

118TH CONGRESS
1ST SESSION

S. _____

To amend the Controlled Substances Act to require electronic communication service providers and remote computing services to report to the Attorney General certain controlled substances violations.

IN THE SENATE OF THE UNITED STATES

Mr. MARSHALL (for himself, Mrs. SHAHEEN, Mr. DURBIN, Mr. GRASSLEY, Ms. KLOBUCHAR, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Controlled Substances Act to require electronic communication service providers and remote computing services to report to the Attorney General certain controlled substances violations.

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 “Cooper Davis Act”.

1 **SEC. 2. REPORTING REQUIREMENTS OF ELECTRONIC COM-**
2 **MUNICATION SERVICE PROVIDERS AND RE-**
3 **MOTE COMPUTING SERVICES FOR CERTAIN**
4 **CONTROLLED SUBSTANCES VIOLATIONS.**

5 (a) AMENDMENTS TO CONTROLLED SUBSTANCES
6 ACT.—

7 (1) IN GENERAL.—Part E of the Controlled
8 Substances Act (21 U.S.C. 871 et seq.) is amended
9 by adding at the end the following:

10 **“SEC. 521. REPORTING REQUIREMENTS OF ELECTRONIC**
11 **COMMUNICATION SERVICE PROVIDERS AND**
12 **REMOTE COMPUTING SERVICES FOR CER-**
13 **TAIN CONTROLLED SUBSTANCES VIOLA-**
14 **TIONS.**

15 “(a) DEFINITIONS.—In this section, the terms ‘elec-
16 tronic communication service’, ‘electronic mail address’,
17 ‘provider’, ‘remote computing service’, and ‘website’ have
18 the meanings given those terms in section 2258E of title
19 18, United States Code.

20 “(b) DUTY TO REPORT.—

21 “(1) IN GENERAL.—

22 “(A) DUTY.—In order to reduce the pro-
23 liferation of the unlawful sale, distribution, or
24 manufacture (as applicable) of counterfeit con-
25 trolled substances and certain controlled sub-
26 stances, a provider—

1 “(i) shall, as soon as reasonably pos-
2 sible after obtaining actual knowledge of
3 any facts or circumstances described in
4 paragraph (2)(A), take the actions de-
5 scribed in subparagraph (B);

6 “(ii) may, after obtaining actual
7 knowledge of any facts or circumstances
8 described in paragraph (2)(B), take the ac-
9 tions described in subparagraph (B);

10 “(iii) may, if the provider reasonably
11 believes that any facts or circumstances
12 described in paragraph (2)(A) exist, take
13 the actions described in subparagraph (B);
14 and

15 “(iv) shall, if a submission to the pro-
16 vider by a user, subscriber, or customer of
17 the provider alleges facts or circumstances
18 described in paragraph (2) and the pro-
19 vider upon review has a reasonable belief
20 that the alleged facts or circumstances
21 exist, take the actions described in sub-
22 paragraph (B).

23 “(B) ACTIONS DESCRIBED.—The actions
24 described in this subparagraph are—

1 “(i) providing to the Drug Enforce-
2 ment Administration the mailing address,
3 telephone number, facsimile number, and
4 electronic mailing address of, and indi-
5 vidual point of contact for, such provider;
6 and

7 “(ii) making a report of such facts or
8 circumstances to the Drug Enforcement
9 Administration.

10 “(2) FACTS AND CIRCUMSTANCES.—

11 “(A) VIOLATIONS.—The facts or cir-
12 cumstances described in this subparagraph are
13 any facts or circumstances that indicate a viola-
14 tion has occurred involving—

15 “(i) the unlawful sale or distribution
16 of—

17 “(I) fentanyl; or

18 “(II) methamphetamine; or

19 “(ii) the unlawful sale, distribution, or
20 manufacture of a counterfeit controlled
21 substance.

22 “(B) IMMINENT VIOLATIONS.—The facts
23 or circumstances described in this subparagraph
24 are any facts or circumstances that indicate

1 that a violation described in subparagraph (A)
2 may be planned or imminent.

3 “(c) CONTENTS OF REPORT.—

4 “(1) IN GENERAL.—In an effort to prevent fu-
5 ture violations described in subsection (b)(2)(A), and
6 to the extent the information is within the custody
7 or control of a provider, the facts and circumstances
8 included in each report under subsection (b)(1) may,
9 at the sole discretion of the provider, except as pro-
10 vided in paragraph (2), include the following infor-
11 mation:

12 “(A) INFORMATION ABOUT THE INVOLVED
13 INDIVIDUAL.—Information relating to the iden-
14 tity of any individual who has committed a vio-
15 lation or plans to commit a violation described
16 in subsection (b)(2)(A), which may, to the ex-
17 tent reasonably practicable, include the elec-
18 tronic mail address, Internet Protocol address,
19 uniform resource locator, payment information
20 (excluding personally identifiable information),
21 screen names or monikers for the account used
22 or any other accounts associated with the indi-
23 vidual, or any other identifying information, in-
24 cluding self-reported identifying information.

1 “(B) HISTORICAL REFERENCE.—Informa-
2 tion relating to when and how a customer or
3 subscriber of a provider uploaded, transmitted,
4 or received content relating to the report or
5 when and how content relating to the report
6 was reported to or discovered by the provider,
7 including a date and time stamp and time zone.

8 “(C) GEOGRAPHIC LOCATION INFORMA-
9 TION.—Information relating to the geographic
10 location of the involved individual or website,
11 which may include the Internet Protocol ad-
12 dress or verified address, or, if not reasonably
13 available, at least one form of geographic iden-
14 tifying information, including area code or zip
15 code, provided by the customer or subscriber, or
16 stored or obtained by the provider, and any in-
17 formation as to whether a virtual private net-
18 work was used.

19 “(D) DATA RELATING TO CERTAIN CON-
20 TROLLED SUBSTANCES VIOLATIONS.—Any data,
21 including symbols, photos, video, icons, or direct
22 messages, relating to activity involving a viola-
23 tion described in subsection (b)(2)(A) or other
24 content relating to the incident such report is
25 regarding.

1 “(E) COMPLETE COMMUNICATION.—The
2 complete communication containing the intent
3 to commit a violation described in subsection
4 (b)(2)(A), including—

5 “(i) any data or information regard-
6 ing the transmission of the communication;
7 and

8 “(ii) any data or other digital files
9 contained in, or attached to, the commu-
10 nication.

11 “(2) EXCEPTION.—In the case of a report
12 under subsection (b)(1) that is mandated under sub-
13 paragraph (A)(iv) of that subsection—

14 “(A) the provider shall include in the re-
15 port the information submitted to the provider
16 by the user, subscriber, or customer; and

17 “(B) the provider may include in the re-
18 port any information described in paragraph (1)
19 that the user, subscriber, or customer did not
20 submit to the provider.

21 “(d) FORWARDING OF REPORT TO OTHER FEDERAL
22 LAW ENFORCEMENT AGENCIES, STATE AND LOCAL LAW
23 ENFORCEMENT AGENCIES, AND FOREIGN LAW ENFORCE-
24 MENT AGENCIES.—The Drug Enforcement Administra-
25 tion shall make available each report made under sub-

1 section (b)(1) to other Federal law enforcement agencies,
2 State and local law enforcement agencies, and foreign law
3 enforcement agencies involved in the investigation of viola-
4 tions described in subsection (b)(2)(A), unless the Drug
5 Enforcement Administration will conduct the investigation
6 of the report.

7 “(e) ATTORNEY GENERAL RESPONSIBILITIES.—

8 “(1) IN GENERAL.—The Attorney General shall
9 enforce this section.

10 “(2) DESIGNATION OF FEDERAL AGENCIES.—

11 The Attorney General may designate a Federal law
12 enforcement agency or agencies to which the Drug
13 Enforcement Administration shall forward a report
14 under subsection (d).

15 “(3) DESIGNATION OF FOREIGN AGENCIES.—

16 The Attorney General may—

17 “(A) in consultation with the Secretary of
18 State, designate foreign law enforcement agen-
19 cies to which a report may be forwarded under
20 subsection (d);

21 “(B) establish the conditions under which
22 such a report may be forwarded to such agen-
23 cies; and

24 “(C) develop a process for foreign law en-
25 forcement agencies to request assistance from

1 Federal law enforcement agencies in obtaining
2 evidence related to a report referred under sub-
3 section (d).

4 “(4) REPORTING DESIGNATED FOREIGN AGEN-
5 CIES.—The Attorney General may maintain and
6 make available to the Department of State, pro-
7 viders, the Committee on the Judiciary of the Sen-
8 ate, and the Committee on the Judiciary of the
9 House of Representatives a list of the foreign law
10 enforcement agencies designated under paragraph
11 (3).

12 “(5) NOTIFICATION TO PROVIDERS.—

13 “(A) IN GENERAL.—The Drug Enforce-
14 ment Administration may notify a provider of
15 the information described in subparagraph (B),
16 if—

17 “(i) a provider notifies the Drug En-
18 forcement Administration that the provider
19 is making a report under this section as
20 the result of a request by a foreign law en-
21 forcement agency; and

22 “(ii) the Drug Enforcement Adminis-
23 tration forwards the report described in
24 clause (i) to—

1 “(I) the requesting foreign law
2 enforcement agency; or

3 “(II) another agency in the same
4 country designated by the Attorney
5 General under paragraph (3).

6 “(B) INFORMATION DESCRIBED.—The in-
7 formation described in this subparagraph is—

8 “(i) the identity of the foreign law en-
9 forcement agency to which the report was
10 forwarded; and

11 “(ii) the date on which the report was
12 forwarded.

13 “(C) NOTIFICATION OF INABILITY TO FOR-
14 WARD REPORT.—If a provider notifies the Drug
15 Enforcement Administration that the provider
16 is making a report under this section as the re-
17 sult of a request by a foreign law enforcement
18 agency and the Drug Enforcement Administra-
19 tion is unable to forward the report as de-
20 scribed in subparagraph (A)(ii), the Drug En-
21 forcement Administration shall notify the pro-
22 vider that the Drug Enforcement Administra-
23 tion was unable to forward the report.

1 “(f) FAILURE TO REPORT.—A provider that know-
2 ingly and willfully fails to make a report required under
3 subsection (b)(1) shall be fined—

4 “(1) in the case of an initial knowing and will-
5 ful failure to make a report, not more than
6 \$190,000; and

7 “(2) in the case of any second or subsequent
8 knowing and willful failure to make a report, not
9 more than \$380,000.

10 “(g) PROTECTION OF PRIVACY.—Nothing in this sec-
11 tion shall be construed to require a provider to—

12 “(1) monitor any user, subscriber, or customer
13 of that provider;

14 “(2) monitor the content of any communication
15 of any person described in paragraph (1); or

16 “(3) affirmatively search, screen, or scan for
17 facts or circumstances described in subsections (b)
18 and (c).

19 “(h) CONDITIONS OF DISCLOSURE OF INFORMATION
20 CONTAINED WITHIN REPORT.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), a law enforcement agency that receives a
23 report under subsection (d) shall not disclose any in-
24 formation contained in that report.

1 “(2) PERMITTED DISCLOSURES BY LAW EN-
2 FORCEMENT.—A law enforcement agency may dis-
3 close information in a report received under sub-
4 section (d)—

5 “(A) to an attorney for the government for
6 use in the performance of the official duties of
7 that attorney;

8 “(B) to such officers and employees of that
9 law enforcement agency, as may be necessary in
10 the performance of their investigative and rec-
11 ordkeeping functions;

12 “(C) to such other government personnel
13 (including personnel of a State or subdivision of
14 a State) as are determined to be necessary by
15 an attorney for the government to assist the at-
16 torney in the performance of the official duties
17 of the attorney in enforcing Federal criminal
18 law;

19 “(D) if the report discloses a violation of
20 State criminal law, to an appropriate official of
21 a State or subdivision of a State for the pur-
22 pose of enforcing such State law;

23 “(E) to a defendant in a criminal case or
24 the attorney for that defendant to the extent

1 the information relates to a criminal charge
2 pending against that defendant;

3 “(F) to a provider if necessary to facilitate
4 response to legal process issued in connection to
5 a criminal investigation, prosecution, or post-
6 conviction remedy relating to that report; and

7 “(G) as ordered by a court upon a showing
8 of good cause and pursuant to any protective
9 orders or other conditions that the court may
10 impose.

11 “(i) PRESERVATION.—

12 “(1) IN GENERAL.—

13 “(A) REQUEST TO PRESERVE CON-
14 TENTS.—

15 “(i) IN GENERAL.—Subject to clause
16 (ii), for the purposes of this section, a com-
17 pleted submission by a provider of a report
18 to the Drug Enforcement Administration
19 under subsection (b)(1) shall be treated as
20 a request to preserve the contents provided
21 in the report, and any data or other digital
22 files that are reasonably accessible and
23 may provide context or additional informa-
24 tion about the reported material or person,

1 for 90 days after the submission to the
2 Drug Enforcement Administration.

3 “(ii) LIMITATIONS ON EXTENSION OF
4 PRESERVATION PERIOD.—

5 “(I) NOTIFICATION THAT DEA
6 HAS FORWARDED REPORT TO FOR-
7 EIGN LAW ENFORCEMENT AGENCY.—

8 The Drug Enforcement Administra-
9 tion may not extend the required pe-
10 riod of preservation under clause (i)
11 on the basis of a notification by the
12 Drug Enforcement Administration to
13 the provider under subsection
14 (e)(5)(A).

15 “(II) STORED COMMUNICATIONS
16 ACT.—The Drug Enforcement Admin-
17 istration may not submit a request to
18 a provider to continue preservation of
19 the contents of a report or other data
20 described in clause (i) under section
21 2703(f) of title 18, United States
22 Code, beyond the required period of
23 preservation under clause (i) of this
24 subparagraph unless the Drug En-
25 forcement Administration intends in

1 good faith to investigate the user, sub-
2 scribe, or customer account at issue
3 in the report or make the report avail-
4 able to another Federal, State, or
5 local law enforcement agency.

6 “(III) RULE OF CONSTRUC-
7 TION.—Nothing in subclause (II) shall
8 preclude another Federal, State, or
9 local law enforcement agency from
10 seeking continued preservation of the
11 contents of a report or other data de-
12 scribed in clause (i) under section
13 2703(f) of title 18, United States
14 Code.

15 “(B) NOTIFICATION TO USER.—A provider
16 may not notify a user, subscriber, or customer
17 of the provider of a preservation request de-
18 scribed in subparagraph (A) unless—

19 “(i) the provider has notified the
20 Drug Enforcement Administration of its
21 intent to provide that notice; and

22 “(ii) 5 business days have elapsed
23 since the notification under clause (i).

24 “(2) PROTECTION OF PRESERVED MATE-
25 RIALS.—A provider preserving materials under this

1 section shall maintain the materials in a secure loca-
2 tion and take appropriate steps to limit access to the
3 materials by agents or employees of the service to
4 that access necessary to comply with the require-
5 ments of this subsection.

6 “(3) AUTHORITIES AND DUTIES NOT AF-
7 FECTED.—Nothing in this section shall be construed
8 as replacing, amending, or otherwise interfering with
9 the authorities and duties under section 2703 of title
10 18, United States Code.”.

11 (2) TECHNICAL AND CONFORMING AMEND-
12 MENT.—The table of contents for the Controlled
13 Substances Act (21 U.S.C. 801 et seq.) is amended
14 by inserting after the item relating to section 520
15 the following:

“Sec. 521. Reporting requirements of electronic communication service pro-
viders and remote computing services for certain controlled
substances violations.”.

16 (b) CONFORMING AMENDMENTS TO STORED COMMU-
17 NICATIONS ACT.—

18 (1) IN GENERAL.—Section 2702 of title 18,
19 United States Code, is amended—

20 (A) in subsection (b)—

21 (i) in paragraph (8), by striking “or”
22 at the end;

23 (ii) in paragraph (9), by striking the
24 period at the end and inserting “; or”; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(10) to a law enforcement agency, in connec-
4 tion with a report submitted thereto under section
5 521 of the Controlled Substances Act.”; and

6 (B) in subsection (c)—

7 (i) in paragraph (6), by striking “or”
8 at the end;

9 (ii) in paragraph (7), by striking the
10 period at the end and inserting “; or”; and

11 (iii) by adding at the end the fol-
12 lowing:

13 “(8) to a law enforcement agency, in connection
14 with a report submitted thereto under section 521 of
15 the Controlled Substances Act.”.

16 (2) TECHNICAL AMENDMENT.—Paragraph (7)
17 of section 2702(b) of title 18, United States Code,
18 is amended to read as follows:

19 “(7) to a law enforcement agency if the con-
20 tents—

21 “(A) were inadvertently obtained by the
22 service provider; and

23 “(B) appear to pertain to the commission
24 of a crime;”.