

BILL ANALYSIS

C.S.S.B. 1308
By: Hancock
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Chapter 423, Government Code, is intended to preserve the safety and privacy of certain critical infrastructure in Texas, such as military installations and airports, from potential dangers posed by unmanned aircraft. In 2022, the National Press Photographers Association and Texas Press Association challenged the constitutionality of Chapter 423 and ultimately the chapter was ruled unconstitutional for providing certain commercial use exemptions but failing to exempt news reporting, in violation of the First Amendment.

Military installations in the North Texas region and the Fort Worth Airport have reported suspicious activity involving unidentified unmanned aircraft flying around them, posing potential security threats and air traffic safety hazards. Legislation is needed to restore protections for the security of military installations and airports.

Accordingly, C.S.S.B. 1308 seeks to create a new, standalone offense of operating an unmanned aircraft over an airport or military installation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1308 amends the Penal Code to create the standalone offense of operating an unmanned aircraft over an airport or military installation, which consists of similar conduct as the Government Code offense of operating an unmanned aircraft over a correctional, detention, or critical infrastructure facility with respect to an airport or military installation. However, this new standalone offense differs from that Government Code offense in the following ways:

- whereas the applicability of the Government Code offense is triggered by operating an unmanned aircraft over a critical infrastructure facility and the unmanned aircraft is not higher than 400 feet above ground level, the new standalone offense contains no such height limitation and makes it an offense for any operation of an unmanned aircraft over an airport or military installation; and
- whereas the applicability of the Government Code offense is triggered by allowing an unmanned aircraft to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility, the applicability of the new standalone offense is triggered by operating an unmanned

aircraft in a manner that interferes with the operations of or causes a disturbance to an airport or military installation.

C.S.S.B. 1308 makes the conditions constituting exceptions from the application of the Government Code offense applicable instead as defenses to prosecution for the new Penal Code offense, except that:

- the bill excludes the exception for an operator of an unmanned aircraft that is being used for a commercial purpose, which is not established as a defense to prosecution; and
- whereas the Government Code offense contains an exception for a person who has the prior written consent of the owner or operator of the applicable critical infrastructure facility, the bill establishes as a defense to prosecution for the Penal Code offense that the person has the prior written or electronic authorization of the owner or operator of the airport or military installation or the Federal Aviation Administration.

The bill assigns the same Class B misdemeanor penalty from the Government Code offense to the new Penal Code offense and enhances the penalty for the standalone offense to a Class A misdemeanor for a subsequent conviction of the offense.

C.S.S.B. 1308 amends the Government Code accordingly to remove airports and military installations from the critical infrastructure facilities subject to its offense and to make other conforming changes.

C.S.S.B. 1308 applies only to an offense committed on or after the bill's effective date and provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1308 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Both the substitute and engrossed establish that operating an unmanned aircraft over an airport or military installation constitutes the offense of operation of unmanned aircraft over an airport or military installation created by the bill. However, the engrossed specified that the offense applied only to the operation of unmanned aircraft that is not higher than 400 feet above ground level, whereas the substitute does not include any such height limitation.

The substitute replaces the provision from the engrossed that established that allowing an unmanned aircraft to come within a distance of an airport or military installation that is close enough to interfere with the operations of or cause a disturbance to the installation constitutes the offense of operation of unmanned aircraft over an airport or military installation with a provision that instead establishes that operating an unmanned aircraft in a manner that interferes with the operations of or causes a disturbance to an airport or military installation constitutes the offense.

Whereas the engrossed established that it is a defense to prosecution for the offense of operation of an unmanned aircraft over an airport or military installation that the applicable conduct was engaged in by a person who has the prior written consent of the owner or operator of the airport or installation, the substitute instead establishes that it is a defense to prosecution that the conduct was engaged in by a person who has the prior written or electronic authorization of the owner or operator or the Federal Aviation Administration.