



March 28, 2016

Senator Hannah-Beth Jackson
California State Senate
State Capitol, Room 2032
Sacramento, CA 95814

Re: **SB No. 868 – the State Remote Piloted Aircraft Act**

Dear Senator Jackson:

The undersigned organizations and companies (hereinafter the “Coalition”), each of which has a significant presence in California, are writing today in strong opposition to enactment of Senate Bill No. 868 (“SB 868”), the “State Remote Piloted Aircraft Act.” Contrary to the legislation’s stated purpose of “[e]ncouraging the development and general use of remote piloted aircraft,” the Bill, if enacted, would deter future innovation and investment in California by the unmanned aircraft systems (“UAS”) industry. See SB 868, § 21751(i). SB 868 should be rejected because (1) various provisions needlessly address conduct already prohibited in California, (2) it creates a new insurance requirement devoid of empirical support for the burdens imposed, and (3) various provisions are preempted by federal law. If the legislation is not rejected, it should be modified to eliminate the problems identified above. Such action would be consistent with the legislature’s goal to establish “only those regulations that are essential” and to place “the least possible restriction” on UAS usage.

SB 868 Would Create Unnecessary and Harmful Technology-Specific Regulations.

The explosive growth of the UAS industry has prompted legislators in many states – including California – to propose legislation regulating the industry. Before considering new, UAS-specific legislation, however, legislators should consider whether the conduct at issue may already be addressed by existing state laws. Creating technology-specific criminal offenses and penalties is a reactionary approach to innovation. To arbitrarily treat identical harms differently based on their enabling instrumentality would create a patchwork of regulation where similar offenses lead to different results, chilling development and forestalling exciting new technologies. SB 868’s efforts to arbitrarily regulate conduct based on the use of a UAS should not be adopted, especially where existing California law already applies.

For example, the privacy and property protections proposed in Sections 21758(a)(4)-(6) are redundant. Cal. Civil Code § 1708.8 already forbids the invasion of privacy to capture a physical impression,

regardless of the manner in which the invasion takes place. Cal. Penal Code § 629.89 already prohibits all “covert entry” onto a property for installation or placement of an interception device; Cal Penal Code § 632 already covers eavesdropping on and/or recording confidential communications; Cal. Penal Code § 647(j) prohibits “Peeping Tom” conduct wherever a reasonable expectation of privacy exists. All of these laws apply to UAS operations and render proposed Sections 21758(a)(4)-(6) unnecessary.

Moreover, technology-specific regulatory approaches are inefficient, requiring the enactment of new regulations as new technology develops. Rather than adopt novel regulations addressing every new innovation, California should rely on existing law – clarifying when necessary – both to enable predictable, stable protections of its citizens’ rights, and to ensure regulatory stability. Such an approach is consistent with the stated goal of the legislation to balance the need to encourage the development of the UAS industry while protecting privacy by “establishing only those regulations that are essential.” SB 868, §§ 21751(a) & (i).

Consistent with this stated objective, any legislation also should make clear that any UAS regulations enacted pursuant to proposed Sections 21761 and 21762 require consultation with the FAA. The FAA has previously expressed a willingness to consult on such issues.¹

SB 868 Would Impose Costly and Quantitatively Unsubstantiated Requirements.

SB 868, Section 21760, proposes to require companies, and their pilots, using UAS for commercial purposes in California to pay for drone-specific insurance. This heavy regulatory burden ignores two critical issues. First, there is insufficient actuarial data regarding the UAS industry for insurance companies to calculate risk and establish policies envisioned by the legislation. Second, other – more harmful – practices are not burdened with such regulation. To the latter point, many practices are potentially dangerous if undertaken irresponsibly – from mowing the lawn to golfing, but insurance coverage is not mandated. Existing tort law provides aggrieved citizens with sufficient recourse. Accordingly, UAS insurance requirements should not be adopted.

SB 868 is Preempted by Federal Law.

Proposed Sections 21754 and 21755 of SB 868 attempt to create no-fly zones under state law. Sections 21754(a) and (d) would grant California’s Office of Emergency Services the authority to designate certain areas as no-fly zones. Sections 21755(a)-(c) would outlaw overflight of state parks, lands, or waters managed by the Department of Fish and Wildlife, and certain stretches of the City of Sacramento. As discussed below, no-fly zones only may be established by the federal government. State and local laws purporting to establish such zones are preempted.

The Supremacy Clause of the U.S. Constitution states that “the Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land.”² As the Supreme Court has indicated, this gives Congress the power to preempt state law.³ Preemption comes in

¹ State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Federal Aviation Administration Office of the Chief Counsel at 1 (Dec. 17, 2015) (“UAS Fact Sheet”), https://www.faa.gov/uas/regulations_policies/media/UAS_Fact_Sheet_Final.pdf.

² U.S. Const., Art. VI, Cl 2.

³ See, e.g., *Arizona v. United States*, 132 S. Ct. 2492 (2012).

three types: (1) express (when Congress specifically preempts a state law);⁴ (2) field (when a federal framework of regulation is “so pervasive . . . that Congress left no room for the States to supplement it’ or where a ‘federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject’”);⁵ and (3) conflict (when state laws “conflict with federal law, including when they stand ‘as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress’”).⁶

Congress has occupied the field of aerial navigation – a fact acknowledged by the Supreme Court:

Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls.⁷

Pursuant to this federal regulatory regime, the FAA has both adopted specific “no fly zones” for UAS, and authorized specific commercial operations (subject to limited restrictions). California and its localities may not create additional “no fly zones” within national airspace. Congress has occupied the field with regard to air navigation and “Federal control is *intensive and exclusive*.”⁸

The FAA has issued thousands of authorizations permitting the commercial operation of UAS in national airspace. These authorizations contain geographic and altitude restrictions on UAS operations that protect the rights of non-participating individuals, but do *not* restrict operations as broadly as proposed in SB 868. Thus, the Bill proposes to modify these federal authorizations and limit the airspace available for UAS operations, effectively establishing a patchwork of no-fly zones. California lacks authority to modify federal UAS authorizations in this manner; these elements of SB 868 are preempted by federal law.

On December 17, 2015, the FAA released a UAS Fact Sheet reminding state and local jurisdictions that they lack authority to regulate airspace.⁹ In particular, the UAS Fact Sheet identified regulations that impose operational bans or otherwise regulate navigable airspace as problematic.¹⁰ It notes that “[s]ubstantial air safety issues are raised when state and local governments attempt to regulate the operation or flight of aircraft” and “[a] navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system.”¹¹ Accordingly, the provisions establishing no-fly zones in California must be stricken from SB 868.

⁴ *Id.*

⁵ *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

⁶ *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

⁷ *Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633-34 (1973)(quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (Jackson, concurring)).

⁸ *Burbank*, 411 U.S. at 633-34.

⁹ See UAS Fact Sheet.

¹⁰ UAS Fact Sheet at 3.

¹¹ UAS Fact Sheet at 2.

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For the above reasons, the Coalition opposes enactment of SB 868. To the extent legislation is adopted, it should clarify the scope of existing law and its application to UAS. State statutes that conflict with federal law, redundantly address already-forbidden conduct, or attach burdensome regulation to UAS operations would undermine innovation and provide a strong disincentive to the UAS industry regarding future developmental and educational activities in California. The Coalition stands ready to work with California regarding potential steps that can be taken to address UAS concerns without adopting legislation that is unnecessary or preempted.

Questions or requests for additional information may be directed to Kelly Jensen at Sloat Higgins Jensen & Associates (kjjensen@shjlobby.com) and Doug Johnson at CTA (djohnson@ce.org).

Sincerely,

Academy of Model Aeronautics (AMA)
Association for Unmanned Vehicle Systems International (AUVSI)
California Chamber of Commerce (CalChamber)
Consumer Technology Association (CTA)
CTIA - The Wireless Association (CTIA)
Small UAV Coalition
3D Robotics
DJI
GoPro, Inc.
Yuneec USA Inc.