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Is New York Hostile to 'New Economy' Companies? Some Tech Innovators Think So

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ALBANY - Advocates for technology-based companies say New York's new law establishing heavy fines for illegally advertising short-term rental units on Airbnb and HomeAway.com is the latest example of the state's apparent reluctance to embrace and accommodate the new economy.

The bill signed by Gov. Andrew Cuomo sets fines of up to $7,500 for each instance where hosts advertise apartments for short-term use when their rental is illegal under state or New York City laws. Airbnb is suing to invalidate the law (NYLJ, Oct. 24).

But tech advocates say home rentals is far from the only example of the state balking at online-or app-based businesses.

FanDuel and Draftkings were forced to suspend their online games this year for more than four months under pressure from New York Attorney General Eric Schneiderman, who maintained that fantasy games constituted illegal gambling. The companies resumed operations after Gov. Andrew Cuomo signed a bill bringing their games under the regulatory control of the state Gaming Commission and allowing the state to take a 15 percent tax cut from their revenues (NYLJ, Aug. 3).

Uber, Lyft and other online ride-sharing platforms have fought for years with New York City officials trying to operate more freely, and have so far failed to win authorization from the Legislature to operate in the rest of the state.

TechNet, a nationwide group of CEOs and senior executives at technology-oriented companies, said the governor's approval of the bill aimed at residence listings on Airbnb and HomeAway.com sent the message that "New York is hostile to new technology."

"I think the concern for the tech industry is that New York is having a harder time trying to adapt to these new technologies because of how they are disrupting the old industries," Matthew Mincieli, TechNet's executive director for the Northeast, said in an interview Friday. "I think the old industries may be holding more power in New York than elsewhere."

New York is hardly alone in clashing with companies that have incorporated new technologies and the internet into successful business models.

Uber hired Eric Holder, Jr. former U.S. attorney general and now a partner at Covington & Burling, to contact lawmakers or city officials in New Jersey, Chicago and Atlanta to argue against local laws requiring the fingerprinting of ride-hailing drivers. Airbnb and HomeAway.com are embroiled with San Francisco in a federal court over restrictions on the short-term apartment rentals.

But some states and municipalities have seemed to accommodate new-economy companies. Pennsylvania Gov. Tom Wolf is expected to sign a bill establishing a regulatory framework to allow Uber, Lyft and other ride providers hailed through smartphone technology to operate throughout the state. Pittsburgh, has given the Uber wide regulatory latitude in testing its driverless cars on the streets.

In a rare instance of federal intervention to date, the National Highway Traffic Safety Administration recently published guidelines for self-driving vehicles that states and municipalities welcomed as helping to prevent a hodgepodge of local laws and ordinances.

Julie Samuels, executive director of Tech:NYC, an advocacy group for emerging technology companies, said innovative executives do not expect to have carte blanche when they seek to introduce businesses based on new technologies in New York.

"What they are looking for is an open dialogue among all the stakeholders, a welcoming attitude for new business models and a willingness to experiment with the new technologies that makes sense for New York," she said in an interview Friday. "We do need to rethink the way we regulate a lot of our institutions. We are putting square pegs into round holes, and that is not a good reason not to take advantage of new and interesting technologies."

Schneiderman's office, however, in response to a request for comment for this story, said the attorney general does not want to discourage competition created by companies with innovative technologies in New York. His aides cited a speech he gave to a group of tech entrepreneurs in late 2015 where he said that while he wanted to protect consumers, he opposed maintaining an economic environment that "mindlessly protects the status quo."

"Monopolies, cronyism and outdated laws and regulations only stifle new ideas," the attorney general said.

The sponsor of the Airbnb advertising bill in the New York state Assembly, Linda Rosenthal, a Manhattan Democrat, said criticism of the measure as anti-sharing economy or anti-technology is a technique Airbnb uses to discredit opponents.

"This is just an argument to denigrate legitimate efforts by the government to maintain affordable housing stock," she said in an interview. "It is throwing in a phrase, 'new and innovative,' and it is supposed to cast aspersions on people who are not 'with it.' This is not about the technology economy versus Luddites. It is about protecting common tenants, the stock of affordable housing and maintaining the integrity of buildings."

Rosenthal said that in her conversations with Airbnb officials and its lobbyists in the last few years, the company showed no willingness to compromise to meet her concerns about keeping ineligible units from being advertised, but rather sought to dictate how the law could be amended to fit the rental patterns of its hosts.

"Companies like Uber and Airbnb come into a market and try to dominate and then force government to deal with them, rather than coming in and saying, 'Here is what we propose to do, how can we deal with it together?'" Rosenthal said. "They have no regard for the people who make the law and no regard for the people who protect the government. It is more bullying that's the mentality."

Airbnb, which did not respond to requests for comment, has argued that the rental advertising law is preempted by the federal Communications Decency Act and violates the company's rights under the First and Fourteenth Amendments of the Constitution. The company also said the law is not clear on whether only hosts are subject to fines for listing ineligible properties, or if Airbnb itself could face liability. The company lists about 45,000 properties in New York.

Steve Blank, a Palo Alto, California-based entrepreneurial expert who has taught at Stanford University, Columbia University and New York University, said it is natural for a city and state like New York, with their long-entrenched political establishments and the well-funded lobbyists to be hard markets for newer companies to crack.

What's different with Airbnb, Uber, FanDuel/Draftkings and others in this successful generation of technology-based companies is the resources they can bring to the fight, he said. The entrenched forces of the status quo are up against new, technologically dependent companies that have the resources to spend on lobbying, public relations and lawyers to push back when they meet resistance in new markets, Blank said in an interview Friday.

"What you haven't seen in New York until now, this is the first time in history that they [new] guys are being funded at the size and the scale that they are," he said.

Richard Honen, a corporate finance and venture capital partner at Phillips Lytle in Albany, said it is probably inevitable that sharing-economy companies are bumping up against opposition in New York because of the nature of their businesses.

For instance, Uber, Lyft and other ride-sharing platforms emerged as serious competition to New York's long-established and well-funded taxi industry, he said.

"These are not only technology companies, but, for the most part, they are technology companies that are competing with long-established, traditional companies—taxi companies and hotels, for example—and politically powerful companies at that," Honen said. "There is definitely a need for New York to strike a balance between protecting existing industries while making room for the inroads that technology has made on those industries."

Honen said the sheer size of New York's population means that "it can still make its own rules and enforce its own commercial borders," but that it probably cannot live in what he called "splendid isolation" for long without learning to make more accommodations with the technology sector outside of litigation.

"If you want to embark upon litigation, you know where the end point is going to be," he said. "Why don't you get to that end point in a negotiated way rather than at the end of bruising litigation? If you are saying that the model is going to be that you have to fight your way through New York in order to be accepted as a new technology, that to me would be disappointing and not an especially innovative [economic] environment."