117TH CONGRESS
2D Session

S. ______

To amend the Controlled Substances Act to require electronic communication service providers and remote computing services to report to the Attorney General the unlawful sale and distribution of controlled substances.

IN THE SENATE OF THE UNITED STATES

Mr. MARSHALL 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 the unlawful sale and distribution of controlled substances.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Cooper Davis Act”.
SEC. 2. REPORTING REQUIREMENTS OF ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND REMOTE COMPUTING SERVICES FOR THE UNLAWFUL SALE AND DISTRIBUTION OF CONTROLLED SUBSTANCES.

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

"SEC. 521. REPORTING REQUIREMENTS OF ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND REMOTE COMPUTING SERVICES FOR THE UNLAWFUL SALE AND DISTRIBUTION OF CONTROLLED SUBSTANCES.

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

(b) DUTY TO REPORT.—

(1) IN GENERAL.—

(A) DUTY.—In order to reduce the proliferation of the unlawful sale or distribution of controlled substances, a provider—

(i) shall, as soon as reasonably possible after obtaining actual knowledge of any facts or circumstances described in
paragraph (2)(A), take the actions described in subparagraph (B); and

“(ii) may, after obtaining actual knowledge of any facts or circumstances described in paragraph (2)(B), take the actions described in subparagraph (B).

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

“(i) providing to the Drug Enforcement Administration the mailing address, telephone number, facsimile number, and electronic mailing address of, and individual point of contact for, such provider; and

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

“(2) FACTS AND CIRCUMSTANCES.—

“(A) APPARENT VIOLATIONS.—The facts or circumstances described in this subparagraph are any facts or circumstances from which there is an apparent violation of section 401, 402, 403, or 406.

“(B) IMMINENT VIOLATIONS.—The facts or circumstances described in this subparagraph
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are any facts or circumstances that indicate
that a violation described in subparagraph (A)
may be planned or imminent.

“(c) CONTENTS OF REPORT.—In an effort to prevent
future violations of the sections described in subsection
(b)(2)(A), and to the extent the information is within the
custody or control of a provider, the facts and cir-
cumstances included in each report under subsection
(b)(1) shall, at the sole discretion of the provider, include
the following information:

“(1) INFORMATION ABOUT THE INVOLVED IN-
DIVIDUAL.—Information relating to the identity of
any individual who appears to have violated or plans
to violate the sections described in subsection
(b)(2)(A), which may, to the extent reasonably prac-
ticable, include the electronic mail address, Internet
Protocol address, uniform resource locator, payment
information (excluding personally identifiable infor-
mation), screen names or monikers for the account
used or any other accounts associated with the indi-
vidual, or any other identifying information, includ-
ing self-reported identifying information.

“(2) HISTORICAL REFERENCE.—Information
relating to when and how a customer or subscriber
of a provider uploaded, transmitted, or received con-
tent relating to the report or when and how content
relating to the report was reported to or discovered
by the provider, including a date and time stamp
and time zone.

“(3) Geographic location information.—
Information relating to the geographic location of
the involved individual or website, which may include
the Internet Protocol address or verified address, or,
if not reasonably available, at least one form of geo-
graphic identifying information, including area code
or zip code, provided by the customer or subscriber,
or stored or obtained by the provider, and any infor-
mation as to whether a virtual private network was
used.

“(4) Data relating to the sale of con-
trolled substances.—Any data, including sym-
bols, photos, video, icons, or direct messages, relating
to apparent activity involving the unlawful sale
or distribution of a controlled substance or other
content relating to the incident such report is re-
garding.

“(5) Complete communication.—The com-
plete communication containing the intent to unlaw-
fully sell or distribute a controlled substance, includ-
ing—
“(A) any data or information regarding the transmission of the communication; and

“(B) any data or other digital files contained in, or attached to, the communication.

“(d) FORWARDING OF REPORT TO OTHER FEDERAL LAW ENFORCEMENT AGENCIES, STATE AND LOCAL LAW ENFORCEMENT AGENCIES, AND FOREIGN LAW ENFORCEMENT AGENCIES.—The Drug Enforcement Administration shall make available each report made under subsection (b)(1) to other Federal law enforcement agencies, State and local law enforcement agencies, and foreign law enforcement agencies involved in the investigation of violations described in subsection (b)(2)(A).

“(e) ATTORNEY GENERAL RESPONSIBILITIES.—

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

“(2) DESIGNATION OF FEDERAL AGENCIES.—The Attorney General may designate a Federal law enforcement agency or agencies to which the Drug Enforcement Administration shall forward a report under subsection (d).

“(3) DESIGNATION OF FOREIGN AGENCIES.—The Attorney General may—

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

“(B) establish the conditions under which such a report may be forwarded to such agencies; and

“(C) develop a process for foreign law enforcement agencies to request assistance from Federal law enforcement agencies in obtaining evidence related to a report referred under subsection (d).

“(4) REPORTING DESIGNATED FOREIGN AGENCIES.—The Attorney General may maintain and make available to the Department of State, providers, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a list of the foreign law enforcement agencies designated under paragraph (3).

“(5) NOTIFICATION TO PROVIDERS.—

“(A) IN GENERAL.—The Drug Enforcement Administration may notify a provider of the information described in subparagraph (B), if—

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

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

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

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

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

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

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

“(C) NOTIFICATION OF INABILITY TO FOR-
WARD REPORT.—If a provider notifies the Drug
Enforcement Administration that the provider
is making a report under this section as the re-
sult of a request by a foreign law enforcement
agency and the Drug Enforcement Administra-
tion is unable to forward the report as de-
scribed in subparagraph (A)(ii), the Drug Enforcement Administration shall notify the provider that the Drug Enforcement Administration was unable to forward the report.

“(f) Failure to Report.—A provider that knowingly and willfully fails to make a report required under subsection (b)(1) shall be fined—

“(1) in the case of an initial knowing and willful failure to make a report, not more than $150,000; and

“(2) in the case of any second or subsequent knowing and willful failure to make a report, not more than $300,000.

“(g) Protection of Privacy.—Nothing in this section shall be construed to require a provider to—

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

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

“(3) affirmatively search, screen, or scan for facts or circumstances described in subsections (b) and (e).

“(h) Conditions of Disclosure of Information Contained Within Report.—
“(1) In general.—Except as provided in paragraph (2), a law enforcement agency that receives a report under subsection (d) shall not disclose any information contained in that report.

“(2) Permitted disclosures by law enforcement.—A law enforcement agency may disclose information in a report received under subsection (d)—

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

“(B) to such officers and employees of that law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

“(C) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law;

“(D) if the report discloses a violation of State criminal law, to an appropriate official of
a State or subdivision of a State for the purpose of enforcing such State law;

“(E) to a defendant in a criminal case or the attorney for that defendant to the extent the information relates to a criminal charge pending against that defendant;

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

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

“(i) Preservation.—

“(1) In general.—

“(A) Request to preserve contents.—For the purposes of this section, a completed submission by a provider of a report to the Drug Enforcement Administration under subsection (b)(1) shall be treated as a request to preserve the contents provided in the report for 90 days after the submission to the Drug Enforcement Administration.
“(B) Notification to user.—A provider may not notify a user, subscriber, or customer of the provider of a preservation request described in subparagraph (A) unless—

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

“(ii) 5 business days have elapsed since the notification under clause (i); and

“(iii) the Drug Enforcement Administration has not obtained a court order for nondisclosure.

“(2) Preservation of commingled content.—Pursuant to paragraph (1)(A), a provider shall preserve any data or other digital files that are reasonably accessible and may provide context or additional information about the reported material or person.

“(3) Protection of preserved materials.—A provider preserving materials under this section shall maintain the materials in a secure location and take appropriate steps to limit access to the materials by agents or employees of the service to that access necessary to comply with the requirements of this subsection.
“(4) AUTHORITIES AND DUTIES NOT AFFECTED.—Nothing in this section shall be construed as replacing, amending, or otherwise interfering with the authorities and duties under section 2703 of title 18, United States Code.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

The table of contents for the Controlled Substances Act (21 U.S.C. 801 et seq.) is amended by inserting after the item relating to section 520 the following:

“Sec. 521. Reporting requirements of electronic communication service providers and remote computing services for the unlawful sale and distribution of controlled substances.”.