Consumer Technology Association™

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September 9, 2016

The Honorable Edmund G. Brown Jr.
Governor, State of California
State Capitol, Room 1173
Sacramento, CA 95814

Re: **Drone Registration Omnibus Negligence Prevention Enactment Act — A.B. 2724**

Dear Governor Brown:

We are writing in strong opposition to enactment of proposed Assembly Bill 2724 which would impermissibly regulate the design, marketing, and operation of small unmanned aircraft systems ("UAS"). While well-intended, the bill should be rejected because it would thwart a growing and innovative industry and is preempted by federal law.

The Consumer Technology Association ("CTA") represents more than 2,200 companies, 80 percent of which are small businesses and startups. As a champion of innovation, CTA has been a long-time advocate of clear rules authorizing UAS in a safe manner within the national airspace. CTA has been continually involved in the Federal Aviation Administration ("FAA") rulemaking activities concerning the operation and certification of small UAS. We also are a partner with several other organizations and the FAA in the *Know Before You Fly* campaign, which is educating prospective drone users about the safe and responsible operation of UAS. Additionally, CTA served on FAA's recent Micro UAS Aviation Rulemaking Committee, which developed recommendations for performance-based regulations for operations over people.

A.B. 2724 would require a manufacturer of a UAS to be sold in California to (i) include with it a link to the FAA website containing safety regulations or best practices applicable to UAS and a notification of any FAA registration requirement and (ii) design any UAS that is GPS-equipped to include "geofencing" technology to prohibit the UAS from flying, unless otherwise preempted by federal law, within any area prohibited by local, state or federal law. It would also require, beginning January 1, 2020, the owner of a UAS to have protection against liability for bodily injury, death, and property damage resulting from its operation.

CTA certainly supports ensuring that consumers are aware of the FAA's regulations and registration requirements. Likewise, CTA supports consumer compliance with FAA-established regulations restricting UAS operations. However, it is not appropriate for states to take on the role of determining how federal laws are complied with, or to establish state-specific no-fly zones. Because of the national market for devices such as UAS, a state's laws

concerning disclosures about FAA requirements or about geofencing and no-fly zones would effectively apply to all marketing of UAS products nationwide. Such a proposal is preempted by federal law.

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."[1] As noted by the Supreme Court, this gives Congress the power to preempt state law.[2] There are three types of preemption: express preemption when Congress specifically preempts a state law;[3] field preemption 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;'"[4] and conflict preemption 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.'"[5] Congress has occupied the field with regard to air navigation. As the Supreme Court has observed:

> 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.[6]

On December 17, 2015, the FAA released a UAS Fact Sheet reminding state and local jurisdictions that they lack authority to regulate airspace.[7] In particular, the UAS Fact Sheet identified regulations that impose operational bans or otherwise regulate navigable airspace as problematic.[8] 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."[9]

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[1] U.S. Const., Art. VI, Cl 2.
[2] *See, e.g., Arizona v. United States*, 132 S. Ct. 2492 (2012).
[3] *Id.*
[4] *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).
[5] *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).
[6] *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)).
[7] State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Federal Aviation Administration Office of the Chief Counsel (Dec. 17, 2015) ("UAS Fact Sheet"), https://www.faa.gov/uas/regulations_policies/media/UAS_Fact_Sheet_Final.pdf.
[8] UAS Fact Sheet at 3.
[9] UAS Fact Sheet at 2.

A.B. 2724 would intrude into this purely federal regulatory system—first, by dictating disclosure requirements about the requirements of federal law, which should apply uniformly across the country under the purview of the FAA; and second, by mandating a particular design feature, geofencing, to enforce a state-specific no-fly zone, a matter that is exclusively under FAA jurisdiction. In both of these respects, A.B. 2724 regulates the design, marketing, and operation of aircraft in the national airspace. It is, therefore, preempted.

Even if preemption were not justified by the FAA occupying the field, it would be justified on a conflict basis. The FAA has adopted rules governing small UAS operations and issued thousands of authorizations to individuals and companies permitting the commercial operation of UAS in the national airspace. These authorizations contain certain geographic and altitude restrictions on UAS operations, and the FAA's restrictions will not necessarily be the same as those specified by A.B. 2724 now and in the future. Moreover, the federal authorizations do not require the use of geofencing technology. The proposal thus would modify these federal authorizations and limit the airspace available for UAS operations as a matter of state law, rather than federal law. California lacks authority to modify federal UAS authorizations in this manner.

These requirements are also unwarranted as a matter of policy because mandating particular ways of achieving what might be a laudable goal can hamper innovation and deter the development of better alternatives. Given the national scope of FAA regulation and of the marketing and sale of UAS, it would be better to have the conversation about FAA regulatory compliance at a national level, involving the industry, consumers, and the FAA, than to have the issue of federal regulatory compliance be subject to a patchwork of state requirements.

Finally, the bill imposes an open-ended requirement of "adequate protection against liability imposed by law"—presumably by purchasing insurance—on UAS owners in particular. There is no need for a UAS-specific liability protection standard. Many everyday practices are potentially dangerous if undertaken irresponsibly, from mowing the lawn or grilling a steak to playing golf or riding a bicycle, but there is no comparable "adequate protection against liability" requirement for consumers engaged in such potentially hazardous activities. Existing tort law should be sufficient to address any injuries and damage caused by UAS operations. Moreover, the language of the bill could be read as imposing strict liability without limitation on UAS owners, although this may not have been the intended effect.

For the above reasons, CTA opposes enactment of A.B. 2724 and respectfully requests that you veto this legislation.

Sincerely,

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cc: The Honorable Mike Gatto
Michael Martinez, Deputy Legislative Secretary, Office of the Governor
Daniel Seeman, Deputy Legislative Secretary, Office of the Governor