

ASSEMBLY BILL

No. 1190

Introduced by Assembly Member Irwin

February 21, 2019

An act to amend Sections 831.7 and 853.5 of, and to add Chapter 12.97 (commencing with Section 7105) to Division 7 of Title 1 of, the Government Code, relating to unmanned aircraft.

LEGISLATIVE COUNSEL'S DIGEST

AB 1190, as introduced, Irwin. Unmanned aircraft: state and local regulation: limitations.

Existing law prohibits a person from knowingly and intentionally operating an unmanned aircraft system on or above the grounds of a state prison, a jail, or a juvenile hall, camp, or ranch. Existing law provides a local public entity or employee with immunity as to any person engaging in hazardous recreational activity, as defined, and for damage to an unmanned aircraft while the local entity or employee is providing emergency services. Existing law defines “unmanned aircraft” and other terms for purposes of these provisions.

This bill would, among other things, prohibit a state or local agency from adopting any law or regulation that bans the operation of an unmanned aircraft system. The bill would include the operation of small unmanned aircraft systems within the definition of hazardous recreational activity for purposes of public entity liability. The bill would authorize a state or local agency to adopt regulations to enforce a requirement that a small unmanned aircraft system be properly registered under existing federal regulations. The bill would also authorize a state or local agency to require an unmanned aircraft operator to provide proof of federal, state, or local registration to licensing or

enforcement officials. The bill would define terms for purposes of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares that the intent
2 of this act is to accomplish the following goals:
3 (a) To foster and promote public safety in the use of unmanned
4 aircraft systems.
5 (b) To explore the development of a balanced approach to a
6 consistent state regulatory framework for unmanned aircraft
7 systems that can work for industry, recreational users, local
8 government, and law enforcement.
9 (c) To facilitate the use of drones for recreational and hobby,
10 commercial, and governmental purposes.
11 (d) To protect persons and entities from invasion of their privacy
12 and to prevent harassment of persons and entities in their public
13 activities.
14 (e) To protect sensitive governmental and private facilities and
15 operations from interference or unauthorized surveillance, including
16 facilities and operations addressing emergency events, such as
17 earthquakes, fires, and flooding.
18 SEC. 2. Section 831.7 of the Government Code is amended to
19 read:
20 831.7. (a) Neither a public entity nor a public employee is
21 liable to any person who participates in a hazardous recreational
22 activity, including any person who assists the participant, or to any
23 spectator who knew or reasonably should have known that the
24 hazardous recreational activity created a substantial risk of injury
25 to ~~himself or herself~~ *themselves* and was voluntarily in the place
26 of risk, or having the ability to do so failed to leave, for any damage
27 or injury to property or persons arising out of that hazardous
28 recreational activity.
29 (b) As used in this section, “hazardous recreational activity”
30 means a recreational activity conducted on property of a public
31 entity that creates a substantial, as distinguished from a minor,
32 trivial, or insignificant, risk of injury to a participant or a spectator.
33 “Hazardous recreational activity” also means:

1 (1) Water contact activities, except diving, in places where, or
2 at a time when, lifeguards are not provided and reasonable warning
3 thereof has been given, or the injured party should reasonably have
4 known that there was no lifeguard provided at the time.

5 (2) Any form of diving into water from other than a diving board
6 or diving platform, or at any place or from any structure where
7 diving is prohibited and reasonable warning thereof has been given.

8 (3) Animal riding, including equestrian competition, archery,
9 bicycle racing or jumping, bicycle motocross, mountain bicycling,
10 boating, cross-country and downhill skiing, hang gliding, kayaking,
11 motorized vehicle racing, off-road motorcycling or four-wheel
12 driving of any kind, orienteering, pistol and rifle shooting, rock
13 climbing, rocketeering, rodeo, self-contained underwater breathing
14 apparatus (SCUBA) diving, spelunking, skydiving, sport
15 parachuting, paragliding, body contact sports, surfing,
16 trampolining, tree climbing, tree rope swinging, waterskiing, white
17 water rafting, and windsurfing. For the purposes of this subdivision,
18 “mountain bicycling” does not include riding a bicycle on paved
19 pathways, roadways, or sidewalks. For the purpose of this
20 paragraph, “body contact sports” means sports in which it is
21 reasonably foreseeable that there will be rough bodily contact with
22 one or more participants.

23 (4) *Operation of small unmanned aircraft systems within an*
24 *recreational area designated by a state or local agency for the*
25 *operation of small unmanned aircraft pursuant to subdivision (c)*
26 *of Section 7105.*

27 (c) (1) Notwithstanding subdivision (a), this section does not
28 limit liability that would otherwise exist for any of the following:

29 (A) Failure of the public entity or employee to guard or warn
30 of a known dangerous condition or of another hazardous
31 recreational activity known to the public entity or employee that
32 is not reasonably assumed by the participant as inherently a part
33 of the hazardous recreational activity out of which the damage or
34 injury arose.

35 (B) Damage or injury suffered in any case where permission to
36 participate in the hazardous recreational activity was granted for
37 a specific fee. For the purpose of this subparagraph, “specific fee”
38 does not include a fee or consideration charged for a general
39 purpose such as a general park admission charge, a vehicle entry
40 or parking fee, or an administrative or group use application or

1 permit fee, as distinguished from a specific fee charged for
2 participation in the specific hazardous recreational activity out of
3 which the damage or injury arose.

4 (C) Injury suffered to the extent proximately caused by the
5 negligent failure of the public entity or public employee to properly
6 construct or maintain in good repair any structure, recreational
7 equipment or machinery, or substantial work of improvement
8 utilized in the hazardous recreational activity out of which the
9 damage or injury arose.

10 (D) Damage or injury suffered in any case where the public
11 entity or employee recklessly or with gross negligence promoted
12 the participation in or observance of a hazardous recreational
13 activity. For purposes of this subparagraph, promotional literature
14 or a public announcement or advertisement that merely describes
15 the available facilities and services on the property does not in
16 itself constitute a reckless or grossly negligent promotion.

17 (E) An act of gross negligence by a public entity or a public
18 employee that is the proximate cause of the injury.

19 (2) Nothing in this subdivision creates a duty of care or basis
20 of liability for personal injury or damage to personal property.

21 (d) Nothing in this section limits the liability of an independent
22 concessionaire, or any person or organization other than the public
23 entity, whether or not the person or organization has a contractual
24 relationship with the public entity to use the public property, for
25 injuries or damages suffered in any case as a result of the operation
26 of a hazardous recreational activity on public property by the
27 concessionaire, person, or organization.

28 SEC. 3. Section 853.5 of the Government Code is amended to
29 read:

30 853.5. The following definitions shall apply to this chapter:

31 (a) *"Public unmanned aircraft system" means an unmanned*
32 *aircraft system that is owned or operated by a local or state*
33 *government entity.*

34 (b) *"Small unmanned aircraft" means an unmanned aircraft*
35 *weighing less than 55 pounds.*

36 ~~(a)~~
37 (c) "Unmanned aircraft" means an aircraft that is operated
38 without the possibility of direct human intervention from within
39 or on the aircraft.

40 ~~(b)~~

1 (d) “Unmanned aircraft system” means an unmanned aircraft
2 and associated elements, including, but not limited to,
3 communication links and the components that control the
4 unmanned aircraft that are required for the pilot in command to
5 operate safely and efficiently in the national airspace system.

6 SEC. 4. Chapter 12.97 (commencing with Section 7105) is
7 added to Division 7 of Title 1 of the Government Code, to read:

8
9 CHAPTER 12.97. UNMANNED AIRCRAFT REGULATION
10

11 7105. (a) No state or local agency shall adopt any law or
12 regulation that bans the operation of an unmanned aircraft system.

13 (b) (1) An operator of a small unmanned aircraft system shall
14 register pursuant to federal regulations as set forth in 14 CFR Part
15 47.

16 (2) A state or local agency may adopt regulations to enforce a
17 requirement that a small unmanned aircraft system be properly
18 registered under 14 CFR Part 47 before issuing a license or other
19 approval to operate the system and to require that the unmanned
20 aircraft be labeled with the operator’s registration number.

21 (3) It is the Legislature’s intent that if the Federal Aviation
22 Administration eliminates small unmanned aircraft registration,
23 the ____ shall develop a statewide small unmanned aircraft
24 registration system.

25 (4) If the state fails to develop a statewide registration system
26 within ____ months of the final action by the Federal Aviation
27 Administration to eliminate the federal registration system, local
28 agencies may develop a registration system for small unmanned
29 aircraft to be operated within an agency’s jurisdiction.

30 (5) Notwithstanding any other provision of law, a state or local
31 agency may require an unmanned aircraft operator to provide proof
32 of federal, state, or local registration to licensing or enforcement
33 officials. An operator who fails to show proof of registration shall
34 correct the violation within the time period as provided by law. If
35 an operator fails to correct the violation within the applicable time
36 period, the state or local agency may take additional enforcement
37 actions as provided by law.

38 (c) A state or local agency may designate recreational areas for
39 the operation of small unmanned aircraft. The state or local agency
40 shall cause signage to be posted at each entrance to the recreational

1 area notifying the public that unmanned aircraft may be operating
2 in the area.

3 (d) Every unmanned aircraft shall be operated in strict
4 compliance with 14 CFR Part 107 as that regulation read on
5 January 1, 2019, unless the operator has received a valid waiver
6 or authorization from the Federal Aviation Administration. A state
7 or local agency may enforce the provisions of this section as
8 provided by law.

9 (e) A state or local agency may require the operator of a small
10 unmanned aircraft system for commercial purposes to maintain
11 insurance coverage, as specified by the agency.

12 (f) G. An operator's compliance with the provisions of this
13 section shall not be a defense to liability for a violation of Section
14 1708.8 of the Civil Code.

15 (g) For purposes of this section, the terms "public unmanned
16 aircraft system," "small unmanned aircraft," "unmanned aircraft,"
17 and "unmanned aircraft system," have the same meanings as those
18 terms are defined in Section 853.5.