department of justice under RSA 78-E:3 shall constitute an affirmative waiver of sovereign immunity for any and all claims, cases, or controversies related to an action brought under the provisions of this chapter.

78-E:9 Reimbursement for Sales and Use Tax Collection. Notwithstanding the provisions of this chapter, if a New Hampshire remote seller is determined to be obligated to collect and remit sales or use tax on behalf of a foreign taxing jurisdiction or foreign taxing authority, then that New Hampshire remote seller shall be entitled to recover or deduct from any taxes collected on behalf of such foreign taxing jurisdiction or foreign taxing authority any costs, including any initial set up costs, incurred in the collection and remission of sales and use taxes to that jurisdiction or authority.

78-E:10 Supplement to RSA 78-D. The protections for New Hampshire remote sellers provided by this chapter are intended to supplement, and not replace or supplant, protections provided to retailers under and as that term is defined in RSA 78-D. Therefore, in any situation where a provision of this chapter conflicts with the provisions of RSA 78-D, the provision that provides greater protection from sales and use tax collection liabilities to a New Hampshire remote seller or retailer, as that term is defined in RSA 78-D, shall control.

78-E:11 Commission Established. There shall be a commission to study ways to protect the New Hampshire advantage for New Hampshire businesses as a result of the uncertainty created from the United States Supreme Court decision in *South Dakota v. Wayfair*, which changed the long held view of the physical presence rule.

I. The commission shall be composed of 13 members, as follows:

(a) The attorney general, or designee.
(b) The commissioner of the department of revenue administration, or designee.
(c) The commissioner of the department of business and economic affairs, or designee.
(d) A member of the Business and Industry Association of New Hampshire, appointed by the governor.
(e) A member of the New Hampshire Retail Association, appointed by the president of the senate.
(f) A New Hampshire merchant, appointed by the speaker of the house of representatives.
(g) A New Hampshire remote seller, appointed by the president of the senate.
(h) A tax attorney or tax accountant, appointed by the speaker of the house of representatives.
(i) Three members of the house of representatives, one of whom shall be from the minority party, appointed by the speaker of the house of representatives.

(j) Two members of the senate, one of whom shall be from the minority party, appointed by the president of the senate.

II. The duties of commission shall include, but are not limited to:

(a) Monitoring subsequent United States Supreme Court decisions relating to the issues raised in *South Dakota v. Wayfair, Inc.*, and any other relevant court decisions that may impact New Hampshire businesses’ obligations to collect sales and use taxes on behalf of foreign taxing jurisdictions or authorities.

(b) Monitoring attempts by other states to impose sales and use tax collection obligations on New Hampshire remote sellers and remote service providers.

(c) Studying the creation of a private right of action for violations of privacy in transactions associated with any attempts to impose sales and use tax collection obligations on New Hampshire remote sellers.

(d) Reviewing court cases regarding the Full Faith and Credit Clause of the United States Constitution to determine how these cases impact New Hampshire’s ability to protect New Hampshire remote sellers from sales and use tax collection obligations, including but not limited to the following decisions:


(e) Addressing concerns related to costs incurred by New Hampshire businesses in the collection of sales and use taxes on behalf of a foreign taxing jurisdiction or authority.

III. The commission may solicit information from any person or entity the commission deems relevant to its duties.

IV. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 30 days of the effective date of this section. Seven members of the commission shall constitute a quorum.

V. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library, in an initial report on or before November 1, 2019, an interim report on or before March 1, 2020, and a final report on or before November 1, 2020.

78-E:12 Severability. If any provision of this chapter or the application thereof to any agency, person, or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications,
and to this end the provisions of this chapter are severable.

2 Repeal of Commission. RSA 78-E:11, relative to the establishment of a commission, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect November 1, 2019.

II. The remainder of this act shall take effect upon its passage.
AN ACT requiring notice and approval of certain actions to commence audits of collection liabilities arising under certain sales and use tax statutes and prohibiting New Hampshire remote sellers from disclosing private customer information to foreign taxing authorities in connection with the collection of certain sales and use taxes.

FISCAL IMPACT:  [X] State  [ ] County  [ ] Local  [ ] None

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METHODOLOGY:

The Department of Justice states this bill will prohibit foreign taxing jurisdictions from imposing sales and use tax collection obligations on New Hampshire sellers unless the foreign taxing jurisdiction registers with and provides notice to the Department. The bill prohibits sellers in New Hampshire from providing private customer information to any foreign taxing authority for the purpose of determining liability for collection of certain sales or use taxes unless the seller has provided notice to the Department. Foreign taxing authorities shall register with the Department at least 120 days prior to taking action to determine or impose sales or use tax liability against a New Hampshire seller and may not commence any action to determine or impose sales or use tax liability against a New Hampshire seller unless and until the Department has determined the laws of the foreign taxing jurisdiction meet the requirements of the United States and New Hampshire Constitutions.

This bill also states that whenever the Department has reason to believe that any provision of RSA 78-E:3 or RSA 78-E:4 have been violated, the Department may bring a declaratory judgment action against any foreign taxing authority or jurisdiction to establish that the proposed assertion of an obligation to remit sales tax by one or more New Hampshire sellers violates applicable state or federal law. The Department shall also have subpoena powers.

The bill allows for the Department to establish a fee sufficient to cover the reasonable costs
incurred by the Department to complete the administrative duties associated with this bill. The Department assumes it would need to hire a full time attorney to handle the review and litigation of the cases and a full time administrative assistant to assist with the workload. The Department has provided the following salary, benefits and other expenses associated with the positions:

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The Judicial Branch states the potential fiscal impact of the proposed bill on the Branch is in actions under the consumer protection act (RSA 358-A), and in numerous provisions that allow actions in the superior court for injunctive relief, for restitution, or for declaratory judgment. The Branch has no information to estimate the potential volume of cases that could arise under the consumer protection act or the number of superior court actions to determine the fiscal impact. The Branch does know that consumer protection cases are hard fought and carry the potential for enforcement actions by the Attorney General, criminal prosecution, and private actions with the potential of up to treble in damages. The Branch states that the superior court actions would be classified as complex equity cases and does have information on the cost of processing these types of cases. However it should be noted that average case cost estimates for FY 2020 and FY 2021 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. The average complex equity case in the superior court will be $783 in FY 2020 and $788 in FY 2021. Appeals would increase the fiscal impact.

**AGENCIES CONTACTED:**

Department of Justice and Judicial Branch