

[DISCUSSION DRAFT]

112TH CONGRESS
2^D 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.

IN THE HOUSE OF REPRESENTATIVES

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.

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”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) On February 14, 2012, President Obama
2 signed the Federal Aviation Administration Mod-
3 ernization and Reform Act into law, and sections
4 331 through 336 of such Act require the Federal
5 Aviation Administration to fully integrate govern-
6 ment, commercial, and recreational unmanned air-
7 craft systems, commonly known as “drones”, into
8 United States airspace by October 2015.

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

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

22 (4) It has been estimated there could be as
23 many as 30,000 unmanned aircraft systems in the
24 sky by 2020.

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

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

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

17 **SEC. 3. GUIDANCE AND LIMITATIONS REGARDING UN-**
18 **MANNED AIRCRAFT SYSTEMS.**

19 Subtitle B of title III of the FAA Modernization and
20 Reform Act of 2012 (49 U.S.C. 40101 note) is amended
21 by adding at the end the following new sections:

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

23 “(a) **STUDY.**—The Secretary of Transportation, in
24 consultation with the Secretary of Commerce, the Chair-
25 man of the Federal Trade Commission, and the Chief Pri-

1 vacy Officer of the Department of Homeland Security,
2 shall carry out a study that identifies any potential threats
3 to privacy protections posed by the integration of un-
4 manned aircraft systems into the national airspace sys-
5 tem, including any potential violations of the fair informa-
6 tion practice principles.

7 “(b) REPORT.—Not later than 6 months after the
8 date of enactment of this section, the Secretary of Trans-
9 portation shall submit a report on the study conducted
10 under subsection (a) to—

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

13 “(2) the Committee on Energy and Commerce
14 of the House of Representatives;

15 “(3) the Committee on Homeland Security of
16 the House of Representatives;

17 “(4) the Committee on Environment and Public
18 Works of the Senate;

19 “(5) the Committee on Commerce, Science, and
20 Transportation of the Senate; and

21 “(6) the Committee on Homeland Security and
22 Governmental Affairs of the Senate.

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

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

5 “(2) the term ‘fair information practice prin-
6 ciples’ means the principles described in the Federal
7 Trade Commission report titled ‘Protecting Con-
8 sumer Privacy in an Era of Rapid Change: Rec-
9 ommendations for Businesses and Policymakers’,
10 published by the Federal Trade Commission in
11 March of 2012, and such term shall include such
12 principles as if they were applied to governmental
13 entities as well as nongovernmental entities.

14 **“SEC. 338. RULEMAKING.**

15 “As part of the rulemaking process required under
16 section 332(b)(1) and the final rule adopted under such
17 section, the Secretary of Transportation shall establish
18 procedures to bring the integration of unmanned aircraft
19 systems into the national airspace system into compliance
20 with the fair information practice principles.

21 **“SEC. 339. DATA COLLECTION STATEMENTS AND DATA**
22 **MINIMIZATION STATEMENTS.**

23 “(a) IN GENERAL.—Beginning on the date of enact-
24 ment of this section, the Secretary of Transportation may
25 not approve, issue, or award any certificate, license, or

1 other grant of authority to operate an unmanned aircraft
2 system in the national airspace system unless the applica-
3 tion for such certificate, license, or other grant of author-
4 ity includes—

5 “(1) a data collection statement in accordance
6 with the requirements of subsection (b); and

7 “(2) in the case of such an unmanned aircraft
8 system that is to be operated by a law enforcement
9 agency or a law enforcement agency contractor or
10 subcontractor, a data minimization statement in ac-
11 cordance with the requirements of subsection (c).

12 “(b) DATA COLLECTION STATEMENT.—A data col-
13 lection statement under subsection (a), with respect to an
14 unmanned aircraft system, shall include information iden-
15 tifying—

16 “(1) the individuals or entities that will have
17 the power to authorize the use of the unmanned air-
18 craft system;

19 “(2) the locations in which the unmanned air-
20 craft system will operate;

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

23 “(4) whether the unmanned aircraft system will
24 collect information or data about individuals or
25 groups of individuals, and if so—

1 “(A) the circumstances under which such
2 system will be used; and

3 “(B) the specific kinds of information or
4 data such system will collect about individuals
5 or groups of individuals and how such informa-
6 tion or data, as well as conclusions drawn from
7 such information or data, will be used, dis-
8 closed, and otherwise handled, including—

9 “(i) whether such information or data
10 might be sold, leased, or otherwise pro-
11 vided to third parties, and if so, under
12 what circumstances it might be so sold or
13 leased;

14 “(ii) the period for which such infor-
15 mation or data will be retained; and

16 “(iii) whether such information or
17 data will be destroyed, and if so, when and
18 how it will be destroyed;

19 “(5) the possible impact the operation of the
20 unmanned aircraft system may have upon the pri-
21 vacy of individuals;

22 “(6) the specific steps that will be taken to
23 mitigate any possible impact identified under para-
24 graph (5), including steps to protect against unau-
25 thorized disclosure of any information or data de-

1 scribed in paragraph (4), such as the use of
2 encryption methods and other security features that
3 will be used; and

4 “(7) a telephone number or email address that
5 individuals with complaints about the operation of
6 the unmanned aircraft system may use to report
7 such complaints.

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

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

15 “(A) minimize the collection by the un-
16 manned aircraft system of information and data
17 unrelated to the investigation of a crime; and

18 “(B) require the destruction of information
19 and data collected by the unmanned aircraft
20 system that is no longer relevant to the inves-
21 tigation of a crime; and

22 “(2) audit and oversight procedures adopted by
23 the agency, contractor, or subcontractor, respec-
24 tively, that will ensure that such agency, contractor,
25 or subcontractor, respectively, uses the unmanned

1 aircraft system in accordance with the parameters
2 outlined in the data collection statement and the
3 statement required by this subsection.

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

6 “(a) IN GENERAL.—The Administrator of the Fed-
7 eral Aviation Administration shall make available on the
8 public Internet website of the Federal Aviation Adminis-
9 tration in a searchable format—

10 “(1) the approved certificate, license, or other
11 grant of authority for each unmanned aircraft sys-
12 tem awarded a certificate, license, or other grant of
13 authority to operate in the national airspace system,
14 including any such certificate, license, or other grant
15 of authority awarded prior to the date of enactment
16 of this section;

17 “(2) information detailing where, when, and for
18 what period each unmanned aircraft system will be
19 operated;

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

23 “(4) in the case of a certificate, license, or
24 other grant of authority awarded on or after the
25 date of enactment of this section to operate an un-

1 manned aircraft system in the national airspace sys-
2 tem, the data collection statement described in sec-
3 tion 339(b) and, if applicable, the data minimization
4 statement described in section 339(c) required with
5 respect to such unmanned aircraft system.

6 “(b) DEADLINE.—The Administrator shall complete
7 the requirements under subsection (a) with regard to each
8 unmanned aircraft system—

9 “(1) in the case of a certificate, license, or
10 other grant of authority awarded before the date of
11 enactment of this section, not later than 3 months
12 after such date of enactment; and

13 “(2) in the case of a certificate, license, or
14 other grant of authority awarded on or after the
15 date of enactment of this section, as soon as is prac-
16 ticable after the date of approval of such certificate,
17 license, or other grant of authority.

18 “(c) LIMITATION ON EXCEPTIONS.—The Adminis-
19 trator may not make an exception to subsection (a) unless
20 such exception is for the purposes of—

21 “(1) national security; or

22 “(2) responding to instances of immediate and
23 severe danger to an individual.

1 **“SEC. 341. WARRANTS REQUIRED FOR GENERALIZED SUR-**
2 **VEILLANCE.**

3 “Law enforcement must obtain a warrant to use an
4 unmanned aircraft system for surveillance without a par-
5 ticular target.”.

6 **SEC. 4. ENFORCEMENT.**

7 (a) **PROHIBITED CONDUCT.—**

8 (1) **IN GENERAL.—**It shall be unlawful for a
9 person to operate an unmanned aircraft system in a
10 manner that is not in accordance with the terms of
11 a data collection statement submitted under section
12 339(a)(1) of the FAA Modernization and Reform
13 Act of 2012 (49 U.S.C. 40101 note) or in a manner
14 that violates any portion of the final rule required
15 under section 332(b)(1) of such Act insofar as such
16 portion relates to the procedures described in section
17 338 of such Act.

18 (2) **REGULATIONS.—**The Commission may pro-
19 mulgate regulations under section 553 of title 5,
20 United States Code, to implement and enforce para-
21 graph (1).

22 (b) **ENFORCEMENT BY FEDERAL TRADE COMMIS-**
23 **SION.—**

24 (1) **UNFAIR OR DECEPTIVE ACTS OR PRAC-**
25 **TICES.—**A violation of subsection (a) or the regula-
26 tions promulgated under such subsection shall be

1 treated as a violation of a regulation under section
2 18(a)(1)(B) of the Federal Trade Commission Act
3 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-
4 tive acts or practices.

5 (2) POWERS OF COMMISSION.—The Commis-
6 sion shall enforce subsection (a) and the regulations
7 promulgated under such subsection in the same
8 manner, by the same means, and with the same ju-
9 risdiction, powers, and duties as though all applica-
10 ble terms and provisions of the Federal Trade Com-
11 mission Act (15 U.S.C. 41 et seq.) were incor-
12 porated into and made a part of this Act, and any
13 person who violates such subsection or such regula-
14 tions shall be subject to the penalties and entitled to
15 the privileges and immunities provided in the Fed-
16 eral Trade Commission Act.

17 (c) ACTIONS BY STATES.—

18 (1) CIVIL ACTIONS.—In any case in which the
19 attorney general of a State, or an official or agency
20 of a State, has reason to believe that an interest of
21 the residents of that State has been or is threatened
22 or adversely affected by an act or practice that vio-
23 lates subsection (a) or a regulation promulgated
24 under such subsection, or by the operation of an un-
25 manned aircraft system in a manner that is not in

1 accordance with the terms of a data minimization
2 statement submitted under section 339(a)(2) of the
3 FAA Modernization and Reform Act of 2012 (49
4 U.S.C. 40101 note), the State, as *parens patriae*,
5 may bring a civil action on behalf of the residents
6 of the State in an appropriate State court or an ap-
7 propriate district court of the United States to—

8 (A) enjoin that act or practice;

9 (B) enforce compliance with such sub-
10 section or such regulation;

11 (C) obtain damages, restitution, or other
12 compensation on behalf of residents of the
13 State; or

14 (D) obtain such other legal and equitable
15 relief as the court may consider to be appro-
16 priate.

17 (2) NOTICE.—Before filing an action under this
18 subsection, the attorney general, official, or agency
19 of the State involved shall provide to the Commis-
20 sion a written notice of that action and a copy of the
21 complaint for that action. If the attorney general, of-
22 ficial, or agency determines that it is not feasible to
23 provide the notice described in this paragraph before
24 the filing of the action, the attorney general, official,
25 or agency shall provide written notice of the action

1 and a copy of the complaint to the Commission im-
2 mediately upon the filing of the action.

3 (3) AUTHORITY OF THE COMMISSION.—

4 (A) IN GENERAL.—On receiving notice
5 under paragraph (2) of an action under this
6 subsection, the Commission shall have the
7 right—

8 (i) to intervene in the action;

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

11 (iii) to file petitions for appeal.

12 (B) LIMITATION ON STATE ACTION WHILE
13 FEDERAL ACTION IS PENDING.—If the Commis-
14 sion or the Attorney General of the United
15 States has instituted a civil action for violation
16 of subsection (a) or a regulation promulgated
17 under such subsection (referred to in this sub-
18 paragraph as the “Federal action”), no State
19 attorney general, official, or agency may bring
20 an action under this subsection during the
21 pendency of the Federal action against any de-
22 fendant named in the complaint in the Federal
23 action for any violation as alleged in that com-
24 plaint.

1 (4) RULE OF CONSTRUCTION.—For purposes of
2 bringing a civil action under this subsection, nothing
3 in this Act shall be construed to prevent an attorney
4 general, official, or agency of a State from exercising
5 the powers conferred on the attorney general, offi-
6 cial, or agency by the laws of that State to conduct
7 investigations, administer oaths and affirmations, or
8 compel the attendance of witnesses or the production
9 of documentary and other evidence.

10 (d) PRIVATE RIGHT OF ACTION.—

11 (1) IN GENERAL.—A person injured by an act
12 in violation of subsection (a) or the regulations pro-
13 mulgated under such subsection, or by the operation
14 of an unmanned aircraft system in a manner that is
15 not in accordance with the terms of a data mini-
16 mization statement submitted under section
17 339(a)(2) of the FAA Modernization and Reform
18 Act of 2012 (49 U.S.C. 40101 note), may bring in
19 an appropriate State court or an appropriate district
20 court of the United States—

21 (A) an action to enjoin such violation;

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

1 (C) both such actions.

2 (2) WILLFUL OR KNOWING VIOLATIONS.—If the
3 court finds that the defendant acted willfully or
4 knowingly in committing a violation described in
5 paragraph (1), the court may, in its discretion, in-
6 crease the amount of the award to an amount equal
7 to not more than 3 times the amount available
8 under paragraph (1)(B).

9 (3) COSTS.—The court shall award to a pre-
10 vailing plaintiff in an action under this subsection
11 the costs of such action and reasonable attorney's
12 fees, as determined by the court.

13 (4) LIMITATION.—An action may be com-
14 menced under this subsection not later than 2 years
15 after the date on which the person first discovered
16 or had a reasonable opportunity to discover the vio-
17 lation.

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

21 (e) SUITS AGAINST GOVERNMENTAL ENTITIES.—
22 Notwithstanding section 5(a)(2) of the Federal Trade
23 Commission Act (15 U.S.C. 45(a)(2)), a suit under sub-
24 section (e) or subsection (d) may be maintained against
25 a governmental entity.

1 (f) VIOLATIONS.—Each day on which an unmanned
2 aircraft system is operated in violation of subsection (a)
3 or the regulations promulgated under such subsection
4 shall be treated as a separate violation.

5 (g) DEFINITIONS.—In this section:

6 (1) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (2) UNMANNED AIRCRAFT SYSTEM.—The term
9 “unmanned aircraft system” has the meaning given
10 such term in section 331 of the FAA Modernization
11 and Reform Act of 2012 (49 U.S.C. 40101 note).