

117TH CONGRESS
2D SESSION

S. 5297

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 counterfeit substances and certain controlled substances.

IN THE SENATE OF THE UNITED STATES

DECEMBER 19, 2022

Mr. MARSHALL (for himself and Mrs. SHAHEEN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

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 counterfeit substances and certain 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 COUN-**
 5 **TERFEIT SUBSTANCES AND CERTAIN CON-**
 6 **TROLLED SUBSTANCES.**

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

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

16 “(a) DEFINITIONS.—In this section, the terms ‘elec-
 17 tronic communication service’, ‘electronic mail address’,
 18 ‘provider’, ‘remote computing service’, and ‘website’ have
 19 the meanings given those terms in section 2258E of title
 20 18, United States Code.

21 “(b) DUTY TO REPORT.—

22 “(1) IN GENERAL.—

23 “(A) DUTY.—In order to reduce the pro-
 24 liferation of the unlawful sale or distribution of
 25 counterfeit substances and certain controlled
 26 substances, 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); and

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

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

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

21 “(2) FACTS AND CIRCUMSTANCES.—

22 “(A) VIOLATIONS.—The facts or cir-
23 cumstances described in this subparagraph are
24 any facts or circumstances that indicate a viola-
25 tion has occurred involving—

1 “(i) fentanyl;

2 “(ii) methamphetamine; or

3 “(iii) the manufacture of a counterfeit
4 substance.

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

10 “(c) CONTENTS OF REPORT.—In an effort to prevent
11 future violations described in subsection (b)(2)(A), and to
12 the extent the information is within the custody or control
13 of a provider, the facts and circumstances included in each
14 report under subsection (b)(1) shall include the following
15 information:

16 “(1) INFORMATION ABOUT THE INVOLVED IN-
17 DIVIDUAL.—Information relating to the identity of
18 any individual who has committed a violation or
19 plans to commit a violation described under sub-
20 section (b)(2)(A), which may, to the extent reason-
21 ably practicable, include the electronic mail address,
22 Internet Protocol address, uniform resource locator,
23 payment information (excluding personally identifi-
24 able information), screen names or monikers for the
25 account used or any other accounts associated with

1 the individual, or any other identifying information,
2 including self-reported identifying information.

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

10 “(3) GEOGRAPHIC LOCATION INFORMATION.—
11 Information relating to the geographic location of
12 the involved individual or website, which may include
13 the Internet Protocol address or verified address, or,
14 if not reasonably available, at least one form of geo-
15 graphic identifying information, including area code
16 or ZIP Code, provided by the customer or sub-
17 scriber, or stored or obtained by the provider, and
18 any information as to whether a virtual private net-
19 work was used.

20 “(4) DATA RELATING TO THE SALE OF COUN-
21 TERFEIT SUBSTANCES AND CERTAIN CONTROLLED
22 SUBSTANCES.—Any data, including symbols, photos,
23 video, icons, or direct messages, relating to activity
24 involving the unlawful sale or distribution of a sub-
25 stance described in subsection (b)(2)(A) or other

1 content relating to the incident such report is re-
2 garding.

3 “(5) COMPLETE COMMUNICATION.—The com-
4 plete communication containing the intent to unlaw-
5 fully sell or distribute a substance described in sub-
6 section (b)(2)(A), including—

7 “(A) any data or information regarding
8 the transmission of the communication; and

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

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

20 “(e) ATTORNEY GENERAL RESPONSIBILITIES.—

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

23 “(2) DESIGNATION OF FEDERAL AGENCIES.—
24 The Attorney General may designate a Federal law
25 enforcement agency or agencies to which the Drug

1 Enforcement Administration shall forward a report
2 under subsection (d).

3 “(3) DESIGNATION OF FOREIGN AGENCIES.—

4 The Attorney General may—

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

9 “(B) establish the conditions under which
10 such a report may be forwarded to such agen-
11 cies; and

12 “(C) develop a process for foreign law en-
13 forcement agencies to request assistance from
14 Federal law enforcement agencies in obtaining
15 evidence related to a report referred under sub-
16 section (d).

17 “(4) REPORTING DESIGNATED FOREIGN AGEN-
18 CIES.—The Attorney General may maintain and
19 make available to the Department of State, pro-
20 viders, the Committee on the Judiciary of the Sen-
21 ate, and the Committee on the Judiciary of the
22 House of Representatives a list of the foreign law
23 enforcement agencies designated under paragraph
24 (3).

25 “(5) NOTIFICATION TO PROVIDERS.—

1 “(A) IN GENERAL.—The Drug Enforce-
2 ment Administration may notify a provider of
3 the information described in subparagraph (B),
4 if—

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

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

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

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

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

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

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

1 “(C) NOTIFICATION OF INABILITY TO FOR-
2 WARD REPORT.—If a provider notifies the Drug
3 Enforcement Administration that the provider
4 is making a report under this section as the re-
5 sult of a request by a foreign law enforcement
6 agency and the Drug Enforcement Administra-
7 tion is unable to forward the report as de-
8 scribed in subparagraph (A)(ii), the Drug En-
9 forcement Administration shall notify the pro-
10 vider that the Drug Enforcement Administra-
11 tion was unable to forward the report.

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

15 “(1) in the case of an initial knowing and will-
16 ful failure to make a report, not more than
17 \$190,000; and

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

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

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

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

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

6 “(h) CONDITIONS OF DISCLOSURE OF INFORMATION
7 CONTAINED WITHIN REPORT.—

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

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

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

19 “(B) to such officers and employees of that
20 law enforcement agency, as may be necessary in
21 the performance of their investigative and rec-
22 ordkeeping functions;

23 “(C) to such other government personnel
24 (including personnel of a State or subdivision of
25 a State) as are determined to be necessary by

1 an attorney for the government to assist the at-
2 torney in the performance of the official duties
3 of the attorney in enforcing Federal criminal
4 law;

5 “(D) if the report discloses a violation of
6 State criminal law, to an appropriate official of
7 a State or subdivision of a State for the pur-
8 pose of enforcing such State law;

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

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

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

21 “(i) PRESERVATION.—

22 “(1) IN GENERAL.—

23 “(A) REQUEST TO PRESERVE CON-
24 TENTS.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), for the purposes of this section, a com-
3 pleted submission by a provider of a report
4 to the Drug Enforcement Administration
5 under subsection (b)(1) shall be treated as
6 a request to preserve the contents provided
7 in the report, and any data or other digital
8 files that are reasonably accessible and
9 may provide context or additional informa-
10 tion about the reported material or person,
11 for 90 days after the submission to the
12 Drug Enforcement Administration.

13 “(ii) LIMITATIONS ON EXTENSION OF
14 PRESERVATION PERIOD.—

15 “(I) NOTIFICATION THAT DEA
16 HAS FORWARDED REPORT TO FOR-
17 EIGN LAW ENFORCEMENT AGENCY.—

18 The Drug Enforcement Administra-
19 tion may not extend the required pe-
20 riod of preservation under clause (i)
21 on the basis of a notification by the
22 Drug Enforcement Administration to
23 the provider under subsection
24 (e)(5)(A).

1 “(II) STORED COMMUNICATIONS

2 ACT.—The Drug Enforcement Admin-
3 istration may not submit a request to
4 a provider to continue preservation of
5 the contents of a report or other data
6 described in clause (i) under section
7 2703(f) of title 18, United States
8 Code, beyond the required period of
9 preservation under clause (i) of this
10 subparagraph unless the Drug En-
11 forcement Administration intends in
12 good faith to investigate the user, sub-
13 scribe, or customer account at issue
14 in the report or make the report avail-
15 able to another Federal, State, or
16 local law enforcement agency.

17 “(III) RULE OF CONSTRUC-

18 TION.—Nothing in subclause (II) shall
19 preclude another Federal, State, or
20 local law enforcement agency from
21 seeking continued preservation of the
22 contents of a report or other data de-
23 scribed in clause (i) under section
24 2703(f) of title 18, United States
25 Code.

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; and

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

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

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

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 23 The table of contents for the Controlled Substances Act
 24 (21 U.S.C. 801 et seq.) is amended by inserting after the
 25 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 counterfeit substances and certain controlled substances.”.

