



Honorable Andrew M. Cuomo  
Governor  
State of New York  
The Capitol  
Albany, New York 12224-0341

The Hon. Carl E. Heastie  
Speaker of the New York State Assembly  
The Capitol  
Albany, New York 12224-0341

The Hon. John J. Flanagan  
President Pro Tem  
The Capitol  
Albany, New York 12224-0341

September 6, 2016

Rob Chesnut  
General Counsel  
Airbnb, Inc.  
888 Brannan St.  
San Francisco, CA 94103

Dear Governor Cuomo, Speaker Heastie, and Senate President Flanagan,

I am the General Counsel of Airbnb, Inc., and I write to you today regarding Assembly Bill 8704-C (“the Bill”). The Bill was passed by the New York State Senate and Assembly on June 17, 2016, and, if signed into law, would amend the state’s Multiple Dwelling Law and New York City Administrative Code to make it “unlawful to advertise occupancy or use” of accommodations that cannot lawfully be rented out for less than 30-day periods. The Bill would subject parties to draconian fines that would lead to financial duress for the Airbnb New York host community. The proposed amendments are not only unwise, they violate both federal law and the United States Constitution.

As this unlawful Bill would impose real harm on our community, out of respect for the process and to inform your considerations, we want to formally notify the State that if it is signed into law by Governor Cuomo, Airbnb would have no choice but to immediately file suit against the State of New York and ask a court to declare the statute invalid and unenforceable as well as to award any damages and fees as appropriate. In making such a formal notification, Airbnb wants to be clear that it does so more in sadness than in anger, as the company believes that there are clearly available lawful alternative legislative options to meet legitimate policy objectives while still protecting the right of everyday New Yorkers to share the homes they live in order to help make ends meet. We are writing this letter now with the recognition that the Bill will likely be given serious review by all parties over the next four months and because we recognize that over the last six years, the state's leadership has earned a well-deserved reputation of working to put the interests of all the people of New York before any special interest when it comes to resolving challenging issues in ways that are legal, effective, and fair.

The Bill’s legal infirmities are clear, including but not limited to the following:



- (1) The Bill, which would ban “advertising” short-term rentals in any medium, does not differentiate between hosts who list their properties for short term rental and the platforms who carry those listings. To the extent the Bill were applied to online platforms such as Airbnb, it would directly conflict with, and be preempted by, Section 230 of the Communications Decency Act (“CDA”) which immunizes such platforms for any liability based on the content of advertisements posted by their users. Airbnb has already been forced to bring federal challenges to laws with similar defects, including recently in Anaheim, California, where the city attorney publicly acknowledged that the ordinance conflicted with federal law and announced that the city could not enforce it.
- (2) The Bill’s restrictions also conflict with the First Amendment. The ban on advertising is, at its core, a ban on speech, and such bans – even those on commercial speech – presumptively violate the First Amendment as they are not narrowly tailored to further a substantial governmental interest. Instead of an outright speech ban, which would chill the posting of listings, including for lawful rentals, the State can (and, indeed, does) enforce land use restrictions directly against those who may violate the law.
- (3) The Bill additionally violates the First Amendment and the Due Process Clause of the Fourteenth Amendment by imposing criminal penalties triggered by the publication of allegedly unlawful listings without any accompanying *mens rea* requirement. If passed, the Bill could impose strict civil and criminal penalties on both hosts and platforms who have no knowledge that a particular listing was unlawful, which depends on, among other things, whether the property advertised is a “Class A” multiple dwelling and whether the use at issue falls within any of the stated exceptions under the law.
- (4) Finally, by purporting to ban advertisements regardless of where they are published, the proposed law constitutes an impermissible attempt by the State to regulate publishing activities that may occur outside the State’s borders in violation of the Dormant Commerce Clause.

In addition to its legal infirmities, the Bill is simply bad for New Yorkers.

Over the past year, over 46,000 New Yorkers welcomed nearly 1.8 million visitors to every corner of the Empire State, generating billions of dollars in economic activity from the Bronx to Buffalo. In 2015 alone, the Airbnb community had the following impact in various corners of the state:

- **Capital Region:** 850 hosts welcomed 40,000 visitors, generating over \$6 million in host income.
- **Central New York:** 210 hosts welcomed 7,700 visitors, generating \$1 million in host income.
- **Finger Lakes:** 290 hosts welcomed over 10,000 visitors, generating \$1.3 million in host income.
- **Long Island:** 1,390 hosts welcomed over 47,000 visitors, generating over \$15 million in host income.
- **Mid-Hudson:** 1,910 hosts welcomed nearly 98,000 visitors, generating \$16.7 million in host income.
- **Mohawk Valley:** 180 hosts welcomed 6,600 visitors, generating \$870,000 in host income.



- **North Country:** 350 hosts welcomed 14,000 visitors, generating \$2 million in host income.
- **Southern Tier:** 650 hosts welcomed 29,100 visitors, generating \$4 million in host income.
- **Western New York:** 290 hosts welcomed 20,900 visitors, generating nearly \$2 million in host income.

The overwhelming majority of those engaged in home sharing in New York City are middle class New Yorkers looking to use the income to help make ends meet. Today, for the first time publicly, we are making electronically available – at <http://abnb.co/NYdata> – data that has been aggregated at the neighborhood level in New York City to help demonstrate the positive impact Airbnb is having on everyday people.

This data, along with other data that we have already released, shows that the vast majority of these hosts are everyday New Yorkers who occasionally rent their homes to make ends meet. 96% of hosts in New York City who share their entire home list a single property and the typical Airbnb host in New York earns \$5,300 annually from sharing their home an average of three days a month. That's real money for New York's Airbnb hosts. About three-quarters of hosts in New York City are low, moderate, or middle income households, and 76% of hosts in New York City indicate that they use the money earned sharing their space to stay in their homes.

Indeed, our host community mirrors the great mosaic that is the City of New York:

- Thousands of hosts reside in New York's most vulnerable communities, where home sharing has helped families in the city's census tracts with lowest average income increase their income by 13%. That could be the difference between making your rent or falling short.
- In New York City zip codes with the highest percentage of black New Yorkers, hosts earned \$43 million in 2015.
- Furthermore, 56% of hosts in New York are women, with senior women representing the fastest growing host demographic in the United States. Nationally, a typical senior host earns \$6,000 in one year, an amount that goes a long way when you're living on a fixed income.
- Last but not least, there are 21,000 Millennials who host in New York City alone, bringing in \$158 million in supplemental income to help pay down student debt, launch businesses, and afford the high cost of living across the five boroughs.

While the vast majority of our hosts share only their own home, we fully understand the challenge posed by the affordable housing crisis in New York City. That is why we support efforts to protect permanent housing by discouraging commercial operators from using our platform. Since November 1, 2015, Airbnb has removed over 2,570 New York City listings from the site that we believe pose the risk of taking permanent housing off the market, and we plan to continue to improve our tools and methods to remove truly harmful actors.

Unfortunately, the bill passed by the State Legislature does nothing to solve the affordability crisis in New York. In fact, by failing to distinguish between individual New Yorkers who occasionally share their own home and commercial operators, the Bill threatens to impose fines of up to \$7,500 which would be incredibly harmful to everyday New Yorkers struggling to make ends meet while doing little to deter commercial operators who have access to capital investments. To put these fines into perspective, this Bill's \$7,500 fine exceeds the current fine for driving while intoxicated or misdemeanor assault. These reasons and others have been



cited by many of the State's leading newspapers who have editorialized against the Bill, including *The Buffalo News*, *New York Daily News*, *New York Post* and *Newsday*.

There is a more sensible path forward.

Airbnb recognizes that in addition to its clear benefits, home sharing may also introduce new challenges, for both regulators and members of the community who are concerned about important issues like unlicensed commercial operators and their impact on housing, the impact on the character of neighborhoods, whether tourist taxes are being collected from those traveling on the platform, and the overall need for a common sense approach that addresses other specific issues important to New York. We understand these concerns and, as we have regularly made clear, we are ready and willing to work with lawmakers to help address these concerns.

To date, we have worked with more than 200 municipalities globally to collaborate on tax collection and partnered with governments across the world to adopt common sense solutions that embrace responsible home sharing, including London, Paris, Amsterdam, Milan, Chicago, Philadelphia, San Jose, Denver, Portland, Phoenix (via Arizona law), Dubai, and Havana to name a few. States all around New York, including Pennsylvania, Connecticut, Rhode Island, and Vermont, have worked to allow the collection of tourist taxes from guests.

In fact, mere days after the New York Bill was voted on by the Legislature, Chicago passed comprehensive reforms that distinguish between commercial users and hosts sharing their primary homes and included detailed policies on registration, tax collection, data sharing, public-private enforcement partnership, due process, and user privacy. Not only does Chicago's plan help Windy City residents stay in their communities, it also seeks to directly target the housing crisis by devoting tax revenue collected from short term rentals to combatting homelessness, an approach that Los Angeles also embraced by entering into a tourist tax collection agreement with Airbnb this July.

We believe that there is the opportunity to put in place a legislative approach that supports the State's desire to address commercial activity in New York City, and are fully prepared to work with the State to create an approach that would be legal and effective while still allowing everyday people to use the homes they live in to make supplemental income to help address economic inequality challenges.

Assembly Bill 8704-C, if signed, would be tantamount to a rejection of an effort to pursue a common sense policy resolution and leave Airbnb with no choice but to stand up for its New York hosts and immediately commence litigation against New York State. We urge you to choose the path of partnership instead.

Sincerely,

/s Rob Chesnut

Rob Chesnut  
General Counsel  
Airbnb, Inc.