

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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Rep. Diane St. Onge, Chair

House Small Business & Information Technology Committee

Kentucky House of Representatives

702 Capitol Ave

Annex Room 357B

Frankfort, KY 40601

March 8, 2018

RE: **Opposition to HB 383 – Creating new occupancy taxes**

Dear Chair St. Onge and members of the committee,

While well intentioned, we ask that you not move HB 383 as it creates a new occupancy tax that goes beyond just home-sharing services to also impact online travel agents when they arrange bookings with hotels.

Cities and states favor hotel taxes since they fall mostly on visitors – not on resident voters. But HB 383 is not the right way forward for Kentucky.

This legislation also creates a new taxing obligation on the “Travel or accommodation intermediary” – imposing potential state and local taxing requirements.

This broad term of “Travel or accommodation intermediary” also comes with several unintended consequences. For example, this term would encompass home-sharing posts on the University of Kentucky student website and on local neighborhood online bulletin boards. Likewise, this broad term would also capture online travel agents when they arrange bookings with hotels.

HB 383 imposes these tax collection requirements on newspapers like Lexington Herald Leader’s “Kentucky.com”

We are sure that the Committee would think it absurd to hold *newspapers* responsible for what customers write in their classified listings. But that is precisely what HB 383 would require of classified sections of newspapers, bulletin boards in universities, and websites.

HB 383 requires every business that “lists” rental of any room to collect the taxes on the transaction – even if the advertiser is not a party to the rental transaction. This requirement, of course, would apply to the classified section of the local newspaper.

Much like the Classified ads listing in the Lexington Herald Leader, short-term rental hosting platforms are just that, platforms for hosts to list their short-term rental availability.

It would be absurd to impose HB 383’s requirements on the Leader’s classified section and we ask that you not do so for short-term rental services.

HB 383 would undermine a key benefit of the internet and would likely be unconstitutional

The internet is an open resource that enables people from all parts of Kentucky to freely communicate with one another and pursue their goals. While some nations discourage user-generated content, the United States created a fertile ground for business models that have transformed the world.

Moreover, this openness is bolstered by Section 230 of the federal Communications Decency Act, which says platforms can't be held strictly liable for content posted *by others*.

However, HB 383 fails to recognize Section 230. This not only threatens a core tenet of the internet but is at odds with federal law – resulting in the likely injunction of the HB 383.

HB 383 would not apply to businesses without a physical presence in Kentucky

If passed, HB 383 would run directly in the US Supreme Court decision of *North Dakota v Quill*¹ which protects Kentucky businesses from Illinois tax collectors. The *Quill* decision precludes states from forcing businesses with no physical presence to collect and remit taxes.

If HB 383 is passed, Kentucky could find itself in the same place as South Dakota – with a law enjoined by the courts for violating the *Quill* standard. Thus, even if HB 383 is passed, Kentucky wouldn't be able to force out of state companies to collect the tax, since that is presently precluded by *Quill*.

While we ask that you not move HB 383 as currently drafted, we welcome the opportunity to work with you on a more reasonable approach to home-sharing.

Sincerely,



Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

¹ *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) further confirmed the physical presence standard for sales tax collection. It protected Quill, a Delaware corporation with offices and warehouses in Illinois, California, and Georgia, from North Dakota tax collectors and North Dakota tax rules – a state where Quill had no physical presence.