

Section-by-Section Summary of H.R. 637 – The “Preserving American Privacy Act”

Section 2 – Use of Unmanned Aircraft Systems

- The bill creates a new Chapter 205A in Title 18 of the United States Code.

Section A – Definitions

- “Covered information” means information that is reasonably likely to enable identification of an individual, or information about an individual’s property that is not in plain view.
- “Public unmanned aircraft system” (public UAS) means a UAS operated by a governmental entity, such as an agency of the federal, state, or municipal governments.

Section B – Use of Public Unmanned Aircraft Systems

- Governmental entities must operate public UAS in accordance with this Act.
- Governmental entities operating public UAS must minimize, to the extent practicable, the collection or disclosure of covered information.
- Governmental entities that seek a license or certificate to operate a public UAS must submit to the Dept. of Justice (DOJ) a data collection statement that includes following: the purpose for which the UAS will be used, whether the UAS is capable of collecting covered information, the length of time for which collected information will be retained, the unit of the governmental entity that is responsible for safe and appropriate use of the UAS, an individual point of contact for citizen feedback, the rank and title of the individual who can authorize the use of the UAS, the applicable data minimization policies, and applicable audit and oversight procedures.
- The DOJ may request that the Secretary of Transportation revoke a certificate or license to operate a public UAS if the operator’s activity contravenes the data collection statement.
- The Attorney General must issue regulations to establish a publicly accessible database indexing the certificates or licenses and associated data collection statements for public UAS.

Section C – Use of Covered Information as Evidence

- Covered information collected by a governmental entity’s operation of a public UAS in violation of this Act cannot be used as evidence against any individual at any trial, hearing or other procedure before any court, agency, regulatory body, or other authority of the United States.

- A governmental entity may not operate a public UAS for a law enforcement purpose, or collect or disclose covered information through such operation.
- A governmental entity may operate a public UAS and collect or disclose covered information for a law enforcement purpose under the following circumstances:
 - Pursuant to a warrant, and within ten days of the execution of the warrant serves a copy of the warrant to each person on whom covered information was collected – unless the notice would seriously jeopardize an ongoing criminal or national security investigation;
 - Pursuant to a court order based on specific and articulable facts supporting reasonable suspicion of criminal activity, the public UAS will operate only in a stipulated public area for a period of not more than 48 hours (courts have discretion to renew the order for up to 30 days), and
 1. The governmental entity serves notice to each person on whom covered information was collected within ten days of the execution of the order, OR
 2. The governmental entity posts public notification 48 hours prior to the UAS operation, either via public signage in the area in which the operation takes place, notice in a major publication (circulation of at least 1,000) serving the area, or notice on the entity’s public website.
 - If the public UAS is operated within 25 miles of any external land boundary of the U.S. for the purpose of patrolling or securing the border;
 - If the individuals on whom the covered information is collected or disclosed provide prior written consent;
 - An investigative or law enforcement office reasonably believes an emergency situation exists involving immediate danger of death or physical injury, conspiratorial activities threatening the national security, conspiratorial activities characteristic of organized crime – and the officer must apply for a warrant not later than 48 hours after the operation.

Section D – Administrative Discipline

- The section allows for oversight and administrative discipline of governmental entities that intentionally violate the provisions of the bill.

Section E – Reporting

- Once a year all Federal judges who have issued an order or warrant under this Act must report the following: the fact the warrant or order was applied for, if the application was granted or denied, the time period of UAS operation requested, the offense the application was in relation to, and the identity of the governmental entity that made the application.
- Once a year the Attorney General (Federal and State) must report, in addition to the above information, the following: a general description of information gathered under the warrant or order, the approximate nature and frequency of incriminating conduct observed, the approximate number of persons on whom covered information was gathered, the approximate cost of manpower and other resources used in public UAS operation, and the number of arrests, trials, motions to suppress, and convictions resulting from public UAS operation.

Section F – Private Use of Unmanned Aircraft Systems

- It shall be unlawful to use a private UAS equipped with a visual or auditory enhancing device to capture, in a manner that is highly offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of a individual engaging in a personal or familial activity under circumstances in which the individual has a reasonable expectation of privacy – if the image, recording, or impression could not have been achieved without a trespass unless the visual or auditory enhancing device was used. This restriction applies regardless of whether there is a physical trespass.
- This provision is modeled on Cal. Civ. Code 1708.8.

Section G – No preemption of 18 USC Chapter 119

- This law does not preempt federal laws on wire and electronic communications interception.

Section H – Ban on Weaponization

- It is unlawful for private individuals or law enforcement officers to use or operate an unmanned aircraft system that is armed with a firearm (includes explosives) in the national airspace of the United States.

Section I – No State Preemption

- This law does not preempt state laws on the use of UAS exclusively in the airspace of the state.

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