

112TH CONGRESS
2D SESSION

H. R. 6676

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 HOUSE OF REPRESENTATIVES

DECEMBER 18, 2012

Mr. MARKEY introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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”.

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

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

23 (4) It has been estimated there could be as
24 many as 30,000 unmanned aircraft systems in the
25 sky in the United States 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 inva-
9 sive and pervasive surveillance without adequate pri-
10 vacy protections, and currently, no explicit privacy
11 protections or public transparency measures with re-
12 spect to such system technology are built into the
13 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 (Public Law 112–95; 49 U.S.C.
21 40101 note) is amended by adding at the end the following
22 new sections:

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

24 “(a) **STUDY.**—The Secretary of Transportation, in
25 consultation with the Secretary of Commerce, the Chair-

1 man of the Federal Trade Commission, and the Chief Pri-
2 vacy Officer of the Department of Homeland Security,
3 shall carry out a study that identifies any potential threats
4 to privacy protections posed by the integration of un-
5 manned aircraft systems into the national airspace sys-
6 tem, including any potential violations of the privacy prin-
7 ciples.

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

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

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

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

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

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

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

24 “(c) DEFINITIONS.—For purposes of this section and
25 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;

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

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

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

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

22 **“SEC. 338. RULEMAKING.**

23 “As part of the rulemaking process required under
24 section 332(b)(1) and the final rule adopted under such
25 section, the Secretary of Transportation shall establish

1 procedures to ensure that the integration of unmanned
2 aircraft systems into the national airspace system is done
3 in compliance with the privacy principles.

4 **“SEC. 339. DATA COLLECTION STATEMENTS AND DATA**
5 **MINIMIZATION STATEMENTS.**

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

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

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

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

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

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

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

11 “(4) whether the unmanned aircraft system will
12 collect information or data about individuals or
13 groups of individuals, and if so—

14 “(A) the circumstances under which such
15 system will be used; and

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

22 “(i) how the collection or retention of
23 such information or data that is unrelated
24 to the specified use will be minimized;

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

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

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

12 “(5) the possible impact the operation of the
13 unmanned aircraft system may have upon the pri-
14 vacy of individuals;

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

22 “(7) a telephone number or electronic mail ad-
23 dress that an individual with complaints about the
24 operation of the unmanned aircraft system may use
25 to report such complaints and to request confirma-

1 tion that personally identifiable data relating to such
2 individual has been collected;

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

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

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

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

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

24 “(A) minimize the collection by the un-
25 manned aircraft system of information and data

1 unrelated to the investigation of a crime under
2 a warrant;

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

8 “(C) establish procedures for the method
9 of such destruction; and

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

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

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

23 “(1) the approved certificate, license, or other
24 grant of authority for each unmanned aircraft sys-
25 tem awarded a certificate, license, or other grant of

1 authority to operate in the national airspace system,
2 including any such certificate, license, or other grant
3 of authority awarded prior to the date of enactment
4 of this section;

5 “(2) information detailing where, when, and for
6 what period each unmanned aircraft system will be
7 operated;

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

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

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

22 “(1) in the case of a certificate, license, or
23 other grant of authority awarded before the date of
24 enactment of this section, not later than 90 days
25 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 enactment of this section, as soon as is prac-
4 ticable after the date of approval of such certificate,
5 license, or other grant of authority.

6 **“SEC. 341. WARRANTS REQUIRED FOR GENERALIZED SUR-**
7 **VEILLANCE.**

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

17 “(b) EXCEPTION.—

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

21 “(2) EXIGENT CIRCUMSTANCES DEFINED.—Ex-
22 igent circumstances exist when a law enforcement
23 entity reasonably believes there is—

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

1 “(B) a high risk of a terrorist attack by a
2 specific individual or organization, when the
3 Secretary of Homeland Security has determined
4 that credible intelligence indicates there is such
5 a risk.

6 “(3) REQUIRED DOCUMENTATION.—In the case
7 of a person or entity operating an unmanned air-
8 craft system under the exception for exigent cir-
9 cumstances created by paragraph (1), documenta-
10 tion justifying the exception shall be submitted to
11 the Secretary of Transportation not later than 7
12 days after the date of the relevant unmanned air-
13 craft system flight.

14 “(4) INFORMATION OR DATA UNRELATED TO
15 EXIGENT CIRCUMSTANCES.—A person or entity op-
16 erating an unmanned aircraft system under the ex-
17 ception for exigent circumstances created by para-
18 graph (1) shall minimize the collection by the un-
19 manned aircraft system of information and data un-
20 related to the exigent circumstances, and if such un-
21 manned aircraft system incidentally collects any
22 such information or data while being operated under
23 such exception, the person or entity operating the
24 unmanned aircraft system shall destroy such infor-
25 mation and data.

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

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

17 **SEC. 4. ENFORCEMENT.**

18 (a) PROHIBITED CONDUCT.—

19 (1) IN GENERAL.—It shall be unlawful for a
20 person or entity to operate an unmanned aircraft
21 system in a manner that is not in accordance with
22 the terms of a data collection statement submitted
23 under section 339(a)(1) of the FAA Modernization
24 and Reform Act of 2012, as added by section 3 of
25 this Act, or in a manner that violates any portion of

1 the final rule required under section 332(b)(1) of
2 such Act insofar as such portion relates to the pro-
3 cedures described in section 338 of such Act.

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

9 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
10 SION.—

11 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
12 TICES.—A violation of subsection (a) or the regula-
13 tions promulgated under such subsection shall be
14 treated as a violation of a regulation under section
15 18(a)(1)(B) of the Federal Trade Commission Act
16 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-
17 tive acts or practices.

18 (2) POWERS OF COMMISSION.—The Commis-
19 sion shall enforce subsection (a) and the regulations
20 promulgated under such subsection in the same
21 manner, by the same means, and with the same
22 powers and duties as though all applicable terms
23 and provisions of the Federal Trade Commission Act
24 (15 U.S.C. 41 et seq.) were incorporated into and
25 made a part of this Act, and any violator shall be

1 subject to the penalties and entitled to the privileges
2 and immunities provided in the Federal Trade Com-
3 mission Act.

4 (3) APPLICABILITY.—Paragraphs (1) and (2)
5 shall apply—

6 (A) with respect to persons, partnerships,
7 and corporations over which the Commission
8 has jurisdiction under section 5(a)(2) of the
9 Federal Trade Commission Act (15 U.S.C.
10 45(a)(2)) (except to the extent such person,
11 partnership, or corporation is a law enforce-
12 ment contractor or subcontractor); and

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

15 (c) ACTIONS BY STATES.—

16 (1) CIVIL ACTIONS.—In any case in which the
17 attorney general of a State, or an official or agency
18 of a State, has reason to believe that an interest of
19 the residents of that State has been or is threatened
20 or adversely affected by an act or practice in viola-
21 tion of subsection (a) or a regulation promulgated
22 under such subsection, or by the operation of an un-
23 manned aircraft system in violation of the terms of
24 a data minimization statement submitted under sec-
25 tion 339(a)(2) of the FAA Modernization and Re-

1 form Act of 2012 (49 U.S.C. 40101 note), the State
2 may bring a civil action on behalf of the residents
3 of the State in an appropriate State court or an ap-
4 propriate district court of the United States to—

5 (A) enjoin the violation;

6 (B) enforce compliance with such sub-
7 section, regulation, or statement;

8 (C) obtain damages, restitution, or other
9 compensation on behalf of residents of the
10 State; or

11 (D) obtain such other legal and equitable
12 relief as the court may consider to be appro-
13 priate.

14 (2) NOTICE.—Before filing an action under this
15 subsection against a person, partnership, or corpora-
16 tion over which the Commission has jurisdiction
17 under section 5(a)(2) of the Federal Trade Commis-
18 sion Act (15 U.S.C. 45(a)(2)) (except to the extent
19 such person, partnership, or corporation is a law en-
20 forcement contractor or subcontractor) or an air car-
21 rier or foreign air carrier, the attorney general, offi-
22 cial, or agency of the State involved shall provide to
23 the Commission a written notice of that action and
24 a copy of the complaint for that action. If the attor-
25 ney general, official, or agency determines that it is

1 not feasible to provide the notice described in this
2 paragraph before the filing of the action, the attor-
3 ney general, official, or agency shall provide written
4 notice of the action and a copy of the complaint to
5 the Commission immediately upon the filing of the
6 action.

7 (3) AUTHORITY OF THE COMMISSION.—

8 (A) IN GENERAL.—On receiving notice
9 under paragraph (2) of an action under this
10 subsection, the Commission shall have the
11 right—

12 (i) to intervene in the action;

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

15 (iii) to file petitions for appeal.

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

1 fendant named in the complaint in the Federal
2 action for any violation as alleged in that com-
3 plaint.

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

14 (d) PRIVATE RIGHT OF ACTION.—

15 (1) IN GENERAL.—A person injured by an act
16 in violation of subsection (a) or the regulations pro-
17 mulgated under such subsection, or by the operation
18 of an unmanned aircraft system in violation of the
19 terms of a data minimization statement submitted
20 under section 339(a)(2) of the FAA Modernization
21 and Reform Act of 2012 (49 U.S.C. 40101 note),
22 may bring in an appropriate State court or an ap-
23 propriate district court of the United States—

24 (A) an action to enjoin such violation;

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

5 (C) both such actions.

6 (2) INTENTIONAL VIOLATIONS.—If the defend-
7 ant committed a violation described in paragraph
8 (1), and intended to do so, the court may increase
9 the amount of the award to an amount equal to not
10 more than 3 times the amount available under para-
11 graph (1)(B).

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

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

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

24 (e) SUITS AGAINST GOVERNMENTAL ENTITIES.—
25 Notwithstanding the Federal Trade Commission Act (15

1 U.S.C. 41 et seq.), a suit under subsection (c) or sub-
2 section (d) may be maintained against a governmental en-
3 tity.

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

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

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

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

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

19 (g) VIOLATIONS.—Each day on which each un-
20 manned aircraft system is operated in violation of sub-
21 section (a), or the regulations promulgated under such
22 subsection, or the terms of a data minimization statement
23 submitted under section 339(a)(2) of the FAA Moderniza-
24 tion and Reform Act of 2012 (49 U.S.C. 40101 note), as

1 added by section 3 of this Act, shall be treated as a sepa-
2 rate violation.

3 (h) DEFINITIONS.—In this section:

4 (1) COMMISSION.—The term “Commission”
5 means the Federal Trade Commission.

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

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

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

○