



National Press Photographers Association

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Via Email

September 3, 2015

The Honorable Jerry Brown
State Capitol, Suite 1173
Sacramento, CA 95814

RE: SB 142 — Veto Request for Unmanned Aircraft Systems Legislation

Dear Governor Brown:

As general counsel for the National Press Photographers Association (NPPA), I write to you on behalf of the organizations listed below to request your veto of SB 142, “An act to add Section 1708.83 to the Civil Code, and to amend Section 21012 of the Public Utilities Code, relating to civil law.” We believe this bill will unduly restrict the development of new uses for Unmanned Aircraft Systems (UAS) by establishing a technology-specific restriction that is impossible to comply with, impossible to enforce, and likely will conflict with the existing authority and proposed new regulations of the Federal Aviation Administration (FAA).

This bill was dramatically amended changing its focus from claims of invasion of privacy, as earlier drafts provided, to claims of “wrongful occupation of real property,” a strict liability statute with an overly broad and vague provision for damages. As amended the bill no longer even addresses privacy, as it applies to UAS whether or not they are equipped with cameras.

Moreover, under the bill’s current form, journalists could be sued if a UAS they operate were to stray into the “airspace overlaying the real property” of owners while actually gathering newsworthy information of a different nearby location. This is problematic as the bill contains no method of establishing the exact height of a UAS, whether it in fact it overflowed the property, or whether the violation of the statute was intentional or unintentional. Because it is very difficult to determine a UAS’ altitude or exact overhead location while looking up from the ground, property owners are likely to file erroneous claims based on inaccurate assessments of a UAS’ location. The potential onslaught would require courts to guess at whether a property line or altitude threshold was crossed.

As pertains to newsgathering, it will be daunting if not impossible for journalists to obtain the “express consent” from a wide range of property owners, as the bill requires, especially during breaking news events. What “person or entity with the legal authority to grant access” would a

journalist contact for permission to fly over a government owned sidewalk, park, riverbed, beach or road? What about an apartment building with 100 tenants? Or an empty field with no structures or residents?

While the bill acknowledges the FAA Modernization and Reform Act of 2012, its language flies in the face of both common sense and federal preemption. Currently, the FAA allows unmanned aircraft to be flown up to 400 feet for non-commercial purposes. The FAA is in the process of drafting a final rulemaking that would establish similar height restrictions for the commercial use of small UAS, under 55 pounds. SB 142 would essentially limit UAS flights in California airspace to between 350 and 400 feet. Flying a UAS in such a narrow band would be virtually impossible and the restrictions would effectively restrict lateral movement or take-off and landings.

Moreover, by Executive Memorandum the Obama Administration has referred to the National Telecommunications and Information Administration, a sub-agency within the Department of Commerce, to host discussions with stakeholders in emerging UAS technologies regarding best practices. Those discussions are ongoing, and NPPA along with many of these other organizations are participating in them.

SB 142 conflicts with the federal government's regulatory and outreach efforts in just some of the ways outlined in this letter. The proposed California legislation also poses a serious risk to the uses by journalists to gather and disseminate the news to the public, and the public's right to receive news, as guaranteed by the First Amendment to the U.S. Constitution and Article 1, Section 2(a) of the California Constitution. The chilling legal repercussions of this bill will tax an overburdened court system and thwart the federal government's efforts, in which we are participating, to bring about a sensible regulatory regime for this new technology.

Therefore, we urge that you veto this bill to allow time to further evaluate sound UAS policy and consider its full legal and detrimental impact.

Thank you for your attention and consideration in this matter.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

On behalf of:

Advance Publications, Inc.
American Society of News Editors
Associated Press Media Editors
Associated Press Photo Managers

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Association of Alternative Newsmedia
CNN
First Look Media, Inc.
Gannett Co., Inc.
Hearst Corporation
KBAK-TV (Bakersfield)
KERO-TV (Bakersfield)
KGTV-TV (San Diego)
KMPH-TV (Fresno)
KXTV-TV (Sacramento)
Los Angeles Times Communications LLC
Merced Sun-Star
Newspaper Association of America
Radio Television Digital News Association
Reporters Committee for Freedom of the Press
Scripps Media
Society of Professional Journalists
Student Press Law Center
The Associated Press
The Desert Sun, Palm Springs
The Fresno Bee
The McClatchy Company
The Modesto Bee
The Sacramento Bee
The Salinas Californian
The (San Luis Obispo) Tribune
Tulare Advance-Register
Visalia Times-Delta

cc:

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