



**ELECTRONIC FRONTIER FOUNDATION**

Protecting Rights and Promoting Freedom on the Electronic Frontier

June 2, 2016

**VIA EMAIL**

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

Dear Sen. Jackson

The Electronic Frontier Foundation (EFF) is a non-profit member-supported civil liberties organization based in San Francisco, California, that works to protect rights in the digital world. EFF has more than 26,000 members and donors across the country.

EFF respectfully opposes S.B. 868, a bill that would create unnecessarily burdensome restrictions for the use of remote piloted aircraft, also known as unmanned aerial vehicles or drones.

First and foremost, S.B. 868 continues to propagate the misguided practice of regulating drone operations differently depending on whether they are commercial or non-commercial. From a safety and privacy perspective, this approach makes absolutely no logical sense. It is true that this distinction usually makes sense when applied to manned aircraft, since commercial manned aircraft typically carry passengers or cargo, and thus the primary risk (and thus reason behind regulation) is to those passengers or cargo. However, the major risk from drones is typically only to people and property *not onboard* the drone. As such, whether or not the operator is being paid is a poor proxy for the potential risk to the public, and is thus also a poor proxy for whether or not the operation should be regulated to promote safety and privacy.

Further, due to the way S.B. 868 is written, this artificial distinction makes operations by non-commercial operators illegal when the very same operations would be legal if they were commercial in nature. In particular, it is worth noting that although S.B. 868 contains numerous exceptions for commercial operations authorized by the FAA, not every operation authorized by the FAA is commercial in nature. (The FAA distinguishes between hobby/recreational and non-hobby/non-recreational use, not between commercial and non-commercial.) As such, many non-commercial yet FAA-sanctioned operations will be illegal under S.B. 868—including operations by non-profits, which the FAA has explicitly said fall under its authority.<sup>1</sup>

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<sup>1</sup> See, e.g., “FAA grounds humanitarian search-and-rescue drone flights,” Ars Technica. <<http://arstechnica.com/tech-policy/2014/04/faa-grounds-humanitarian-search-and-rescue-drone-flights/>>

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Beyond the improper division between commercial and non-commercial operations, the restrictions on drone operations created by S.B. 868 would affect newsgathering and whistle-blowing activities. For example, §21754(a)(1) prohibits the operation of a drone within 500 feet of critical infrastructure, as determined by the Office of Emergency Services. It is entirely plausible that this could include water treatment facilities, power plants, oil refineries, or other industrial operations. However, as a result of S.B. 868, any non-profit that wishes to document, for example, a hazardous chemical spill or violation of environmental regulations would be forbidden from doing so via a drone. Similarly, the requirement that pilots obtain a permit before flying over state parks or waterways could stifle any effort by independent non-commercial operators to expose improper use of state lands.

We are also concerned about how this bill will affect the growing drone hobbyist community. While we understand the motivation for outlawing weaponized drones, this would criminalize some legitimate and safe activities. For example, “Game of Drones” is an aerial combat game that has become a central draw at the Bay Area Maker Faire; young<sup>2</sup> and old alike participate in head-to-head dogfights in a secure, enclosed area. Often these drones are outfitted with fishing line to foul a competitor’s propellers or other apparatus that could be considered weapons under the vaguely phrased bill. As such, S.B. 868 would ground this fun and educational activity before it has a chance to get off the ground.

Finally, many of the laws S.B. 868 prescribes are unnecessary and duplicative of existing federal regulations. For example, FAA regulations already prohibit the operation of any aircraft in a reckless manner. Further, given that the FAA has not yet finished developing its regulations regarding drone operations, some of the rules may end up coming into conflict with federal safety regulations, thus sewing confusion and hampering the development of drone technology (even safe, privacy-friendly uses). As a leader in technological innovation, the last thing California needs is confusing regulations.

For these reason EFF must oppose this bill and urge legislators to vote against its passage. At this stage, we do not believe any amendments would affect our opposition, short of stripping out all sections except for §21760. If you have further questions for us, please contact Dave Maass at 415-436-9333 x151.

Sincerely,

Jeremy Gillula  
Staff Technologist

Dave Maass  
Investigative Researcher

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<sup>2</sup> In fact, many of the participants in these drone combat games are students for whom building combat drones is their first exposure to science and engineering.