

113TH CONGRESS
1ST SESSION

S. 1639

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

NOVEMBER 4, 2013

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 2013”.

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
 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 (a) IN GENERAL.—Subtitle B of title III of the FAA
 20 Modernization and Reform Act of 2012 (Public Law 112–
 21 95; 49 U.S.C. 40101 note) is amended by adding at the
 22 end the following 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 the enactment of this section, the Secretary of
10 Transportation shall submit a report on the study con-
11 ducted under subsection (a) to—

12 “(1) the Committee on Transportation and In-
13 frastructure, the Committee on Energy and Com-
14 merce, and the Committee on Homeland Security of
15 the House of Representatives; and

16 “(2) the Committee on Commerce, Science, and
17 Transportation, the Committee on Environment and
18 Public Works, and the Committee on Homeland Se-
19 curity and Governmental Affairs of the Senate.

20 **“SEC. 338. RULEMAKING.**

21 “As part of the rulemaking process required under
22 section 332(b)(1) and the final rule adopted under such
23 section, the Secretary of Transportation shall establish
24 procedures to ensure that the integration of unmanned

1 aircraft systems into the national airspace system is done
2 in compliance with the privacy principles.

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

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

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

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

16 “(B) the specific kinds of information or
17 data the system will collect about individuals or
18 groups of individuals and how such information
19 or data, as well as conclusions drawn from such
20 information or data, will be used, disclosed, and
21 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 a case in which personally identifiable
4 data relating to an individual has been collected, a
5 reasonable process for the individual to request to
6 obtain such data in a timely and an intelligible man-
7 ner;

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

12 “(10) in a case in which personally identifiable
13 data relating to an individual has been collected, a
14 process by which the 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, as the case may be, 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 or to an ongoing
8 criminal proceeding; and

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

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

18 **“SEC. 340. 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—

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

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

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

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

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

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

23 “(1) in the case of a certificate, license, or
24 other grant of authority awarded before the date of

1 the enactment of this section, not later than 90 days
2 after such date of enactment; and

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

8 **“SEC. 341. WARRANTS REQUIRED FOR GENERALIZED SUR-**
9 **VEILLANCE.**

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

22 “(b) EXCEPTION.—

23 “(1) IN GENERAL.—Subsection (a) shall not
24 apply in exigent circumstances (as defined in para-
25 graph (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 a terrorist attack
8 by a specific individual or organization and the
9 Secretary of Homeland Security has determined
10 that credible intelligence indicates there is such
11 a risk.

12 “(3) REQUIRED DOCUMENTATION.—In the case
13 of a person operating an unmanned aircraft system
14 under the exception for exigent circumstances under
15 paragraph (1), documentation justifying the excep-
16 tion shall be submitted to the Secretary of Transpor-
17 tation not later than 7 days after the date of the rel-
18 evant unmanned aircraft system flight.

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

1 incidentally collects any such information or data
2 while being operated under that exception, the per-
3 son operating the unmanned aircraft system shall
4 destroy the information and data.

5 “(5) PROHIBITION ON INFORMATION SHAR-
6 ING.—A person may not intentionally divulge infor-
7 mation collected in accordance with this section with
8 any other person, except as authorized by law.

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

20 (b) DEFINITIONS.—Section 331 of the FAA Mod-
21 ernization and Reform Act of 2012 (Public Law 112–95;
22 49 U.S.C. 40101 note) is amended—

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

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

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

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

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

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

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

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

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

5 **SEC. 4. ENFORCEMENT.**

6 (a) PROHIBITED CONDUCT.—

7 (1) IN GENERAL.—It shall be unlawful for a
 8 person to operate an unmanned aircraft system in a
 9 manner that is not in accordance with the terms of
 10 a data collection statement submitted under section
 11 339(a)(1) of the FAA Modernization and Reform
 12 Act of 2012, as added by section 3, or in a manner
 13 that violates any portion of the final rule required
 14 under section 332(b)(1) of such Act insofar as such
 15 portion relates to the procedures described in section
 16 338 of such Act.

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

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-

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

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

17 (3) APPLICABILITY.—Paragraphs (1) and (2)
18 shall apply—

19 (A) with respect to persons, partnerships,
20 and corporations over which the Commission
21 has jurisdiction under section 5(a)(2) of the
22 Federal Trade Commission Act (15 U.S.C.
23 45(a)(2)) (except to the extent such person,
24 partnership, or corporation is a law enforce-
25 ment contractor or subcontractor); and

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

3 (c) ACTIONS BY STATES.—

4 (1) CIVIL ACTIONS.—In any case in which the
5 attorney general of a State, or an official or agency
6 of a State, has reason to believe that an interest of
7 the residents of that State has been or is threatened
8 or adversely affected by an act or practice in viola-
9 tion of subsection (a) or a regulation promulgated
10 under such subsection, or by the operation of an un-
11 manned aircraft system in violation of the terms of
12 a data minimization statement submitted under sec-
13 tion 339(a)(2) of the FAA Modernization and Re-
14 form Act of 2012, as added by section 3, the State
15 may bring a civil action on behalf of the residents
16 of the State in an appropriate State court or an ap-
17 propriate district court of the United States to—

18 (A) enjoin the violation;

19 (B) enforce compliance with such sub-
20 section, regulation, or statement;

21 (C) obtain damages, restitution, or other
22 compensation on behalf of residents of the
23 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

subsection, the Commission shall have the right—

(i) to intervene in the action;

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

(iii) to file petitions for appeal.

(B) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or the Attorney General of the United States has instituted a civil action for violation of subsection (a) or a regulation promulgated under such subsection (referred to in this subparagraph as the “Federal action”), no State attorney general, official, or agency may bring an action under this subsection during the pendency of the Federal action against any defendant named in the complaint in the Federal action for any violation as alleged in that complaint.

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

1 agency by the laws of that State to conduct inves-
 2 tigations, 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 339(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 339 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 338 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 339(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) COMMISSION.—The term “Commission”
19 means the Federal Trade Commission.

20 (2) LAW ENFORCEMENT.—The term “law en-
21 forcement” has the meaning given such term in sec-
22 tion 331 of the FAA Modernization and Reform Act
23 of 2012, as amended by section 3.

24 (3) STATE.—The term “State” means each of
25 the several States, the District of Columbia, each

1 commonwealth, territory, or possession of the United
2 States, and each federally recognized Indian tribe.

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

7 **SEC. 5. MODEL AIRCRAFT PROVISION.**

8 Nothing in this Act may be construed to apply to
9 model aircraft (as defined in section 336(c) of the FAA
10 Modernization and Reform Act of 2012 (Public Law 112–
11 95; 49 U.S.C. 40101 note)).

○