



February 20, 2023

Representative Jason Kropf  
Chair, House Committee on Judiciary  
Oregon State Legislature  
900 Court St. NE  
Salem, OR 97301

Sent via email to [rep.jasonkropf@oregonlegislature.gov](mailto:rep.jasonkropf@oregonlegislature.gov)

Dear Chairman Kropf:

The undersigned organizations urge the Oregon legislature to reject proposed House Bill No. 2688 (“HB 2688”), which we understand is set for hearing on February 21, 2023. HB 2688 would allow a private property owner to sue a drone operator merely because the drone is flown over the property without consent of the property owner.<sup>1</sup> HB 2688 proposes to amend ORS 837.380 to give property owners broader authority to preclude UAS operations over their property by the threat of litigation. Because the bill and current ORS 837.380 are tantamount to regulation of the national airspace, they are preempted by Federal law. If enacted, revised ORS 837.330 would, like current law, stymie industry growth and deny the public the manifold benefits from drone operations. Thus, rather than amend this statute, the Oregon legislature should repeal it on preemption grounds for the reasons discussed herein.

HB 2688 should not be adopted because it would effectively establish amorphous no-fly zones over private property in the National Airspace (“NAS”) over Oregon. Laws and regulations governing the operation of drones in the NAS may be adopted only by the federal government. Under the Supremacy Clause of the U.S. Constitution, the Congress of the United States has the power to preempt state law. Congress has done so in providing the Federal Aviation Administration with plenary authority over the NAS. Congress has thus occupied the field of

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<sup>1</sup> Existing law also gives the Attorney General, on behalf of the State of Oregon, authority to bring a nuisance or trespass claim against the operator of a drone in “airspace over this state” without defining what constitutes a nuisance or trespass.

airspace regulation and, beginning in 2012, directed the FAA to integrate civil drones into the NAS.

HB 2688 directly conflicts with this approach by prohibiting UAS flights over private property without the landowner's consent. In 2015, the FAA released a UAS Fact Sheet reminding state and local jurisdictions that they lack authority to regulate airspace.<sup>2</sup> The FAA has made clear that regulating navigable airspace is preempted.<sup>3</sup> "A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system."<sup>4</sup>

Under existing ORS 837.380, a private property owner can recover treble damages for any injury and obtain an injunction, as well as recover attorney fees if the amount of the claim is \$10,000 or less. Thus, a private property plaintiff may prevail in court, obtain an injunction, and recover attorney fees, without establishing any injury or harm to a person or the property.

This bill, as well as current ORS 837.380, purports to give a private right of action for a trespass to property. This right of action exists regardless of the altitude of the drone, the amount of time the drone flies over private property, whether the flight results in any interference with the use or enjoyment of the property, and even if the owner is not on the property at the time of the flight. In purporting to establish a sort of strict liability without any showing of harm or interference, HB 2688 is flawed as a matter of policy. The Restatement (Second) of Torts section 159 (1965) recognizes a right to sue for an aerial trespass, but only where the flight is operated within the "immediate reaches" of the owner's use of the property and the flight or flights substantially interfere with the owner's use and enjoyment of the property. The undersigned organizations are available to work with the Oregon legislature to craft an aerial trespass provision that would pass constitutional muster and provide a remedy for aerial trespass without unreasonably inhibiting responsible drone operations for the benefit of Oregon individuals and businesses.

For the above reasons, the undersigned organizations respectfully oppose enactment of HB 2688 and urge a revision to ORS 837.380 in accordance with this letter.

Sincerely,

Gregory S. Walden  
Aviation Counsel  
Small UAV Coalition

Mike Smitsky  
Vice President, Government Affairs  
Association of Uncrewed Vehicle Systems International

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<sup>2</sup> 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/sites/faa.gov/files/uas/resources/policy\\_library/UAS\\_Fact\\_Sheet\\_Final.pdf](https://www.faa.gov/sites/faa.gov/files/uas/resources/policy_library/UAS_Fact_Sheet_Final.pdf).

<sup>3</sup> UAS Fact Sheet at 3.

<sup>4</sup> UAS Fact Sheet at 2.

Vic Moss  
Vice President  
Drone Service Providers Alliance