



## COMMITTEE ON AERONAUTICS NEWSLETTER

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*The views and opinions expressed in these articles are those of the authors and do not necessarily reflect the views of the New York City Bar Association.*

## California Considers Stringent Drone Delivery Privacy Legislation

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On February 20, 2020, California Assemblyman Edwin Chau (D) introduced California Assembly Bill 2787, a bill currently pending before the California Assembly Privacy and Consumer Protection Committee that would have significant ramifications for drone delivery of all consumer products including food and medication.<sup>2</sup> This legislation comes on the heels of the enactment of the California Consumer Privacy Act (CCPA), the most comprehensive consumer privacy statute in the United States, which took effect on January 1, 2020.<sup>3</sup>

In recent years and months, various corporations including Amazon and Domino's have begun to develop drone delivery programs that could use drones to deliver merchandise and food to customer's doorsteps. The ongoing COVID-19 Pandemic, along with government-issued stay-at-home orders, has fueled interest in drone delivery as corporations and consumers alike have begun to view drone delivery as a means of promoting social distancing and reducing the number of essential workers required to interact with consumers while simultaneously ensuring consumer access to food, medication, household supplies, and other merchandise.<sup>4</sup> Alphabet's drone delivery service, Wing, has reportedly doubled its drone deliveries in Australia and Virginia, the only state in the United States where it has commenced a drone delivery test program as of April of 2020.<sup>5</sup> On April 27, 2020, UPS and CVS announced that beginning in May of 2020, they would partner to use drones to deliver prescription medication to The Villages, a Florida retirement community that is home to approximately 135,000 senior citizens.<sup>6</sup>

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<sup>2</sup> California A.B. 2787 (2020).

<sup>3</sup> Kari Paul, "California's Groundbreaking Privacy Law Takes Effect in January. What Does It Do?," The Guardian (December 30, 2019) <https://www.theguardian.com/us-news/2019/dec/30/california-consumer-privacy-act-what-does-it-do> accessed May 3, 2020.

<sup>4</sup> Curtis Silver, "The Time for Delivery Drones to Rise Up is Now," Forbes (April 14, 2020) <https://www.forbes.com/sites/curtissilver/2020/04/14/the-time-for-delivery-drones-to-rise-up-is-now/#51ebd8bb382a> accessed May 3, 2020.

<sup>5</sup> Jon Porter, "Alphabet's Nascent Drone Delivery Service is Booming," The Verge (April 9 2020) <https://www.theverge.com/2020/4/9/21214709/alphabet-wing-drone-delivery-coronavirus-covid-19-demand-increase-toilet-paper-baby-food> accessed May 3, 2020.

<sup>6</sup> Alan Boyle "CVS and UPS Team Up for Drone Deliveries to Retirees Amid Coronavirus Outbreak," GeekWire <https://www.geekwire.com/2020/cvs-ups-team-drone-deliveries-retirees-amid-coronavirus-outbreak> (April 27, 2020) accessed May 3, 2020.

The pending California legislation would provide that a drone that is used to deliver any consumer product in California, including food, medication, household supplies, and merchandise, may only collect, use, or retain audio, geolocation, or visual information when reasonably necessary and proportionate to achieve the delivery purposes for which such information was collected or processed.<sup>7</sup> The legislation would also require that all such information be destroyed as soon as the delivery is completed unless federal law requires that it be retained.<sup>8</sup> Violations of these provisions would be subject to enforcement by the California Attorney General pursuant to Cal. Civ. Code § 1798.99.82.<sup>9</sup>

If the pending California legislation is enacted, it is possible that it could be challenged on federal preemption grounds. In 2016, a California appellate court held that a state information privacy statute was preempted by the Airline Deregulation Act of 1978 as applied to an airline.<sup>10</sup> However, courts have yet to address whether state information privacy statutes are federally preempted as applied to drones. Although the United States District Court for the District of Massachusetts held that a municipal ordinance governing drone registration was federally preempted by FAA drone registration regulations, it remains to be seen whether this same reasoning would be applicable to a state statute governing drones' collection, use, and retention of consumer information.<sup>11</sup>

The enactment of the California legislation would also raise issues for commercial drone operators seeking to comply with the provisions of the FAA Reauthorization Act of 2018 governing the privacy practices of commercial drone operators. The FAA Reauthorization Act of 2018 requires any commercial drone operator using a drone for non-First Amendment protected activities, presumably including delivery of consumer products, to develop and implement a publicly available privacy policy governing the collection, use, retention, and deletion of data collected by its drones that protects and respects individual privacy consistent with federal, state, and local law.<sup>12</sup> Violations of such privacy policies are subject to Federal Trade Commission (FTC) enforcement pursuant to § 5(a) of the Federal Trade Commission Act.<sup>13</sup> Therefore, if the pending California legislation is enacted, businesses offering drone delivery in California may be required to incorporate and comply with provisions mandating compliance with the California legislation into their publicly available privacy policies pursuant to the FAA Reauthorization Act.

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<sup>7</sup> California A.B. 2787 (2020).

<sup>8</sup> California A.B. 2787 (2020).

<sup>9</sup> California A.B. 2787 (2020); Cal.Civ.Code § 1798.99.82.

<sup>10</sup> *People ex. rel. Harris v. Delta Air Lines, Inc.*, 247 Cal. App. 4th 844 (Cal. Ct. App. 1st Dist. 2016).

<sup>11</sup> *Singer v. City of Newton*, 284 F. Supp.3d 125 (D. Mass. 2017).

<sup>12</sup> P.L. 115-254 § 357, § 375, § 378 (2018).

<sup>13</sup> P.L. 115-254 § 375 (2018).