

115TH CONGRESS
1ST SESSION

S. _____

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.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY introduced the following bill; which was read twice and 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 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

10 (2) As the technology advances and the cost de-
11 creases—unmanned aircraft systems are already or-
12 ders of magnitude less expensive to purchase and op-
13 erate than piloted aircraft—the market for Federal,
14 State, and local government and commercial un-
15 manned aircraft systems is rapidly growing.

16 (3) It has been estimated there could be as
17 many as 2,700,000 commercial unmanned aircraft
18 systems sold annually in the United States by 2020.

19 (4) There will no doubt be many beneficial ap-
20 plications for unmanned aircraft systems, including
21 delivering goods, serving as early warning systems,
22 performing search and rescue missions, and pro-
23 viding critical aid to those in need.

24 (5) However, there also is the potential for un-
25 manned aircraft system technology to enable

1 invasive and pervasive surveillance without adequate
2 privacy protections, and currently, no explicit pri-
3 vacy protections or public transparency measures
4 with respect to such system technology are built into
5 the law.

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

9 **SEC. 3. GUIDANCE AND LIMITATIONS REGARDING UN-**
10 **MANNED AIRCRAFT SYSTEMS.**

11 (a) IN GENERAL.—Subtitle B of title III of the FAA
12 Modernization and Reform Act of 2012 (Public Law 112–
13 95; 49 U.S.C. 40101 note) is amended by adding at the
14 end the following new sections:

15 **“SEC. 337. RULEMAKING.**

16 “(a) IN GENERAL.—The Secretary of Transportation
17 shall establish procedures to ensure that the integration
18 of unmanned aircraft systems into the national airspace
19 system is done in compliance with the privacy principles.

20 “(b) EXCEPTION.—The procedures established under
21 subsection (a) shall not apply with respect to unmanned
22 aircraft systems operated for news-gathering activities
23 protected by the First Amendment to the Constitution of
24 the United States.

1 **“SEC. 338. DATA COLLECTION STATEMENTS AND DATA**
2 **MINIMIZATION STATEMENTS.**

3 “(a) IN GENERAL.—Beginning on the date of the en-
4 actment of this section, the Secretary of Transportation
5 may not approve, issue, or award any certificate, license,
6 or other grant of authority to operate an unmanned air-
7 craft system in the national airspace system unless the
8 application for such certificate, license, or other grant of
9 authority includes—

10 “(1) a data collection statement in accordance
11 with the requirements of subsection (b) that provides
12 reasonable assurance that the applicant will operate
13 the unmanned aircraft system in accordance with
14 the privacy principles; and

15 “(2) in the case of such an unmanned aircraft
16 system that is to be operated by a law enforcement
17 agency or a law enforcement agency contractor or
18 subcontractor, a data minimization statement in ac-
19 cordance with the requirements of subsection (c)
20 that provides reasonable assurance that the appli-
21 cant will operate the unmanned aircraft system in
22 accordance with the privacy principles.

23 “(b) DATA COLLECTION STATEMENT.—A data col-
24 lection statement under subsection (a), with respect to an
25 unmanned aircraft system, shall include information iden-
26 tifying—

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

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

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

7 “(4) whether the unmanned aircraft system will
8 collect information or data about individuals or
9 groups of individuals, and if so—

10 “(A) the circumstances under which the
11 system will be used; and

12 “(B) the specific kinds of information or
13 data the system will collect about individuals or
14 groups of individuals and how such information
15 or data, as well as conclusions drawn from such
16 information or data, will be used, disclosed, and
17 otherwise handled, including—

18 “(i) how the collection or retention of
19 such information or data that is unrelated
20 to the specified use will be minimized;

21 “(ii) whether such information or data
22 might be sold, leased, or otherwise pro-
23 vided to third parties, and if so, under
24 what circumstances it might be so sold or
25 leased;

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

3 “(iv) when and how such information
4 or data, including information or data no
5 longer relevant to the specified use, will be
6 destroyed;

7 “(5) the possible impact the operation of the
8 unmanned aircraft system may have upon the pri-
9 vacy of individuals;

10 “(6) the specific steps that will be taken to
11 mitigate any possible impact identified under para-
12 graph (5), including steps to protect against unau-
13 thorized disclosure of any information or data de-
14 scribed in paragraph (4), such as the use of
15 encryption methods and other security features that
16 will be used;

17 “(7) a telephone number or electronic mail ad-
18 dress that an individual with complaints about the
19 operation of the unmanned aircraft system may use
20 to report such complaints and to request confirma-
21 tion that personally identifiable data relating to such
22 individual has been collected;

23 “(8) in a case in which personally identifiable
24 data relating to an individual has been collected, a
25 reasonable process for the individual to request to

1 obtain such data in a timely and an intelligible man-
2 ner;

3 “(9) in a case in which a request described in
4 paragraph (8) is denied, a process by which the indi-
5 vidual may obtain the reasons for the denial and
6 challenge the denial; and

7 “(10) in a case in which personally identifiable
8 data relating to an individual has been collected, a
9 process by which the individual may challenge the
10 accuracy of such data and, if the challenge is suc-
11 cessful, have such data erased or amended.

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

17 “(1) policies adopted by the agency, contractor,
18 or subcontractor, as the case may be, that—

19 “(A) minimize the collection by the un-
20 manned aircraft system of information and data
21 unrelated to the investigation of a crime under
22 a warrant;

23 “(B) require the destruction of such infor-
24 mation and data, as well as of information and
25 data collected by the unmanned aircraft system

1 that is no longer relevant to the investigation of
2 a crime under a warrant or to an ongoing
3 criminal proceeding; and

4 “(C) establish procedures for the method
5 of such destruction; and

6 “(2) audit and oversight procedures adopted by
7 the agency, contractor, or subcontractor, as the case
8 may be, that will ensure that the agency, contractor,
9 or subcontractor, as the case may be, uses the un-
10 manned aircraft system in accordance with the pa-
11 rameters outlined in the data collection statement
12 and the statement required by this subsection.

13 “(d) EXCEPTION.—The procedures established under
14 subsections (a), (b), and (c) shall not apply with respect
15 to unmanned aircraft systems operated for news-gathering
16 activities protected by the First Amendment to the Con-
17 stitution of the United States.

18 **“SEC. 339. DISCLOSURE OF APPROVED CERTIFICATES, LI-**
19 **CENSES, AND OTHER GRANTS OF AUTHORITY.**

20 “(a) IN GENERAL.—The Administrator of the Fed-
21 eral Aviation Administration shall make available on the
22 public Internet website of the Federal Aviation Adminis-
23 tration in a searchable format—

1 “(1) the name of each person or agency author-
2 ized to conduct civil or public unmanned aircraft
3 system operations;

4 “(2) the name of the owner of each unmanned
5 aircraft system described in paragraph (1);

6 “(3) the expiration date of the authorization de-
7 scribed in paragraph (1);

8 “(4) the contact information for each person
9 identified under paragraph (1) or (2), including a
10 telephone number and electronic mail address, sub-
11 ject to applicable privacy laws;

12 “(5) the tail number or other specific identifica-
13 tion number of each unmanned aircraft system au-
14 thorized to conduct operations, with a link to the
15 owner of the unmanned aircraft system;

16 “(6) the approved certificate, license, or other
17 grant of authority for each unmanned aircraft sys-
18 tem awarded a certificate, license, or other grant of
19 authority to operate in the national airspace system,
20 including any such certificate, license, or other grant
21 of authority awarded prior to the date of the enact-
22 ment of this section;

23 “(7) information detailing where, when, and for
24 what purpose each unmanned aircraft system will be
25 operated;

1 “(8) information detailing any data security
2 breach that occurs with regard to information col-
3 lected by an unmanned aircraft system;

4 “(9) a description of the technical capability of
5 each unmanned aircraft system, including whether
6 the system has cameras, thermal imaging capabili-
7 ties, mobile phone interception capabilities, facial
8 recognition capabilities, and license plate readers;
9 and

10 “(10) in the case of a certificate, license, or
11 other grant of authority awarded on or after the
12 date of the enactment of this section to operate an
13 unmanned aircraft system in the national airspace
14 system, the data collection statement described in
15 section 339(b) and, if applicable, the data minimiza-
16 tion statement described in section 339(c) required
17 with respect to such unmanned aircraft system.

18 “(b) DEADLINE.—The Administrator shall complete
19 the requirements under subsection (a) with regard to each
20 unmanned aircraft system—

21 “(1) in the case of a certificate, license, or
22 other grant of authority awarded before the date of
23 the enactment of this section, not later than 90 days
24 after such date of enactment; and

1 “(2) in the case of a certificate, license, or
2 other grant of authority awarded on or after the
3 date of the enactment of this section, as soon as is
4 practicable after the date of approval of such certifi-
5 cate, license, or other grant of authority.

6 **“SEC. 340. WARRANTS REQUIRED FOR GENERALIZED SUR-**
7 **VEILLANCE.**

8 “(a) IN GENERAL.—A governmental entity (as de-
9 fined in section 2711 of title 18, United States Code) may
10 not use an unmanned aircraft system or request informa-
11 tion or data collected by another person using an un-
12 manned aircraft system for protective activities, or for law
13 enforcement or intelligence purposes, except pursuant to
14 a warrant issued using the procedures described in the
15 Federal Rules of Criminal Procedure (or, in the case of
16 a State court, issued using State warrant procedures) by
17 a court of competent jurisdiction, or as permitted under
18 the Foreign Intelligence Surveillance Act of 1978 (50
19 U.S.C. 1801 et seq.).

20 “(b) EXCEPTIONS.—

21 “(1) IN GENERAL.—Subsection (a) shall not
22 apply in a case in which a governmental entity is
23 using an unmanned aircraft system in exigent cir-
24 cumstances (as defined in paragraph (2)).

1 “(2) EXIGENT CIRCUMSTANCES DEFINED.—Ex-
2 igent circumstances exist when—

3 “(A) a law enforcement entity reasonably
4 believes there is an imminent danger of death
5 or serious physical injury; or

6 “(B) a law enforcement entity reasonably
7 believes there is a high risk of an imminent ter-
8 rorist attack by a specific individual or organi-
9 zation and the Secretary of Homeland Security
10 has determined that credible intelligence indi-
11 cates there is such a risk.

12 “(3) REQUIRED DOCUMENTATION.—In the case
13 of a person operating an unmanned aircraft system
14 under an exception under paragraph (1), documenta-
15 tion justifying the exception shall be submitted to
16 the Secretary of Transportation not later than 7
17 days after the date of the relevant unmanned air-
18 craft system flight.

19 “(4) INFORMATION OR DATA UNRELATED TO
20 EXIGENT CIRCUMSTANCES.—A person operating an
21 unmanned aircraft system under an exception under
22 paragraph (1) shall minimize the collection by the
23 unmanned aircraft system of information and data
24 unrelated to the reason for the exception. If the un-
25 manned aircraft system incidentally collects any

1 such information or data while being operated under
2 that exception, the person operating the unmanned
3 aircraft system shall destroy the information and
4 data.

5 “(c) PROHIBITION ON INFORMATION SHARING.—A
6 person may not intentionally divulge information collected
7 in accordance with this section with any other person, ex-
8 cept as authorized by law.

9 “(d) PROHIBITION ON USE AS EVIDENCE.—If infor-
10 mation has been collected by means of use of an un-
11 manned aircraft system, no part of the contents of that
12 information and no evidence derived from that information
13 may be received in evidence in any trial, hearing, or other
14 proceeding in or before any court, grand jury, department,
15 officer, agency, regulatory body, legislative committee, or
16 other authority of the United States, a State, or a political
17 subdivision thereof unless that information is collected in
18 accordance with this section.

19 “(e) INJUNCTION.—A person injured by an act in vio-
20 lation of this section may bring in an appropriate State
21 court or an appropriate district court of the United States
22 an action to enjoin such violation.”.

23 (b) DEFINITIONS.—Section 331 of the FAA Mod-
24 ernization and Reform Act of 2012 (Public Law 112–95;
25 49 U.S.C. 40101 note) is amended—

1 (1) by redesignating paragraphs (4) through
2 (9) as paragraphs (7) through (13);

3 (2) by redesignating paragraph (3) as para-
4 graph (4);

5 (3) by inserting after paragraph (2) the fol-
6 lowing:

7 “(3) LAW ENFORCEMENT.—The term ‘law en-
8 forcement’ means—

9 “(A) any entity of the United States or of
10 a State, or political subdivision thereof, that is
11 empowered by law to conduct investigations of
12 or to make arrests for offenses; and

13 “(B) any entity or individual authorized by
14 law to prosecute or participate in the prosecu-
15 tion of such offenses.”; and

16 (4) by inserting after paragraph (4), as redesign-
17 nated by paragraph (2), the following:

18 “(5) PRIVACY PRINCIPLES.—The term ‘privacy
19 principles’ means the principles described in Part
20 Two of the Organization for Economic Co-operation
21 and Development guidelines titled ‘Annex to the
22 Recommendation of the Council of 23rd September
23 1980: Guidelines Governing The Protection Of Pri-
24 vacy And Transborder Flows Of Personal Data’,

1 adopted by the Organization for Economic Co-oper-
2 ation and Development on September 23, 1980.

3 “(6) PRIVACY PROTECTIONS.—The term ‘pri-
4 vacy protections’ means protections that relate to
5 the use, collection, and disclosure of information and
6 data about individuals and groups of individuals.”.

7 **SEC. 4. ENFORCEMENT.**

8 (a) PROHIBITED CONDUCT.—

9 (1) IN GENERAL.—It shall be unlawful for a
10 person to operate an unmanned aircraft system in a
11 manner that is not in accordance with the terms of
12 a data collection statement submitted under section
13 338(a)(1) of the FAA Modernization and Reform
14 Act of 2012, as added by section 3, or in a manner
15 that violates any portion of the final rule required
16 under section 332(b)(1) of such Act insofar as such
17 portion relates to the procedures described in section
18 337 of such Act.

19 (2) REGULATIONS.—The Commission may pro-
20 mulgate regulations in accordance with section 553
21 of title 5, United States Code, to carry out para-
22 graph (1) with respect to persons, partnerships, and
23 corporations described in subsection (b)(3).

24 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
25 SION.—

1 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
2 TICES.—A violation of subsection (a) or the regula-
3 tions promulgated under such subsection shall be
4 treated as a violation of a regulation under section
5 18(a)(1)(B) of the Federal Trade Commission Act
6 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-
7 tive acts or practices.

8 (2) POWERS OF COMMISSION.—The Commis-
9 sion shall enforce subsection (a) and the regulations
10 promulgated under such subsection in the same
11 manner, by the same means, and with the same
12 powers and duties as though all applicable terms
13 and provisions of the Federal Trade Commission Act
14 (15 U.S.C. 41 et seq.) were incorporated into and
15 made a part of this Act, and any violator shall be
16 subject to the penalties and entitled to the privileges
17 and immunities provided in the Federal Trade Com-
18 mission Act.

19 (3) APPLICABILITY.—Paragraphs (1) and (2)
20 shall apply—

21 (A) with respect to persons, partnerships,
22 and corporations over which the Commission
23 has jurisdiction under section 5(a)(2) of the
24 Federal Trade Commission Act (15 U.S.C.
25 45(a)(2)) (except to the extent such person,

1 partnership, or corporation is a law enforce-
2 ment contractor or subcontractor); and

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

5 (c) ACTIONS BY STATES.—

6 (1) CIVIL ACTIONS.—In any case in which the
7 attorney general of a State, or an official or agency
8 of a State, has reason to believe that an interest of
9 the residents of that State has been or is threatened
10 or adversely affected by an act or practice in viola-
11 tion of subsection (a) or a regulation promulgated
12 under such subsection, or by the operation of an un-
13 manned aircraft system in violation of the terms of
14 a data minimization statement submitted under sec-
15 tion 338(a)(2) of the FAA Modernization and Re-
16 form Act of 2012, as added by section 3, the State
17 may bring a civil action on behalf of the residents
18 of the State in an appropriate State court or an ap-
19 propriate district court of the United States to—

20 (A) enjoin the violation;

21 (B) enforce compliance with such sub-
22 section, regulation, or statement;

23 (C) obtain damages, restitution, or other
24 compensation on behalf of residents of the
25 State; or

1 (D) obtain such other legal and equitable
2 relief as the court may consider to be appro-
3 priate.

4 (2) NOTICE.—Before filing an action under this
5 subsection against a person, partnership, or corpora-
6 tion over which the Commission has jurisdiction
7 under section 5(a)(2) of the Federal Trade Commis-
8 sion Act (15 U.S.C. 45(a)(2)) (except to the extent
9 such person, partnership, or corporation is a law en-
10 forcement contractor or subcontractor) or an air car-
11 rier or foreign air carrier, the attorney general, offi-
12 cial, or agency of the State involved shall provide to
13 the Commission a written notice of that action and
14 a copy of the complaint for that action. If the attor-
15 ney general, official, or agency determines that it is
16 not feasible to provide the notice described in this
17 paragraph before the filing of the action, the attor-
18 ney general, official, or agency shall provide written
19 notice of the action and a copy of the complaint to
20 the Commission immediately upon the filing of the
21 action.

22 (3) AUTHORITY OF THE COMMISSION.—

23 (A) IN GENERAL.—On receiving notice
24 under paragraph (2) of an action under this

1 subsection, the Commission shall have the
2 right—

3 (i) to intervene in the action;

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

6 (iii) to file petitions for appeal.

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

20 (4) RULE OF CONSTRUCTION.—For purposes of
21 bringing a civil action under this subsection, nothing
22 in this Act or any amendment made by this Act
23 shall be construed to prevent an attorney general,
24 official, or agency of a State from exercising the
25 powers conferred on the attorney general, official, or

1 agency by the laws of that State to conduct inves-
2 tigation, administer oaths and affirmations, or com-
3 pel the attendance of witnesses or the production of
4 documentary and other evidence.

5 (d) PRIVATE RIGHT OF ACTION.—

6 (1) IN GENERAL.—A person injured by an act
7 in violation of subsection (a) or the regulations pro-
8 mulgated under such subsection, or by the operation
9 of an unmanned aircraft system in violation of the
10 terms of a data minimization statement submitted
11 under section 338(a)(2) of the FAA Modernization
12 and Reform Act of 2012, as added by section 3, may
13 bring in an appropriate State court or an appro-
14 priate district court of the United States—

15 (A) an action to enjoin such violation;

16 (B) an action to recover damages for ac-
17 tual monetary loss from such violation, or to re-
18 ceive up to \$1,000 in damages for each such
19 violation, whichever is greater; or

20 (C) both such actions.

21 (2) INTENTIONAL VIOLATIONS.—If the defend-
22 ant committed a violation described in paragraph
23 (1), and intended to do so, the court may increase
24 the amount of the award to an amount equal to not

1 more than 3 times the amount available under para-
2 graph (1)(B).

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

7 (4) LIMITATION.—An action may be com-
8 menced under this subsection not later than 2 years
9 after the date on which the person first discovered
10 or had a reasonable opportunity to discover the vio-
11 lation.

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

15 (e) SUITS AGAINST GOVERNMENTAL ENTITIES.—
16 Notwithstanding the Federal Trade Commission Act (15
17 U.S.C. 41 et seq.), a suit under subsection (c) or (d) may
18 be maintained against a governmental entity.

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

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

24 (A) a data collection statement submitted
25 under subsection (a)(1) of section 338 of the

1 FAA Modernization and Reform Act of 2012,
2 as added by section 3; or

3 (B) a data minimization statement sub-
4 mitted under subsection (a)(2) of such section;
5 or

6 (2) violates any portion of the final rule re-
7 quired under section 332(b)(1) of such Act insofar
8 as such portion relates to the procedures described
9 in section 337 of such Act, as added by section 3.

10 (g) VIOLATIONS.—Each day on which each un-
11 manned aircraft system is operated in violation of sub-
12 section (a), or the regulations promulgated under such
13 subsection, or the terms of a data minimization statement
14 submitted under section 338(a)(2) of the FAA Moderniza-
15 tion and Reform Act of 2012, as added by section 3, shall
16 be treated as a separate violation.

17 (h) DEFINITIONS.—In this section:

18 (1) AIR CARRIER; FOREIGN AIR CARRIER.—The
19 terms “air carrier” and “foreign air carrier” have
20 the meanings given those terms in section 40102 of
21 title 49, United States Code.

22 (2) COMMISSION.—The term “Commission”
23 means the Federal Trade Commission.

24 (3) LAW ENFORCEMENT.—The term “law en-
25 forcement” has the meaning given such term in sec-

1 tion 331 of the FAA Modernization and Reform Act
2 of 2012, as amended by section 3.

3 (4) STATE.—The term “State” means each of
4 the several States, the District of Columbia, each
5 commonwealth, territory, or possession of the United
6 States, and each federally recognized Indian tribe.

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

11 **SEC. 5. MODEL AIRCRAFT PROVISION.**

12 Nothing in this Act may be construed to apply to
13 model aircraft (as defined in section 336(c) of the FAA
14 Modernization and Reform Act of 2012 (Public Law 112–
15 95; 49 U.S.C. 40101 note)).