

119TH 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. GRASSLEY, Mr. DURBIN, 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 and
5 Devin Norring 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—

16 “(1) the term ‘electronic communication service’
17 has the meaning given that term in section 2510 of
18 title 18, United States Code;

19 “(2) the term ‘electronic mail address’ has the
20 meaning given that term in section 3 of the CAN-
21 SPAM Act of 2003 (15 U.S.C. 7702);

22 “(3) the term ‘Internet’ has the meaning given
23 that term in section 1101(d)(3) of the Internet Tax
24 Freedom Act (47 U.S.C. 151 note);

1 “(4) the term ‘provider’ means an electronic
2 communication service provider or remote computing
3 service;

4 “(5) the term ‘remote computing service’ has
5 the meaning given that term in section 2711 of title
6 18, United States Code; and

7 “(6) the term ‘website’ means any collection of
8 material placed in a computer server-based file ar-
9 chive so that it is publicly accessible, over the Inter-
10 net, using hypertext transfer protocol or any suc-
11 cessor protocol.

12 “(b) DUTY TO REPORT.—

13 “(1) GENERAL DUTY.—In order to reduce the
14 proliferation of the unlawful sale, distribution, or
15 manufacture (as applicable) of counterfeit sub-
16 stances and certain controlled substances, a provider
17 shall, as soon as reasonably possible after obtaining
18 actual knowledge of any facts or circumstances de-
19 scribed in paragraph (2), and in any event not later
20 than 60 days after obtaining such knowledge, submit
21 to the Attorney General a report containing—

22 “(A) the mailing address, telephone num-
23 ber, facsimile number, and electronic mailing
24 address of, and individual point of contact for,
25 such provider;

1 “(B) information described in subsection
2 (c) concerning such facts or circumstances; and

3 “(C) for purposes of subsection (j), infor-
4 mation indicating whether the facts or cir-
5 cumstances were discovered through content
6 moderation conducted by a human or via a non-
7 human method, including use of an algorithm,
8 machine learning, or other means.

9 “(2) FACTS OR CIRCUMSTANCES.—The facts or
10 circumstances described in this paragraph are any
11 facts or circumstances establishing that a crime is
12 being or has already been committed involving—

13 “(A) creating, manufacturing, distributing,
14 dispensing, or possession with intent to manu-
15 facture, distribute, or dispense—

16 “(i) fentanyl; or

17 “(ii) methamphetamine;

18 “(B) creating, manufacturing, distributing,
19 dispensing, or possession with intent to manu-
20 facture, distribute, or dispense a counterfeit
21 substance, including a counterfeit substance
22 purporting to be a prescription drug; or

23 “(C) creating, manufacturing, distributing,
24 dispensing, or possession with intent to manu-
25 facture, distribute, or dispense an actual or

1 purported prescription pain medication or pre-
2 scription stimulant by any individual or entity
3 that is not authorized, which includes an indi-
4 vidual or entity that falsely claims to be a prac-
5 titioner.

6 “(3) PERMITTED ACTIONS BASED ON REASON-
7 ABLE BELIEF.—In order to reduce the proliferation
8 of the unlawful sale, distribution, or manufacture
9 (as applicable) of counterfeit substances and certain
10 controlled substances, if a provider has a reasonable
11 belief that facts or circumstances described in para-
12 graph (2) exist, the provider may submit to the At-
13 torney General a report described in paragraph (1).

14 “(c) CONTENTS OF REPORT.—

15 “(1) IN GENERAL.—To the extent the informa-
16 tion is within the custody or control of a provider,
17 the facts or circumstances included in each report
18 under subsection (b)(1)—

19 “(A) shall include, to the extent that it is
20 applicable and reasonably available, information
21 relating to the account involved in the commis-
22 sion of a crime described in subsection (b)(2),
23 such as the name, address, electronic mail ad-
24 dress, user or account identification, Internet
25 Protocol address, uniform resource locator,

1 screen names or monikers for the account used
2 or any other accounts associated with the ac-
3 count user, or any other identifying informa-
4 tion, including self-reported identifying informa-
5 tion, but not including the contents of a wire
6 communication or electronic communication, as
7 those terms are defined in section 2510 of title
8 18, United States Code, except as provided in
9 subparagraph (B) of this paragraph; and

10 “(B) may, at the sole discretion of the pro-
11 vider, include the information described in para-
12 graph (2) of this subsection.

13 “(2) OTHER INFORMATION.—The information
14 referred to in paragraph (1)(B) is the following:

15 “(A) HISTORICAL REFERENCE.—Informa-
16 tion relating to when and how a user, sub-
17 scriber, or customer of a provider uploaded,
18 transmitted, or received content relating to the
19 report or when and how content relating to the
20 report was reported to or discovered by the pro-
21 vider, including a date and time stamp and
22 time zone.

23 “(B) GEOGRAPHIC LOCATION INFORMA-
24 TION.—Information relating to the geographic
25 location of the involved individual or website,

1 which may include the Internet Protocol ad-
2 dress or verified address, or, if not reasonably
3 available, at least one form of geographic iden-
4 tifying information, including area code or ZIP
5 Code, provided by the user, subscriber, or cus-
6 tomer, or stored or obtained by the provider,
7 and any information as to whether a virtual pri-
8 vate network was used.

9 “(C) DATA RELATING TO FACTS OR CIR-
10 CUMSTANCES.—Any data, including symbols,
11 photos, video, icons, or direct messages, relating
12 to activity involving the facts or circumstances
13 described in subsection (b)(2) or other content
14 relating to the crime.

15 “(D) COMPLETE COMMUNICATION.—The
16 complete communication containing the infor-
17 mation of the crime described in subsection
18 (b)(2), including—

19 “(i) any data or information regard-
20 ing the transmission of the communication;
21 and

22 “(ii) any data or other digital files
23 contained in, or attached to, the commu-
24 nication.

1 “(3) USER, SUBSCRIBER, OR CUSTOMER SUB-
2 MITTED REPORTS.—In the case of a report under
3 subsection (b)(3), the provider may, at its sole dis-
4 cretion, include in the report information submitted
5 to the provider by a user, subscriber, or customer al-
6 leging facts or circumstances described in subsection
7 (b)(2) if the provider, upon review, has a reasonable
8 belief that the alleged facts or circumstances exist.

9 “(d) HANDLING OF REPORTS.—Upon receipt of a re-
10 port submitted under subsection (b), the Attorney Gen-
11 eral—

12 “(1) shall conduct a preliminary review of such
13 report; and

14 “(2) after completing the preliminary review,
15 shall—

16 “(A) conduct further investigation of the
17 report, which may include making the report
18 available to other Federal, State, or local law
19 enforcement agencies involved in the investiga-
20 tion of crimes described in subsection (b)(2), if
21 the Attorney General determines that the report
22 facially contains sufficient information to war-
23 rant and permit further investigation; or

24 “(B) conclude that no further investigative
25 steps are warranted or possible, or that insuffi-

1 cient evidence exists to make a determination,
2 and close the report.

3 “(e) ATTORNEY GENERAL RESPONSIBILITIES.—

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

6 “(2) DESIGNATION OF FEDERAL AGENCIES.—

7 The Attorney General may designate a Federal law
8 enforcement agency or agencies to which the Attor-
9 ney General may forward a report under subsection
10 (d).

11 “(3) DATA MINIMIZATION REQUIREMENTS.—

12 The Attorney General shall take reasonable meas-
13 ures to—

14 “(A) limit the storage of a report sub-
15 mitted under subsection (b) and its contents to
16 the amount that is necessary to carry out the
17 investigation of crimes described in subsection
18 (b)(2); and

19 “(B) store a report submitted under sub-
20 section (b) and its contents only as long as is
21 reasonably necessary to carry out an investiga-
22 tion of crimes described in subsection (b)(2) or
23 make the report available to other agencies
24 under subsection (d)(2)(A), after which time
25 the report and its contents shall be deleted un-

1 less the preservation of a report has future evi-
2 dentiary value.

3 “(f) FAILURE TO COMPLY WITH REQUIREMENTS.—

4 “(1) CRIMINAL PENALTY.—

5 “(A) OFFENSE.—It shall be unlawful for a
6 provider to knowingly fail to submit a report re-
7 quired under subsection (b)(1).

8 “(B) PENALTY.—A provider that violates
9 subparagraph (A) shall be fined—

10 “(i) in the case of an initial violation,
11 not more than \$190,000; and

12 “(ii) in the case of any second or sub-
13 sequent violation, not more than \$380,000.

14 “(2) CIVIL PENALTY.—In addition to any other
15 available civil or criminal penalty, a provider shall be
16 liable to the United States Government for a civil
17 penalty in an amount not less than \$50,000 and not
18 more than \$100,000 if the provider knowingly sub-
19 mits a report under subsection (b) that—

20 “(A) contains materially false or fraudu-
21 lent information; or

22 “(B) omits information described in sub-
23 section (c)(1)(A) that is reasonably available.

24 “(g) PROTECTION OF PRIVACY.—Nothing in this sec-
25 tion shall be construed to—

1 “(1) require a provider to monitor any user,
2 subscriber, or customer of that provider;

3 “(2) require a provider to monitor the content
4 of any communication of any person described in
5 paragraph (1);

6 “(3) require a provider to affirmatively search,
7 screen, or scan for facts or circumstances described
8 in subsection (b)(2);

9 “(4) permit actual knowledge to be proven
10 based solely on a provider’s decision not to engage
11 in additional verification or investigation to discover
12 facts and circumstances that are not readily appar-
13 ent, so long as the provider does not deliberately
14 blind itself to those violations; or

15 “(5) prohibit a provider from using end-to-end
16 encryption or require a provider to decrypt
17 encrypted communications.

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

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

24 “(2) PERMITTED DISCLOSURES BY LAW EN-
25 FORCEMENT.—A law enforcement agency may dis-

1 close information in a report received under sub-
2 section (d)—

3 “(A) to an attorney for the government for
4 use in the performance of the official duties of
5 that attorney, including providing discovery to a
6 defendant;

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

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

18 “(D) if the report discloses an apparent
19 violation of State criminal law, to an appro-
20 priate official of a State or subdivision of a
21 State for the purpose of enforcing such State
22 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;

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; and

11 “(H) in order to facilitate the enforcement
12 of the penalties authorized under subsection (f).

13 “(i) PRESERVATION.—

14 “(1) IN GENERAL.—

15 “(A) REQUEST TO PRESERVE CON-
16 TENTS.—

17 “(i) IN GENERAL.—Subject to clause
18 (ii), for the purposes of this section, a com-
19 pleted submission by a provider of a report
20 to the Attorney General under subsection
21 (b)(1) shall be treated as a request to pre-
22 serve the contents provided in the report,
23 and any data or other digital files that are
24 reasonably accessible and may provide con-
25 text or additional information about the re-

1 ported material or person, for 90 days
2 after the submission to the Attorney Gen-
3 eral.

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

6 “(I) STORED COMMUNICATIONS
7 ACT.—The Attorney General may not
8 submit a request to a provider to con-
9 tinue preservation of the contents of a
10 report or other data described in
11 clause (i) under section 2703(f) of
12 title 18, United States Code, beyond
13 the required period of preservation
14 under clause (i) of this subparagraph
15 unless the Attorney General has an
16 active or pending investigation involv-
17 ing the user, subscriber, or customer
18 account at issue in the report.

19 “(II) RULE OF CONSTRUC-
20 TION.—Nothing in subclause (I) shall
21 preclude another Federal, State, or
22 local law enforcement agency from
23 seeking continued preservation of the
24 contents of a report or other data de-
25 scribed in clause (i) under section

1 2703(f) of title 18, United States
2 Code.

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

7 “(i) the provider has notified the At-
8 torney General of its intent to provide that
9 notice; and

10 “(ii) 45 business days have elapsed
11 since the notification under clause (i).

12 “(2) PROTECTION OF PRESERVED MATE-
13 RIALS.—A provider preserving materials under this
14 section shall maintain the materials in a secure loca-
15 tion and take appropriate steps to limit access to the
16 materials by agents or employees of the provider to
17 that access necessary to comply with the require-
18 ments of this subsection.

19 “(3) AUTHORITIES AND DUTIES NOT AF-
20 FECTED.—Nothing in this section shall be construed
21 as replacing, amending, or otherwise interfering with
22 the authorities and duties under section 2703 of title
23 18, United States Code.

24 “(4) RELATION TO REPORTING REQUIRE-
25 MENT.—Submission of a report as required by sub-

1 section (b)(1) does not satisfy the obligations under
2 this subsection.

3 “(j) ANNUAL REPORT.—Not later than 1 year after
4 the date of enactment of the Cooper Davis and Devin
5 Norring Act, and annually thereafter, the Attorney Gen-
6 eral shall publish a report that includes, for the reporting
7 period—

8 “(1) the total number of reports received from
9 providers under subsection (b)(1);

10 “(2) the number of reports received under sub-
11 section (b)(1) disaggregated by—

12 “(A) the provider on whose electronic com-
13 munication service or remote computing service
14 the crime for which there are facts or cir-
15 cumstances occurred; and

16 “(B) the subsidiary of a provider, if any,
17 on whose electronic communication service or
18 remote computing service the crime for which
19 there are facts or circumstances occurred;

20 “(3) the number of reports received under sub-
21 section (b)(1) that led to convictions in cases inves-
22 tigated by the Attorney General;

23 “(4) the number of reports received under sub-
24 section (b)(1) that lacked actionable information;

1 “(5) the number of reports received under sub-
2 section (b)(1) where the facts or circumstances of a
3 crime were discovered through—

4 “(A) content moderation conducted by a
5 human; or

6 “(B) a non-human method including use of
7 an algorithm, machine learning, or other
8 means;

9 “(6) the number of reports received under sub-
10 section (b)(1) that were made available to other law
11 enforcement agencies, disaggregated by—

12 “(A) the number of reports made available
13 to Federal law enforcement agencies;

14 “(B) the number of reports made available
15 to State law enforcement agencies; and

16 “(C) the number of reports made available
17 to local law enforcement agencies; and

18 “(7) the number of requests to providers to
19 continue preservation of the contents of a report or
20 other data described in subsection (i)(1)(A)(i) sub-
21 mitted by the Attorney General under section
22 2703(f) of title 18, United States Code.

23 “(k) PROHIBITION ON SUBMISSION OF USER, SUB-
24 SCRIBER, CUSTOMER, OR ANONYMOUS REPORTS BY LAW
25 ENFORCEMENT.—

1 “(1) IN GENERAL.—No Federal, Tribal, State,
2 or local law enforcement officer acting in an official
3 capacity may submit a report to a provider or ar-
4 range for another individual to submit a report to a
5 provider on behalf of the officer under this section.

6 “(2) REMEDY FOR VIOLATION.—No part of the
7 contents of a provider’s report made under sub-
8 section (b)(1) or (b)(3) and no evidence derived
9 therefrom may be received in evidence in any trial,
10 hearing, or other proceeding in or before any court,
11 department, officer, agency, regulatory body, legisla-
12 tive committee, or other authority of the United
13 States, a State, or a political subdivision thereof if
14 that provider report resulted from an action prohib-
15 ited by paragraph (1) of this subsection.

16 “(l) EXEMPTION FOR PROVIDERS OF BROADBAND
17 INTERNET ACCESS SERVICE AND TEXT MESSAGING
18 SERVICE.—Subsections (b) through (k) shall not apply to
19 a provider of—

20 “(1) broadband internet access service, as that
21 term is defined in section 8.1(b) of title 47, Code of
22 Federal Regulations (or any successor regulation),
23 insofar as the provider is acting as a provider of
24 such service; or

1 “(2) text messaging service, as that term is de-
2 fined in section 227(e)(8) of title 47, United States
3 Code, insofar as the provider is acting as a provider
4 of such service.”.

5 (2) TECHNICAL AND CONFORMING AMEND-
6 MENT.—The table of contents for the Comprehensive
7 Drug Abuse Prevention and Control Act of 1970
8 (Public Law 91–513; 84 Stat. 1236) is amended by
9 inserting after the item relating to section 520 the
10 following:

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

11 (b) CONFORMING AMENDMENTS TO STORED COMMU-
12 NICATIONS ACT.—

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

15 (A) in subsection (b)—

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

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

20 (iii) by adding at the end the fol-
21 lowing:

22 “(10) to the Attorney General, in connection
23 with a report submitted thereto under section 521 of
24 the Controlled Substances Act.”; and

1 (B) in subsection (c)—

2 (i) in paragraph (6), by striking “or”

3 at the end;

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

6 (iii) by adding at the end the fol-
7 lowing:

8 “(8) to the Attorney General, in connection
9 with a report submitted thereto under section 521 of
10 the Controlled Substances Act.”.

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

14 “(7) to a law enforcement agency if the con-
15 tents—

16 “(A) were inadvertently obtained by the
17 service provider; and

18 “(B) appear to pertain to the commission
19 of a crime;”.

20 **SEC. 3. SEVERABILITY.**

21 If any provision of this Act or amendment made by
22 this Act, or the application of such a provision or amend-
23 ment to any person or circumstance, is held to be uncon-
24 stitutional, the remaining provisions of this Act and
25 amendments made by this Act, and the application of such

1 provision or amendment to any other person or cir-
2 cumstance, shall not be affected thereby.