

113TH CONGRESS
1ST SESSION

H. R. 2868

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

JULY 30, 2013

Mr. WELCH 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 2013”.

1 **SEC. 2. GUIDANCE AND LIMITATIONS REGARDING UN-**
2 **MANNED AIRCRAFT SYSTEMS.**

3 Subtitle B of title III of the FAA Modernization and
4 Reform Act of 2012 (Public Law 112–95; 49 U.S.C.
5 40101 note) is amended by adding at the end the following
6 new sections:

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

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

17 “(b) **REPORT.**—Not later than 180 days after the
18 date of enactment of this section, the Secretary of Trans-
19 portation shall submit a report on the study conducted
20 under subsection (a) to—

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

23 “(2) the Committee on Energy and Commerce
24 of the House of Representatives;

25 “(3) the Committee on Homeland Security of
26 the House of Representatives;

1 “(4) the Committee on Environment and Public
2 Works of the Senate;

3 “(5) the Committee on Commerce, Science, and
4 Transportation of the Senate; and

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

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

9 “(1) the term ‘privacy protections’ means pro-
10 tectations that relate to the use, collection, and disclo-
11 sure of information and data about individuals and
12 groups of individuals;

13 “(2) the term ‘privacy principles’ means the
14 principles described in Part Two of the Organization
15 for Economic Co-operation and Development guide-
16 lines titled ‘Annex to the Recommendation of the
17 Council of 23rd September 1980: Guidelines Gov-
18 erning The Protection Of Privacy And Transborder
19 Flows Of Personal Data’, adopted by the Organiza-
20 tion for Economic Co-operation and Development on
21 September 23, 1980; and

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

23 “(A) any entity of the United States or of
24 a State or political subdivision thereof, that is

1 empowered by law to conduct investigations of
2 or to make arrests for offenses; and

3 “(B) any entity or individual authorized by
4 law to prosecute or participate in the prosecu-
5 tion of such offenses.

6 **“SEC. 338. RULEMAKING.**

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

13 **“SEC. 339. DATA COLLECTION STATEMENTS AND DATA**
14 **MINIMIZATION STATEMENTS.**

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

22 “(1) a data collection statement in accordance
23 with the requirements of subsection (b) that provides
24 reasonable assurance that the applicant will operate

1 the unmanned aircraft system in accordance with
2 the privacy principles; and

3 “(2) in the case of such an unmanned aircraft
4 system that is to be operated by a law enforcement
5 agency or a law enforcement agency contractor or
6 subcontractor, a data minimization statement in ac-
7 cordance with the requirements of subsection (c)
8 that provides reasonable assurance that the appli-
9 cant will operate the unmanned aircraft system in
10 accordance with the privacy principles.

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

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

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

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

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

24 “(A) the circumstances under which such
25 system will be used; and

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

7 “(i) how the collection or retention of
8 such information or data that is unrelated
9 to the specified use will be minimized;

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

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

17 “(iv) when and how such information
18 or data, including information or data no
19 longer relevant to the specified use, will be
20 destroyed;

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

24 “(6) the specific steps that will be taken to
25 mitigate any possible impact identified under para-

1 graph (5), including steps to protect against unau-
2 thORIZED disclosure of any information or data de-
3 scribed in paragraph (4), such as the use of
4 encryption methods and other security features that
5 will be used;

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

12 “(8) in the case that personally identifiable
13 data relating to such individual has been collected,
14 a reasonable process for such individual to request
15 to obtain such data in a timely and an intelligible
16 manner;

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

21 “(10) in the case that personally identifiable
22 data relating to such individual has been collected,
23 a process by which such individual may challenge the
24 accuracy of such data and, if the challenge is suc-
25 cessful, have such data erased or amended.

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

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

8 “(A) minimize the collection by the un-
9 manned aircraft system of information and data
10 unrelated to the investigation of a crime under
11 a warrant;

12 “(B) require the destruction of such infor-
13 mation and data, as well as of information and
14 data collected by the unmanned aircraft system
15 that is no longer relevant to the investigation of
16 a crime under a warrant or to an ongoing
17 criminal proceeding; and

18 “(C) establish procedures for the method
19 of such destruction; and

20 “(2) audit and oversight procedures adopted by
21 the agency, contractor, or subcontractor, respec-
22 tively, that will ensure that such agency, contractor,
23 or subcontractor, respectively, uses the unmanned
24 aircraft system in accordance with the parameters

1 outlined in the data collection statement and the
2 statement required by this subsection.

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

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

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

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

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

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

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

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

8 “(1) in the case of a certificate, license, or
 9 other grant of authority awarded before the date of
 10 enactment of this section, not later than 90 days
 11 after such date of enactment; and

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

17 **“SEC. 341. WARRANTS REQUIRED FOR GENERALIZED SUR-**
 18 **VEILLANCE.**

19 “(a) IN GENERAL.—A public agency, entity, or indi-
 20 vidual officially representing a public agency or entity may
 21 not use an unmanned aircraft system or request informa-
 22 tion or data collected by another entity using an un-
 23 manned aircraft system for protective activities, or for law
 24 enforcement or intelligence purposes, except pursuant to
 25 a warrant issued using the procedures described in the

1 Federal Rules of Criminal Procedure (or, in the case of
2 a State court, issued using State warrant procedures) by
3 a court of competent jurisdiction, or as otherwise provided
4 in the Foreign Intelligence Surveillance Act of 1978 (50
5 U.S.C. 1801 et seq.).

6 “(b) EXCEPTION.—

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

10 “(2) EXIGENT CIRCUMSTANCES DEFINED.—Ex-
11 igent circumstances exist when a public agency, enti-
12 ty, or individual officially representing such public
13 agency or entity reasonably believes—

14 “(A) there is imminent danger of death or
15 serious physical injury;

16 “(B) there is a high risk of a terrorist at-
17 tack by a specific individual or organization,
18 when the Secretary of Homeland Security has
19 determined that credible intelligence indicates
20 there is such a risk; or

21 “(C) a search and rescue mission is appro-
22 priate.

23 “(3) REQUIRED DOCUMENTATION.—In the case
24 of a public agency, entity, or individual officially rep-
25 resenting such agency or entity operating an un-

1 manned aircraft system under the exception for exi-
2 gent circumstances created by paragraph (1), docu-
3 mentation justifying the exception shall be submitted
4 to the Secretary of Transportation not later than 7
5 days after the date of the relevant unmanned air-
6 craft system flight.

7 “(4) INFORMATION OR DATA UNRELATED TO
8 EXIGENT CIRCUMSTANCES.—A public agency, entity,
9 or individual officially representing such agency or
10 entity operating an unmanned aircraft system under
11 the exception for exigent circumstances created by
12 paragraph (1) shall minimize the collection by the
13 unmanned aircraft system of information and data
14 unrelated to the exigent circumstances, and if such
15 unmanned aircraft system incidentally collects any
16 such information or data while being operated under
17 such exception, the person or entity operating the
18 unmanned aircraft system shall destroy such infor-
19 mation and data.

20 “(5) PROHIBITION ON INFORMATION SHAR-
21 ING.—A public agency, entity, or individual officially
22 representing such public agency or entity shall not
23 intentionally divulge information collected in accord-
24 ance with this section with any other person or enti-
25 ty, except as authorized by law.

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

12 **SEC. 3. ENFORCEMENT.**

13 (a) PROHIBITED CONDUCT.—

14 (1) IN GENERAL.—It shall be unlawful for a
15 person or entity to operate an unmanned aircraft
16 system in a manner that is not in accordance with
17 the terms of a data collection statement submitted
18 under section 339(a)(1) of the FAA Modernization
19 and Reform Act of 2012, as added by section 3 of
20 this Act, or in a manner that violates any portion of
21 the final rule required under section 332(b)(1) of
22 such Act insofar as such portion relates to the pro-
23 cedures described in section 338 of such Act.

24 (2) REGULATIONS.—The Commission may pro-
25 mulgate regulations in accordance with section 553

1 of title 5, United States Code, to carry out para-
2 graph (1) with respect to persons and entities de-
3 scribed in subsection (b)(3).

4 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
5 SION.—

6 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
7 TICES.—A violation of subsection (a) or the regula-
8 tions promulgated under such subsection shall be
9 treated as a violation of a regulation under section
10 18(a)(1)(B) of the Federal Trade Commission Act
11 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-
12 tive acts or practices.

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

24 (3) APPLICABILITY.—Paragraphs (1) and (2)
25 shall apply—

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

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

10 (c) ACTIONS BY STATES.—

11 (1) CIVIL ACTIONS.—In any case in which the
12 attorney general of a State, or an official or agency
13 of a State, has reason to believe that an interest of
14 the residents of that State has been or is threatened
15 or adversely affected by an act or practice in viola-
16 tion of subsection (a) or a regulation promulgated
17 under such subsection, or by the operation of an un-
18 manned aircraft system in violation of the terms of
19 a data minimization statement submitted under sec-
20 tion 339(a)(2) of the FAA Modernization and Re-
21 form Act of 2012 (49 U.S.C. 40101 note), the State
22 may bring a civil action on behalf of the residents
23 of the State in an appropriate State court or an ap-
24 propriate district court of the United States to—

25 (A) enjoin the violation;

1 (B) enforce compliance with such sub-
2 section, regulation, or statement;

3 (C) obtain damages, restitution, or other
4 compensation on behalf of residents of the
5 State; or

6 (D) obtain such other legal and equitable
7 relief as the court may consider to be appro-
8 priate.

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

1 the Commission immediately upon the filing of the
2 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 or any amendment made by this Act
4 shall be construed to prevent an attorney general,
5 official, or agency of a State from exercising the
6 powers conferred on the attorney general, official, or
7 agency by the laws of that State to conduct inves-
8 tigations, administer oaths and affirmations, or com-
9 pel the attendance of witnesses or the production of
10 documentary and other evidence.

11 (d) PRIVATE RIGHT OF ACTION.—

12 (1) IN GENERAL.—A person injured by an act
13 in violation of subsection (a) or the regulations pro-
14 mulgated under such subsection, or by the operation
15 of an unmanned aircraft system in violation of the
16 terms of a data minimization statement submitted
17 under section 339(a)(2) of the FAA Modernization
18 and Reform Act of 2012 (49 U.S.C. 40101 note),
19 may bring in an appropriate State court or an ap-
20 propriate district 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 \$1,000 in damages for each such
25 violation, whichever is greater; or

1 (C) both such actions.

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

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

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

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

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

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

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

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

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

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

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

24 (h) DEFINITIONS.—In this section:

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

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

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

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

15 **SEC. 4. MODEL AIRCRAFT PROVISION.**

16 Nothing in this Act may be construed to apply to
17 model aircraft as defined in section 336(e) of the FAA
18 Modernization and Reform Act of 2012.

○