

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.

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IN THE SENATE OF THE UNITED STATES

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Mr. MARSHALL introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## **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.

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 THE UN-**  
4 **LAWFUL SALE AND DISTRIBUTION OF CON-**  
5 **TROLLED SUBSTANCES.**

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

9 **“SEC. 521. REPORTING REQUIREMENTS OF ELECTRONIC**  
10 **COMMUNICATION SERVICE PROVIDERS AND**  
11 **REMOTE COMPUTING SERVICES FOR THE UN-**  
12 **LAWFUL SALE AND DISTRIBUTION OF CON-**  
13 **TROLLED SUBSTANCES.**

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

19 “(b) DUTY TO REPORT.—

20 “(1) IN GENERAL.—

21 “(A) DUTY.—In order to reduce the pro-  
22 liferation of the unlawful sale or distribution of  
23 controlled substances, a provider—

24 “(i) shall, as soon as reasonably pos-  
25 sible after obtaining actual knowledge of  
26 any facts or circumstances described in

1 paragraph (2)(A), take the actions de-  
2 scribed in subparagraph (B); and

3 “(ii) may, after obtaining actual  
4 knowledge of any facts or circumstances  
5 described in paragraph (2)(B), take the ac-  
6 tions described in subparagraph (B).

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

9 “(i) providing to the Drug Enforce-  
10 ment Administration the mailing address,  
11 telephone number, facsimile number, and  
12 electronic mailing address of, and indi-  
13 vidual point of contact for, such provider;  
14 and

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

18 “(2) FACTS AND CIRCUMSTANCES.—

19 “(A) APPARENT VIOLATIONS.—The facts  
20 or circumstances described in this subparagraph  
21 are any facts or circumstances from which there  
22 is an apparent violation of section 401, 402,  
23 403, or 406.

24 “(B) IMMINENT VIOLATIONS.—The facts  
25 or circumstances described in this subparagraph

1           are any facts or circumstances that indicate  
2           that a violation described in subparagraph (A)  
3           may be planned or imminent.

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

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

23           “(2) HISTORICAL REFERENCE.—Information  
24 relating to when and how a customer or subscriber  
25 of a provider uploaded, transmitted, or received con-

1 tent relating to the report or when and how content  
2 relating to the report was reported to or discovered  
3 by the provider, including a date and time stamp  
4 and time zone.

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

15 “(4) DATA RELATING TO THE SALE OF CON-  
16 TROLLED SUBSTANCES.—Any data, including sym-  
17 bols, photos, video, icons, or direct messages, relat-  
18 ing to apparent activity involving the unlawful sale  
19 or distribution of a controlled substance or other  
20 content relating to the incident such report is re-  
21 garding.

22 “(5) COMPLETE COMMUNICATION.—The com-  
23 plete communication containing the intent to unlaw-  
24 fully sell or distribute a controlled substance, includ-  
25 ing—

1           “(A) any data or information regarding  
2           the transmission of the communication; and

3           “(B) any data or other digital files con-  
4           tained in, or attached to, the communication.

5           “(d) FORWARDING OF REPORT TO OTHER FEDERAL  
6 LAW ENFORCEMENT AGENCIES, STATE AND LOCAL LAW  
7 ENFORCEMENT AGENCIES, AND FOREIGN LAW ENFORCE-  
8 MENT AGENCIES.—The Drug Enforcement Administra-  
9 tion shall make available each report made under sub-  
10 section (b)(1) to other Federal law enforcement agencies,  
11 State and local law enforcement agencies, and foreign law  
12 enforcement agencies involved in the investigation of viola-  
13 tions described in subsection (b)(2)(A).

14           “(e) ATTORNEY GENERAL RESPONSIBILITIES.—

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

17           “(2) DESIGNATION OF FEDERAL AGENCIES.—

18           The Attorney General may designate a Federal law  
19           enforcement agency or agencies to which the Drug  
20           Enforcement Administration shall forward a report  
21           under subsection (d).

22           “(3) DESIGNATION OF FOREIGN AGENCIES.—

23           The Attorney General may—

24           “(A) in consultation with the Secretary of  
25           State, designate foreign law enforcement agen-

1           cies to which a report may be forwarded under  
2           subsection (d);

3           “(B) establish the conditions under which  
4           such a report may be forwarded to such agen-  
5           cies; and

6           “(C) develop a process for foreign law en-  
7           forcement agencies to request assistance from  
8           Federal law enforcement agencies in obtaining  
9           evidence related to a report referred under sub-  
10          section (d).

11          “(4) REPORTING DESIGNATED FOREIGN AGEN-  
12          CIES.—The Attorney General may maintain and  
13          make available to the Department of State, pro-  
14          viders, the Committee on the Judiciary of the Sen-  
15          ate, and the Committee on the Judiciary of the  
16          House of Representatives a list of the foreign law  
17          enforcement agencies designated under paragraph  
18          (3).

19          “(5) NOTIFICATION TO PROVIDERS.—

20                 “(A) IN GENERAL.—The Drug Enforce-  
21                 ment Administration may notify a provider of  
22                 the information described in subparagraph (B),  
23                 if—

24                         “(i) a provider notifies the Drug En-  
25                         forcement Administration that the provider

1 is making a report under this section as  
2 the result of a request by a foreign law en-  
3 forcement agency; and

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

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

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

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

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

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

19 “(C) NOTIFICATION OF INABILITY TO FOR-  
20 WARD REPORT.—If a provider notifies the Drug  
21 Enforcement Administration that the provider  
22 is making a report under this section as the re-  
23 sult of a request by a foreign law enforcement  
24 agency and the Drug Enforcement Administra-  
25 tion is unable to forward the report as de-

1           scribed in subparagraph (A)(ii), the Drug En-  
2           forcement Administration shall notify the pro-  
3           vider that the Drug Enforcement Administra-  
4           tion was unable to forward the report.

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

8                   “(1) in the case of an initial knowing and will-  
9           ful failure to make a report, not more than  
10          \$150,000; and

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

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

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

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

20                   “(3) affirmatively search, screen, or scan for  
21          facts or circumstances described in subsections (b)  
22          and (c).

23          “(h) CONDITIONS OF DISCLOSURE OF INFORMATION  
24          CONTAINED WITHIN REPORT.—

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

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

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

12                   “(B) to such officers and employees of that  
13                  law enforcement agency, as may be necessary in  
14                  the performance of their investigative and rec-  
15                  ordkeeping functions;

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

23                   “(D) if the report discloses a violation of  
24                  State criminal law, to an appropriate official of

1 a State or subdivision of a State for the pur-  
2 pose of enforcing such State law;

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

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

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

15 “(i) PRESERVATION.—

16 “(1) IN GENERAL.—

17 “(A) REQUEST TO PRESERVE CON-  
18 TENTS.—For the purposes of this section, a  
19 completed submission by a provider of a report  
20 to the Drug Enforcement Administration under  
21 subsection (b)(1) shall be treated as a request  
22 to preserve the contents provided in the report  
23 for 90 days after the submission to the Drug  
24 Enforcement Administration.

1           “(B) NOTIFICATION TO USER.—A provider  
2           may not notify a user, subscriber, or customer  
3           of the provider of a preservation request de-  
4           scribed in subparagraph (A) unless—

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

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

10                   “(iii) the Drug Enforcement Adminis-  
11                   tration has not obtained a court order for  
12                   nondisclosure.

13           “(2) PRESERVATION OF COMMINGLED CON-  
14           TENT.—Pursuant to paragraph (1)(A), a provider  
15           shall preserve any data or other digital files that are  
16           reasonably accessible and may provide context or ad-  
17           ditional information about the reported material or  
18           person.

19           “(3) PROTECTION OF PRESERVED MATE-  
20           RIALS.—A provider preserving materials under this  
21           section shall maintain the materials in a secure loca-  
22           tion and take appropriate steps to limit access to the  
23           materials by agents or employees of the service to  
24           that access necessary to comply with the require-  
25           ments of this subsection.

1           “(4) AUTHORITIES AND DUTIES NOT AF-  
2           FECTED.—Nothing in this section shall be construed  
3           as replacing, amending, or otherwise interfering with  
4           the authorities and duties under section 2703 of title  
5           18, United States Code.”.

6           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
7           The table of contents for the Controlled Substances Act  
8           (21 U.S.C. 801 et seq.) is amended by inserting after the  
9           item relating to section 520 the following:

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