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(Original Signature of Member)

112TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend the FAA Modernization and Reform Act of 2012 to provide guidance and limitations regarding the integration of unmanned aircraft systems into United States airspace, and for other purposes.

\_\_\_\_\_

Mr. MARKEY introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

\_\_\_\_\_

## **A BILL**

To amend the FAA Modernization and Reform Act of 2012 to provide guidance and limitations regarding the integration of unmanned aircraft systems into United States airspace, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Drone Aircraft Privacy  
5 and Transparency Act of 2012”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) On February 14, 2012, President Obama  
4 signed the FAA Modernization and Reform Act of  
5 2012 (Public Law 112-95; 49 U.S.C. 40101 note)  
6 into law, and sections 331 through 336 of such Act  
7 require the Federal Aviation Administration to fully  
8 integrate government, commercial, and recreational  
9 unmanned aircraft systems, commonly known as  
10 “drones”, into United States airspace by October  
11 2015.

12 (2) Unmanned aircraft systems have tradition-  
13 ally been used almost exclusively overseas by mili-  
14 tary and security organizations; however, State and  
15 local governments, businesses, and private individ-  
16 uals are increasingly using unmanned aircraft sys-  
17 tems in the United States, including deployments for  
18 law enforcement operations.

19 (3) As the technology advances and the cost de-  
20 creases—unmanned aircraft systems are already or-  
21 ders of magnitude less expensive to purchase and op-  
22 erate than piloted aircraft—the market for Federal,  
23 State, and local government and commercial un-  
24 manned aircraft systems is rapidly growing.

1           (4) It has been estimated there could be as  
2           many as 30,000 unmanned aircraft systems in the  
3           sky in the United States by 2020.

4           (5) There will no doubt be many beneficial ap-  
5           plications of this technology, for as Secretary of  
6           Transportation Ray LaHood said in a statement on  
7           March 7, 2012, “Unmanned aircraft can help us  
8           meet a number of challenges, from spotting wildfires  
9           to assessing natural disasters.”.

10          (6) However, there also is the potential for un-  
11          manned aircraft system technology to enable  
12          invasive and pervasive surveillance without adequate  
13          privacy protections, and currently, no explicit pri-  
14          vacy protections or public transparency measures  
15          with respect to such system technology are built into  
16          the law.

17          (7) Federal standards for informing the public  
18          and protecting individual privacy with respect to un-  
19          manned aircraft systems are needed.

20 **SEC. 3. GUIDANCE AND LIMITATIONS REGARDING UN-**  
21 **MANNED AIRCRAFT SYSTEMS.**

22          Subtitle B of title III of the FAA Modernization and  
23          Reform Act of 2012 (Public Law 112-95; 49 U.S.C.  
24          40101 note) is amended by adding at the end the following  
25          new sections:

1 **“SEC. 337. PRIVACY STUDY AND REPORT.**

2 “(a) STUDY.—The Secretary of Transportation, in  
3 consultation with the Secretary of Commerce, the Chair-  
4 man of the Federal Trade Commission, and the Chief Pri-  
5 vacy Officer of the Department of Homeland Security,  
6 shall carry out a study that identifies any potential threats  
7 to privacy protections posed by the integration of un-  
8 manned aircraft systems into the national airspace sys-  
9 tem, including any potential violations of the privacy prin-  
10 ciples.

11 “(b) REPORT.—Not later than 180 days after the  
12 date of enactment of this section, the Secretary of Trans-  
13 portation shall submit a report on the study conducted  
14 under subsection (a) to—

15 “(1) the Committee on Transportation and In-  
16 frastructure of the House of Representatives;

17 “(2) the Committee on Energy and Commerce  
18 of the House of Representatives;

19 “(3) the Committee on Homeland Security of  
20 the House of Representatives;

21 “(4) the Committee on Environment and Public  
22 Works of the Senate;

23 “(5) the Committee on Commerce, Science, and  
24 Transportation of the Senate; and

25 “(6) the Committee on Homeland Security and  
26 Governmental Affairs of the Senate.

1           “(c) DEFINITIONS.—For purposes of this section and  
2 the succeeding sections of this subtitle—

3           “(1) the term ‘privacy protections’ means pro-  
4 tectations that relate to the use, collection, and disclo-  
5 sure of information and data about individuals and  
6 groups of individuals;

7           “(2) the term ‘privacy principles’ means the  
8 principles described in Part Two of the Organisation  
9 for Economic Co-operation and Development guide-  
10 lines titled ‘Annex to the Recommendation of the  
11 Council of 23rd September 1980: Guidelines Gov-  
12 erning The Protection Of Privacy And Transborder  
13 Flows Of Peronal Data’, adopted by the  
14 Organisation for Economic Co-operation and Devel-  
15 opment on September 23, 1980; and

16           “(3) the term ‘law enforcement’ means—

17           “(A) any entity of the United States or of  
18 a State or political subdivision thereof, that is  
19 empowered by law to conduct investigations of  
20 or to make arrests for offenses; and

21           “(B) any entity or individual authorized by  
22 law to prosecute or participate in the prosecu-  
23 tion of such offenses.

1 **“SEC. 338. RULEMAKING.**

2 “As part of the rulemaking process required under  
3 section 332(b)(1) and the final rule adopted under such  
4 section, the Secretary of Transportation shall establish  
5 procedures to ensure that the integration of unmanned  
6 aircraft systems into the national airspace system is done  
7 in compliance with the privacy principles.

8 **“SEC. 339. DATA COLLECTION STATEMENTS AND DATA**  
9 **MINIMIZATION STATEMENTS.**

10 “(a) IN GENERAL.—Beginning on the date of enact-  
11 ment of this section, the Secretary of Transportation may  
12 not approve, issue, or award any certificate, license, or  
13 other grant of authority to operate an unmanned aircraft  
14 system in the national airspace system unless the applica-  
15 tion for such certificate, license, or other grant of author-  
16 ity includes—

17 “(1) a data collection statement in accordance  
18 with the requirements of subsection (b) that provides  
19 reasonable assurance that the applicant will operate  
20 the unmanned aircraft system in accordance with  
21 the privacy principles; and

22 “(2) in the case of such an unmanned aircraft  
23 system that is to be operated by a law enforcement  
24 agency or a law enforcement agency contractor or  
25 subcontractor, a data minimization statement in ac-  
26 cordance with the requirements of subsection (c)

1 that provides reasonable assurance that the appli-  
2 cant will operate the unmanned aircraft system in  
3 accordance with the privacy principles.

4 “(b) DATA COLLECTION STATEMENT.—A data col-  
5 lection statement under subsection (a), with respect to an  
6 unmanned aircraft system, shall include information iden-  
7 tifying—

8 “(1) the individuals or entities that will have  
9 the power to use the unmanned aircraft system;

10 “(2) the specific locations in which the un-  
11 manned aircraft system will operate;

12 “(3) the maximum period for which the un-  
13 manned aircraft system will operate in each flight;

14 “(4) whether the unmanned aircraft system will  
15 collect information or data about individuals or  
16 groups of individuals, and if so—

17 “(A) the circumstances under which such  
18 system will be used; and

19 “(B) the specific kinds of information or  
20 data such system will collect about individuals  
21 or groups of individuals and how such informa-  
22 tion or data, as well as conclusions drawn from  
23 such information or data, will be used, dis-  
24 closed, and otherwise handled, including—

1                   “(i) how the collection or retention of  
2                   such information or data that is unrelated  
3                   to the specified use will be minimized;

4                   “(ii) whether such information or data  
5                   might be sold, leased, or otherwise pro-  
6                   vided to third parties, and if so, under  
7                   what circumstances it might be so sold or  
8                   leased;

9                   “(iii) the period for which such infor-  
10                  mation or data will be retained; and

11                  “(iv) when and how such information  
12                  or data, including information or data no  
13                  longer relevant to the specified use, will be  
14                  destroyed;

15                  “(5) the possible impact the operation of the  
16                  unmanned aircraft system may have upon the pri-  
17                  vacy of individuals;

18                  “(6) the specific steps that will be taken to  
19                  mitigate any possible impact identified under para-  
20                  graph (5), including steps to protect against unau-  
21                  thorized disclosure of any information or data de-  
22                  scribed in paragraph (4), such as the use of  
23                  encryption methods and other security features that  
24                  will be used;

1           “(7) a telephone number or electronic mail ad-  
2           dress that an individual with complaints about the  
3           operation of the unmanned aircraft system may use  
4           to report such complaints and to request confirma-  
5           tion that personally identifiable data relating to such  
6           individual has been collected;

7           “(8) in the case that personally identifiable  
8           data relating to such individual has been collected,  
9           a reasonable process for such individual to request  
10          to obtain such data in a timely and an intelligible  
11          manner;

12          “(9) in the case that a request described in  
13          paragraph (8) is denied, a process by which such in-  
14          dividual may obtain the reasons for the denial and  
15          challenge the denial; and

16          “(10) in the case that personally identifiable  
17          data relating to such individual has been collected,  
18          a process by which such individual may challenge the  
19          accuracy of such data and, if the challenge is suc-  
20          cessful, have such data erased or amended.

21          “(c) DATA MINIMIZATION STATEMENT.—A data  
22          minimization statement described in this subsection, with  
23          respect to an unmanned aircraft system operated by a law  
24          enforcement agency, contractor, or subcontractor de-  
25          scribed in subsection (a)(2), shall detail the applicable—

1           “(1) policies adopted by the agency, contractor,  
2 or subcontractor, respectively, that—

3           “(A) minimize the collection by the un-  
4 manned aircraft system of information and data  
5 unrelated to the investigation of a crime under  
6 a warrant;

7           “(B) require the destruction of such infor-  
8 mation and data, as well as of information and  
9 data collected by the unmanned aircraft system  
10 that is no longer relevant to the investigation of  
11 a crime under a warrant;

12           “(C) establish procedures for the method  
13 of such destruction;

14           “(2) audit and oversight procedures adopted by  
15 the agency, contractor, or subcontractor, respec-  
16 tively, that will ensure that such agency, contractor,  
17 or subcontractor, respectively, uses the unmanned  
18 aircraft system in accordance with the parameters  
19 outlined in the data collection statement and the  
20 statement required by this subsection.

21 **“SEC. 340. DISCLOSURE OF APPROVED CERTIFICATES, LI-**  
22 **CENSES, AND OTHER GRANTS OF AUTHORITY.**

23           “(a) IN GENERAL.—The Administrator of the Fed-  
24 eral Aviation Administration shall make available on the

1 public Internet website of the Federal Aviation Adminis-  
2 tration in a searchable format—

3 “(1) the approved certificate, license, or other  
4 grant of authority for each unmanned aircraft sys-  
5 tem awarded a certificate, license, or other grant of  
6 authority to operate in the national airspace system,  
7 including any such certificate, license, or other grant  
8 of authority awarded prior to the date of enactment  
9 of this section;

10 “(2) information detailing where, when, and for  
11 what period each unmanned aircraft system will be  
12 operated;

13 “(3) information detailing any data security  
14 breach that occurs with regard to information col-  
15 lected by an unmanned aircraft system; and

16 “(4) in the case of a certificate, license, or  
17 other grant of authority awarded on or after the  
18 date of enactment of this section to operate an un-  
19 manned aircraft system in the national airspace sys-  
20 tem, the data collection statement described in sec-  
21 tion 339(b) and, if applicable, the data minimization  
22 statement described in section 339(c) required with  
23 respect to such unmanned aircraft system.

1           “(b) DEADLINE.—The Administrator shall complete  
2 the requirements under subsection (a) with regard to each  
3 unmanned aircraft system—

4           “(1) in the case of a certificate, license, or  
5 other grant of authority awarded before the date of  
6 enactment of this section, not later than 90 days  
7 after such date of enactment; and

8           “(2) in the case of a certificate, license, or  
9 other grant of authority awarded on or after the  
10 date of enactment of this section, as soon as is prac-  
11 ticable after the date of approval of such certificate,  
12 license, or other grant of authority.

13 **“SEC. 341. WARRANTS REQUIRED FOR GENERALIZED SUR-**  
14 **VEILLANCE.**

15           “(a) IN GENERAL.—No person or entity may use an  
16 unmanned aircraft system for protective activities, or for  
17 law enforcement or intelligence purposes, except pursuant  
18 to a warrant issued using the procedures described in the  
19 Federal Rules of Criminal Procedure (or, in the case of  
20 a State court, issued using State warrant procedures) by  
21 a court of competent jurisdiction, or as otherwise provided  
22 in the Foreign Intelligence Surveillance Act of 1978 (50  
23 U.S.C. 1801 et seq.).

24           “(b) EXCEPTION.—

1           “(1) IN GENERAL.—Subsection (a) shall not  
2           apply in exigent circumstances (as defined in para-  
3           graph 2).

4           “(2) EXIGENT CIRCUMSTANCES DEFINED.—Ex-  
5           igent circumstances exist when a law enforcement  
6           entity reasonably believes there is—

7                   “(A) an imminent danger of death or seri-  
8                   ous physical injury; or

9                   “(B) a high risk of a terrorist attack by a  
10                  specific individual or organization, when the  
11                  Secretary of Homeland Security has determined  
12                  that credible intelligence indicates there is such  
13                  a risk.

14           “(3) REQUIRED DOCUMENTATION.—In the case  
15           of a person or entity operating an unmanned air-  
16           craft system under the exception for exigent cir-  
17           cumstances created by paragraph (1), documenta-  
18           tion justifying the exception shall be submitted to  
19           the Secretary of Transportation not later than 7  
20           days after the date of the relevant unmanned air-  
21           craft system flight.

22           “(4) INFORMATION OR DATA UNRELATED TO  
23           EXIGENT CIRCUMSTANCES.—A person or entity op-  
24           erating an unmanned aircraft system under the ex-  
25           ception for exigent circumstances created by para-

1 graph (1) shall minimize the collection by the un-  
2 manned aircraft system of information and data un-  
3 related to the exigent circumstances, and if such un-  
4 manned aircraft system incidentally collects any  
5 such information or data while being operated under  
6 such exception, the person or entity operating the  
7 unmanned aircraft system shall destroy such infor-  
8 mation and data.

9 “(5) PROHIBITION ON INFORMATION SHAR-  
10 ING.—A person or entity shall not intentionally di-  
11 vulge information collected in accordance with this  
12 section with any other person or entity, except as  
13 authorized by law.

14 “(6) PROHIBITION ON USE AS EVIDENCE.—  
15 Whenever information has been collected by means  
16 of use of an unmanned aircraft system, no part of  
17 the contents of such information and no evidence de-  
18 rived therefrom may be received in evidence in any  
19 trial, hearing, or other proceeding in or before any  
20 court, grand jury, department, officer, agency, regu-  
21 latory body, legislative committee, or other authority  
22 of the United States, a State, or a political subdivi-  
23 sion thereof unless that information is collected in  
24 accordance with this section”.

1 **SEC. 4. ENFORCEMENT.**

2 (a) **PROHIBITED CONDUCT.**—

3 (1) **IN GENERAL.**—It shall be unlawful for a  
4 person or entity to operate an unmanned aircraft  
5 system in a manner that is not in accordance with  
6 the terms of a data collection statement submitted  
7 under section 339(a)(1) of the FAA Modernization  
8 and Reform Act of 2012, as added by section 3 of  
9 this Act, or in a manner that violates any portion of  
10 the final rule required under section 332(b)(1) of  
11 such Act insofar as such portion relates to the pro-  
12 cedures described in section 338 of such Act.

13 (2) **REGULATIONS.**—The Commission may pro-  
14 mulgate regulations in accordance with section 553  
15 of title 5, United States Code, to carry out para-  
16 graph (1) with respect to persons and entities de-  
17 scribed in subsection (b)(3).

18 (b) **ENFORCEMENT BY FEDERAL TRADE COMMIS-**  
19 **SION.**—

20 (1) **UNFAIR OR DECEPTIVE ACTS OR PRAC-**  
21 **TICES.**—A violation of subsection (a) or the regula-  
22 tions promulgated under such subsection shall be  
23 treated as a violation of a regulation under section  
24 18(a)(1)(B) of the Federal Trade Commission Act  
25 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-  
26 tive acts or practices.

1           (2) POWERS OF COMMISSION.—The Commis-  
2           sion shall enforce subsection (a) and the regulations  
3           promulgated under such subsection in the same  
4           manner, by the same means, and with the same  
5           powers and duties as though all applicable terms  
6           and provisions of the Federal Trade Commission Act  
7           (15 U.S.C. 41 et seq.) were incorporated into and  
8           made a part of this Act, and any violator shall be  
9           subject to the penalties and entitled to the privileges  
10          and immunities provided in the Federal Trade Com-  
11          mission Act.

12          (3) APPLICABILITY.—Paragraphs (1) and (2)  
13          shall apply—

14                (A) with respect to persons, partnerships,  
15                and corporations over which the Commission  
16                has jurisdiction under section 5(a)(2) of the  
17                Federal Trade Commission Act (15 U.S.C.  
18                45(a)(2)) (except to the extent such person,  
19                partnership, or corporation is a law enforce-  
20                ment contractor or subcontractor); and

21                (B) notwithstanding such section, with re-  
22                spect to air carriers and foreign air carriers.

23          (c) ACTIONS BY STATES.—

24                (1) CIVIL ACTIONS.—In any case in which the  
25                attorney general of a State, or an official or agency

1 of a State, has reason to believe that an interest of  
2 the residents of that State has been or is threatened  
3 or adversely affected by an act or practice in viola-  
4 tion of subsection (a) or a regulation promulgated  
5 under such subsection, or by the operation of an un-  
6 manned aircraft system in violation of the terms of  
7 a data minimization statement submitted under sec-  
8 tion 339(a)(2) of the FAA Modernization and Re-  
9 form Act of 2012 (49 U.S.C. 40101 note), the State  
10 may bring a civil action on behalf of the residents  
11 of the State in an appropriate State court or an ap-  
12 propriate district court of the United States to—

13 (A) enjoin the violation;

14 (B) enforce compliance with such sub-  
15 section, regulation, or statement;

16 (C) obtain damages, restitution, or other  
17 compensation on behalf of residents of the  
18 State; or

19 (D) obtain such other legal and equitable  
20 relief as the court may consider to be appro-  
21 priate.

22 (2) NOTICE.—Before filing an action under this  
23 subsection against a person, partnership, or corpora-  
24 tion over which the Commission has jurisdiction  
25 under section 5(a)(2) of the Federal Trade Commis-

1 sion Act (15 U.S.C. 45(a)(2)) (except to the extent  
2 such person, partnership, or corporation is a law en-  
3 forcement contractor or subcontractor) or an air car-  
4 rier or foreign air carrier, the attorney general, offi-  
5 cial, or agency of the State involved shall provide to  
6 the Commission a written notice of that action and  
7 a copy of the complaint for that action. If the attor-  
8 ney general, official, or agency determines that it is  
9 not feasible to provide the notice described in this  
10 paragraph before the filing of the action, the attor-  
11 ney general, official, or agency shall provide written  
12 notice of the action and a copy of the complaint to  
13 the Commission immediately upon the filing of the  
14 action.

15 (3) AUTHORITY OF THE COMMISSION.—

16 (A) IN GENERAL.—On receiving notice  
17 under paragraph (2) of an action under this  
18 subsection, the Commission shall have the  
19 right—

20 (i) to intervene in the action;

21 (ii) upon so intervening, to be heard  
22 on all matters arising therein; and

23 (iii) to file petitions for appeal.

24 (B) LIMITATION ON STATE ACTION WHILE  
25 FEDERAL ACTION IS PENDING.—If the Commis-

1           sion or the Attorney General of the United  
2           States has instituted a civil action for violation  
3           of subsection (a) or a regulation promulgated  
4           under such subsection (referred to in this sub-  
5           paragraph as the “Federal action”), no State  
6           attorney general, official, or agency may bring  
7           an action under this subsection during the  
8           pendency of the Federal action against any de-  
9           fendant named in the complaint in the Federal  
10          action for any violation as alleged in that com-  
11          plaint.

12           (4) RULE OF CONSTRUCTION.—For purposes of  
13          bringing a civil action under this subsection, nothing  
14          in this Act or any amendment made by this Act  
15          shall be construed to prevent an attorney general,  
16          official, or agency of a State from exercising the  
17          powers conferred on the attorney general, official, or  
18          agency by the laws of that State to conduct inves-  
19          tigations, administer oaths and affirmations, or com-  
20          pel the attendance of witnesses or the production of  
21          documentary and other evidence.

22          (d) PRIVATE RIGHT OF ACTION.—

23           (1) IN GENERAL.—A person injured by an act  
24          in violation of subsection (a) or the regulations pro-  
25          mulgated under such subsection, or by the operation

1 of an unmanned aircraft system in violation of the  
2 terms of a data minimization statement submitted  
3 under section 339(a)(2) of the FAA Modernization  
4 and Reform Act of 2012 (49 U.S.C. 40101 note),  
5 may bring in an appropriate State court or an ap-  
6 propriate district court of the United States—

7 (A) an action to enjoin such violation;

8 (B) an action to recover damages for ac-  
9 tual monetary loss from such violation, or to re-  
10 ceive up to \$1000 in damages for each such vio-  
11 lation, whichever is greater; or

12 (C) both such actions.

13 (2) INTENTIONAL VIOLATIONS.—If the defend-  
14 ant committed a violation described in paragraph  
15 (1), and intended to do so, the court may increase  
16 the amount of the award to an amount equal to not  
17 more than 3 times the amount available under para-  
18 graph (1)(B).

19 (3) COSTS.—The court shall award to a pre-  
20 vailing plaintiff in an action under this subsection  
21 the costs of such action and reasonable attorney’s  
22 fees, as determined by the court.

23 (4) LIMITATION.—An action may be com-  
24 menced under this subsection not later than 2 years  
25 after the date on which the person first discovered

1 or had a reasonable opportunity to discover the vio-  
2 lation.

3 (5) NONEXCLUSIVE REMEDY.—The remedy pro-  
4 vided by this subsection shall be in addition to any  
5 other remedies available to the person.

6 (e) SUITS AGAINST GOVERNMENTAL ENTITIES.—  
7 Notwithstanding the Federal Trade Commission Act (15  
8 U.S.C. 41 et seq.), a suit under subsection (c) or sub-  
9 section (d) may be maintained against a governmental en-  
10 tity.

11 (f) LICENSE REVOCATION.—The Federal Aviation  
12 Administration shall revoke the certificate, license, or  
13 other grant of authority to operate an unmanned aircraft  
14 system if such system is operated in a manner that—

15 (1) is not in accordance with the terms of—

16 (A) a data collection statement submitted  
17 under section 339(a)(1) of the FAA Moderniza-  
18 tion and Reform Act of 2012 (49 U.S.C. 40101  
19 note), as added by this Act; or

20 (B) a data minimization statement sub-  
21 mitted under section 339(a)(2) of such Act; or

22 (2) violates any portion of the final rule re-  
23 quired under section 332(b)(1) of such Act insofar  
24 as such portion relates to the procedures described  
25 in section 338 of such Act, as added by this Act.

1 (g) VIOLATIONS.—Each day on which each un-  
2 manned aircraft system is operated in violation of sub-  
3 section (a), or the regulations promulgated under such  
4 subsection, or the terms of a data minimization statement  
5 submitted under section 339(a)(2) of the FAA Moderniza-  
6 tion and Reform Act of 2012 (49 U.S.C. 40101 note), as  
7 added by section 3 of this Act, shall be treated as a sepa-  
8 rate violation.

9 (h) DEFINITIONS.—In this section:

10 (1) COMMISSION.—The term “Commission”  
11 means the Federal Trade Commission.

12 (2) LAW ENFORCEMENT.—The term “law en-  
13 forcement” has the meaning given such term in sec-  
14 tion 337(c)(3) of the FAA Modernization and Re-  
15 form Act of 2012, as added by section 3 of this Act.

16 (3) STATE.—The term “state” means each of  
17 the several States, the District of Columbia, each  
18 commonwealth, territory, or possession of the United  
19 States, and each federally recognized Indian tribe.

20 (4) UNMANNED AIRCRAFT SYSTEM.—The term  
21 “unmanned aircraft system” has the meaning given  
22 such term in section 331 of the FAA Modernization  
23 and Reform Act of 2012 (49 U.S.C. 40101 note).