



Via Electronic Mail

March 10, 2023

Room 902, Legislative Office Building
The Honorable Michelle Hinchey
New York State Senate
198 State St
Albany, NY 12247
hinchey@nysenate.gov

Re: Public Comment on S. 885

Dear Senator Hinchey:

On behalf of the Travel Technology Association (Travel Tech) and our members, I submit the following comments concerning S. 885. Travel Tech advocates for public policy that promotes market transparency and competition to encourage innovation and preserve consumer choice. We represent the leading innovators in travel technology, including global distribution systems, online travel agencies, and metasearch companies, travel management companies, and short-term rental platforms.

We are eager to work with you to create a legal framework for short-term rentals in New York State that balances the interests of municipalities, communities, and homeowners; however, several legal and practical problems with S. 885 require urgent attention.

S. 885 is inconsistent with federal law.

The proposed bill is inconsistent with the federal Communications Decency Act (47 U.S.C. § 230), which prohibits government from holding “computer service providers” liable for content posted by third parties. Section 230 of the federal Communications Decency Act (“CDA”) provides that “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹ The CDA further provides: “No cause of action may be brought and *no liability may be imposed* under any State or local law that is inconsistent with this section.”² Courts have held that this language preempts state and local governments from compelling online platforms to police third-

¹ 47 U.S.C. § 230(c)(1).

² 47 U.S.C. § 230(c)(1).

party speech.³ S. 885 would require that short-term rental platforms “verify the registration status of a short-term residential rental unit and that the unit is associated with the short-term rental host who registered the unit” prior to publishing a listing. It would impose fines on platforms for the listing of unregistered rental units. Thus, S. 885 would make short-term rental platforms liable for host-generated content (*i.e.*, rental listings), in violation of the Communications Decency Act.

S. 885 is also inconsistent with federal and state laws that protect individuals and businesses from unreasonable searches and seizures. S. 885 would require quarterly and monthly reporting by short-term rental platforms of transaction-level data and hosts’ personally identifiable information. Federal courts have stopped enforcement of laws that, like S. 885, required short-term rental platforms to provide reports of user information to government officials without any legal process. Portland, New York City, and Boston enacted laws requiring short-term rental platforms to submit monthly reports that included owner information, property addresses, and transactional information, *e.g.*, the number of days booked. Three federal courts enjoined enforcement of those laws, ruling that requiring hosting platforms to disclose their business records without any legal process violated the Fourth Amendment and/or were preempted by the federal Stored Communications Act.⁴

S. 885 would create a complex dual state and local regulatory scheme.

New York municipalities have broad authority to regulate local issues such as rental housing, and many have already adopted registration requirements that meet their unique needs. Our members work with municipalities to craft enforceable regulations and promote compliance. S. 885 would require that the New York Department of State create a new licensing scheme, gather information from countless state and local agencies, and enforce state and local laws. To the extent that state registration is desired, there are alternatives that do not position the state government as the arbiter of local issues. For example, the state of Florida has a statewide registration system for short-term rentals that provides real value for municipalities without overburdening platforms or homeowners.

The registration verification and data reporting requirements are unduly burdensome.

The registration verification and blanket data reporting requirements in S. 885 would place significant burdens on short-term rental platforms without providing much value for municipalities or individual New Yorkers. Both the platforms and the Department of State would

³ See, *e.g.*, *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009) (“removing content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove”); *Roca Labs, Inc. v. Consumer Opinion Corp.*, 140 F. Supp. 3d 1311, 1321, 1324 (M.D. Fla. 2015) (imposing liability for publishing “third parties’ posts” or for “refusal or failure to remove those posts” is “exactly the type of liability the CDA precludes”); *Backpage.com, LLC v. Hoffman*, 2013 WL 4502097, at*6 (D.N.J. Aug. 20, 2013) (statute “[ran] afoul of Section 230 by imposing liability” for “publishing” third-party ads).

⁴ *Airbnb, Inc. v. City of Boston*, Case No. 18-cv-12358-LTS (D. Mass. May 3, 2019); *HomeAway.com, Inc. v. City of New York*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019).

have to build expensive new systems to facilitate verification because ongoing manual verification simply is not feasible. Similarly, the scope, volume, and frequency of the required reporting would impose an undue burden on platforms. Our experience has shown that technological limitations make it difficult to provide this type of information for a large number of listings and transactions in a format that is *useful* to government. Furthermore, some of the information required cannot be provided with certainty (*e.g.*, the number of guests on a reservation might not equal the number of guests who actually occupied a rental unit) and is, therefore, of little value.

In light of these issues, we urge you to continue to consult with our members and other stakeholders before establishing any new short-term rental registration system and regulatory regime.

Thank you for your careful consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Laura Chadwick". The signature is written in a cursive, flowing style.

Laura K. Chadwick
President & CEO
Travel Technology Association

Cc: The Honorable Andrea Stewart-Cousins, Majority Leader, NY State Senate, and staff