

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

James M. Cantwell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the regulation and operation of unmanned aerial vehicles (drones).

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James M. Cantwell</i>	<i>4th Plymouth</i>	<i>3/14/2018</i>

HOUSE No.

By Mr. Cantwell of Marshfield, a petition (subject to Joint Rule 12) of James M. Cantwell relative to the regulation and operation of unmanned aerial vehicles, so called drones. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to the regulation and operation of unmanned aerial vehicles (drones).

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Chapter 266 of the General Laws, as appearing in the 2016 Official Edition, is
2 hereby amended by inserting after Section 120E the following section:

3 Section 120F:

4 (a.) As used in this section, the following words shall have the following meanings:

5 “Unmanned aerial vehicle,”- A self-propelling, mechanized vehicle capable of flight
6 without a human pilot on board that is operated either autonomously by computer or by an
7 individual from outside the vehicle.

8 “Critical infrastructure facility”- a facility that is owned or leased for one of the following
9 purposes:

10 (i) A petroleum or chemical production, transportation, storage, or processing facility

- 11 (ii) An electrical power generating facility, substation, switching station or electrical
12 control center.
- 13 (iii) A chemical, polymer or rubber manufacturing facility
- 14 (iv) A water or wastewater treatment facility and water distribution, a water intake
15 facility, or conveyance system.
- 16 (v) A power generating station plant or substation
- 17 (vi) A federal or state military installation or facility
- 18 (vii) A correctional facility or law enforcement facility
- 19 (viii) A gas processing plant, including a plant used in the processing, treatment,
20 compressing, or fractionation of natural gas
- 21 (ix) A liquid natural gas terminal or storage facility
- 22 (x) A wireless telecommunications infrastructure or central switching office
- 23 (xi) A transmission facility used by a federally licensed radio or television station
- 24 (xii) A port, railroad switching yard, trucking terminal, bus terminal, or other freight
25 transportation facility
- 26 (xiii) A steelmaking facility that uses an electric arc furnace to make steel
- 27 (xiv) Any portion of an above-ground oil, gas, or chemical pipeline
- 28 (xv) A hospital or medical care facility

29 (xvi) A facility identified and regulated by the United States Department of Homeland
30 Security Chemical Facility Anti-Terrorism Standards (CFATS) program

31 (b.) A person shall not operate an unmanned aerial vehicle (UAV) within 5 miles of
32 an airport unless said person:

33 (i) obtains consent of the airport authority or the operator of the airport, or

34 (ii) obtains a waiver, exemption, or other authorization of such operation pursuant to
35 any rule or regulation of the Federal Aviation Administration (FAA) and,

36 (iii) maintains on his or her person documentation of any waiver, exemption,
37 authorization, or consent permitting such operation.

38 (c.) Whoever, without right, operates an unmanned aerial vehicle less than 250 feet of
39 a private dwelling, house, or buildings of another, shall be punished by a fine of not more than
40 five hundred dollars or by imprisonment for not more than thirty days or both such fine and
41 imprisonment.

42 (d.) This section shall not be applied to unmanned aerial vehicles operated by:

43 (1) law enforcement or public agents;

44 (2) tenants or occupants of the real property under which the unmanned aerial vehicle
45 is flying;

46 (3) legally authorized individuals operating in the flight path for landing at an airport,
47 airfield, or runway; or

48 (4) businesses lawfully operating in the state, if:

49 (i) the operator is licensed or otherwise approved to operate the unmanned aerial
50 vehicle by the Federal Aviation Administration (FAA);

51 (ii) the unmanned aerial vehicle is being operated within the scope of the lawful
52 activities of the business; or,

53 (iii) the operation of the unmanned aerial vehicle does not unreasonably interfere with
54 the existing use of the real property.

55 (e.) A person who owns or lawfully occupies real property may bring an action for
56 trespass against the owner or operator of an unmanned aerial vehicle that is flown at a height of
57 less than 250 feet over the property, if:

58 (1) the owner or operator of the unmanned aerial vehicle has flown the unmanned
59 aerial vehicle over the property at a height of less than 250 feet on at least one previous occasion;
60 and

61 (2) the person who owns or occupies the real property notified the owner or operator
62 of the unmanned aerial vehicle that the person did not authorize the flight of the unmanned aerial
63 vehicle over the property at a height of less than 250 feet.

64 (f.) A person shall not be guilty of trespass, if the unmanned aerial vehicle is:

65 (1) lawfully in the flight path for landing at an airport, airfield, or runway;

66 (2) in the process of taking off or landing;

67 (3) under the lawful operation of a law enforcement agency in accordance with
68 Chapter 272 Section 99C of the General Laws; or,

69 (4) under the lawful operation of a business licensed in this State

70 (g.) An unmanned aerial vehicle was under the lawful operation of a land surveyor

71 licensed in

72 this State, registered under chapter one hundred and twelve, if:

73 i. the operator is licensed or otherwise approved to operate the unmanned aerial

74 vehicle by the Federal Aviation Administration (FAA);

75 ii. Whenever a land surveyor registered under chapter one hundred and twelve

76 deems it reasonably necessary to enter upon adjoining lands to make surveys of any description

77 included under "Practice of land surveying", as defined in section 81d of said chapter 112, for

78 any private person, excluding any public authority, public utility or railroad, the land surveyor or

79 his authorized agents or employees may, after reasonable notice, enter upon lands, waters and

80 premises, not including buildings, in the commonwealth, within a reasonable distance from the

81 property line of the land being surveyed, and such entry shall not be deemed a trespass. Nothing

82 in this act shall relieve a land surveyor of liability for damage caused by entry to adjoining

83 property, by himself or his agents or employees.

84 iii. The unmanned aerial vehicle is being operated within the scope of the lawful

85 activities of the land surveyor; and

86 iv. the operation of the unmanned aerial vehicle does not unreasonably interfere with

87 the existing use of the real property.

88 (h.) Whoever uses any unmanned aerial vehicle in a negligent manner over a heavily

89 populated area or over a public gathering within the state and simultaneously causes damage to

90 persons shall be punished by a fine of not more than \$50,000 or up to 5 years in the House of
91 Correction.

92 (i.) Whoever operates an unmanned aircraft over a critical infrastructure facility or
93 comes within a distance of 250 feet over the ground level of a critical infrastructure facility that
94 interferes with the operations of the facility without the written consent of the owner of the
95 critical infrastructure facility shall be punished by imprisonment in a house of correction for not
96 more than 12 months or a fine of not more than \$5,000.

97 Section 3. Section 43 of Chapter 265 of the General Laws, as appearing in the 2016
98 Official Edition, is hereby amended by adding, in line 19, after the words, “instant messages,”
99 the following words:

100 “facsimile communications, or unmanned aerial vehicle transmissions.”

101 Section 5. Chapter 272 of the General Laws, as appearing in the 2016 Official Edition, is
102 hereby amended by inserting after Section 99A the following Section:

103 Section 99B:

104 (a.) As used in this section, the following words shall have the following meanings:

105 “Unmanned aerial vehicle,”- A self-propelling, mechanized vehicle capable of flight
106 without a human pilot on board that is operated either autonomously by computer or by an
107 individual from outside the vehicle.

108 “Surveillance,”-

109 1. With respect to an owner, tenant, occupant, invitee, or licensee of privately owned
110 real property, the observation of such persons with sufficient visual clarity to be able to obtain
111 information about their identity, habits, conduct, movements, or whereabouts; or

112 2. With respect to privately owned real property, the observation of such property's
113 physical domain with sufficient visual clarity to be able to determine unique identifying features
114 or its occupancy by one or more persons.

115 b. Any use of an unmanned aerial vehicle shall fully comply with all Federal Aviation
116 Administration (FAA) requirements and guidelines. Unmanned aerial vehicles shall not be
117 equipped with weapons.

118 c. The acquisition, purchase, or procurement of unmanned aerial vehicles shall be
119 authorized, in the case of a unit of state or county government, by the Secretary of Public Safety,
120 or in the case of a municipality, by the city council or other governing body, subject to approval
121 by the Secretary of Public Safety.

122

123 (d.) It shall be unlawful for a government entity or official to operate an unmanned
124 aerial vehicle except as follows-

125 (1) In order to execute a warrant issued under section 2 of chapter 276.

126 (2) For purposes unrelated to criminal investigation or other law enforcement
127 purposes, provided that information derived from such operation shall not be received in
128 evidence in any criminal trial, hearing, or grand jury proceeding, or maintained, shared, or used
129 for any intelligence purpose.

130 (3) In case of emergency when there is reasonable cause to believe that a threat to the
131 life or safety of a person is imminent, subject to the following limitations:

132 i. the operator shall document the factual basis for the emergency; and

133 ii. not later than 48 hours after the unmanned aerial vehicle is initially deployed, a
134 supervisory official shall file an affidavit describing the grounds for the emergency access.

135 (e.) The lawful operation of unmanned aerial vehicles described in subsection (d) and
136 the disclosure of information acquired by the operation of such vehicles shall be subject to the
137 following limitations:

138 (1) when operated pursuant to a warrant, unmanned aerial vehicles shall collect data
139 only on the warrant subject and avoid data collection on individuals, homes, and areas other than
140 the warrant subject;

141 (2) facial recognition and other biometric matching technology shall not be used on
142 data collected by an unmanned aerial vehicle, except to identify the subject of a warrant; and

143 (3) under no circumstances shall unmanned aerial vehicles be used to track, collect,
144 or maintain information about the political, religious or social views, associations or activities of
145 any individual, group, association, organization, corporation, business or partnership or other
146 entity unless such information relates directly to investigation of criminal activity, and there are
147 reasonable grounds to suspect the subject of the information is involved in criminal conduct.

148 (f.) Data collected on an individual, home, or area other than the target that justified
149 deployment shall not be used, stored, copied, uploaded, transmitted, or disclosed for any

150 purpose, except with the written consent of the data subject. Such data shall be deleted as soon
151 as practical, and in no event later than 72 hours after collection.

152 (g.) Information acquired by government use of an unmanned aerial vehicle and
153 information derived therefrom shall not be received in evidence in any judicial, regulatory, or
154 other government proceeding, if:

155 (1) the use of the unmanned aerial vehicle was unlawful;

156 (2) the unmanned aerial vehicle was used for an unlawful purpose or in an unlawful
157 manner; or

158 (3) the disclosure would be in violation of the data retention limits in subsection (d).

159 (h.) A government office or public official may include in its application for a warrant
160 a request for an order delaying the notification required under subsection (f) for a period not to
161 exceed 90 days, and the court shall issue the order if it determines there is reason to believe that
162 notification of the existence of the warrant may have an adverse result as defined in section 1B
163 of chapter 276. Upon expiration of any period of delay granted under this subsection, the
164 government office or public official shall provide the warrant subject a copy of the warrant
165 together with notice required under, and by means described in, subsection (g).

166 (i.) Not later than seven days after information is collected by an unmanned aerial
167 vehicle pursuant to subsection (b)(1) of this section, the government entity or official shall serve
168 upon, or deliver by registered or first-class mail, electronic mail, or other written means
169 reasonably calculated to be effective as specified by the court issuing the warrant to the subject

170 of the warrant a copy of the warrant, a copy of the application for the warrant, and notice that
171 informs such individual:

172 (1) of the nature of the law enforcement inquiry with reasonable specificity;

173 (2) that information regarding the warrant subject was collected, the dates on which
174 the information was collected, and a description of that information;

175 (3) whether notification was delayed pursuant to subsection (g); and

176 (4) the judicial official authorizing any delay in notification.

177 (j.) On the second Friday of January of each calendar year, any judge issuing or
178 denying a warrant under subsection (b)(1) during the preceding calendar year shall report on
179 each such warrant to the office of court management within the trial court:

180 (1) the fact that the warrant was applied for;

181 (2) the identity of the government entity or official making the application

182 (3) the offense specified in the warrant or application therefor;

183 (4) the place where the information was to be obtained;

184 (5) the fact that the warrant was granted as applied for, was modified, or was denied;

185 (6) the date and time when the warrant was granted as applied for, was modified, or
186 was denied; and

187 (7) the number and duration of any extensions of the warrant.

188 (k.) In June of each year, the court administrator in the office of court management
189 within the trial court shall transmit to the legislature a full and complete report concerning the
190 number of applications for warrants authorizing the use of unmanned aerial vehicles pursuant to
191 subsection (b)(1) of this section. Such reports shall include a summary and analysis of the data
192 required to be filed with that office. Such reports shall be filed with the offices of the clerk of
193 the house and the senate and shall be public records. the court administrator in the office of
194 court management within the trial court shall issue guidance regarding the form of such reports.

195 Section 7. Section 65 of Chapter 131 of the General Laws, as appearing in the 2016
196 Official Edition, is hereby amended by adding, in line 3, after the word, "helicopter," the
197 following words:

198 "unmanned aerial vehicle,".

199 Section 8. Section 65A of Chapter 131 of the General Laws, as appearing in the 2016
200 Official Edition, is hereby amended by adding, in line 2, after the word, "computer," the
201 following words:

202 ", unmanned aerial vehicle,".