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S. 1080

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

MARCH 30, 2023

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 the Judiciary

SEPTEMBER 5, 2023

Reported by Mr. DURBIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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 “(e) 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,
16 or stored or obtained by the provider, and any
17 information 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 scriber, 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 CONSTRU-~~
7 ~~CTION.—~~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;”.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Cooper Davis Act”.*

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

7 *(a) AMENDMENTS TO CONTROLLED SUBSTANCES*
 8 *ACT.—*

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

12 *“REPORTING REQUIREMENTS OF ELECTRONIC COMMUNICA-*
 13 *TION SERVICE PROVIDERS AND REMOTE COMPUTING*
 14 *SERVICES FOR CERTAIN CONTROLLED SUBSTANCES*
 15 *VIOLATIONS*

16 *“SEC. 521. (a) DEFINITIONS.—In this section—*

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

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

23 *“(3) the term ‘Internet’ has the meaning given*
 24 *that term in section 1101 of the Internet Tax Free-*
 25 *dom 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 the
5 meaning given that term in section 2711 of title 18,
6 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 successor
11 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 substances
16 and certain controlled substances, a provider shall, as
17 soon as reasonably possible after obtaining actual
18 knowledge of any facts or circumstances described in
19 paragraph (2), and in any event not later than 60
20 days after obtaining such knowledge, submit to the
21 Drug Enforcement Administration a report con-
22 taining—

23 “(A) the mailing address, telephone number,
24 facsimile number, and electronic mailing address

1 of, and individual point of contact for, such pro-
2 vider;

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

5 “(C) for purposes of subsection (j), informa-
6 tion indicating whether the facts or cir-
7 cumstances were discovered through content mod-
8 eration conducted by a human or via a non-
9 human method, including use of an algorithm,
10 machine learning, or other means.

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

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

18 “(i) *fentanyl; or*

19 “(ii) *methamphetamine;*

20 “(B) *creating, manufacturing, distributing,*
21 *dispensing, or possession with intent to manu-*
22 *facture, distribute, or dispense a counterfeit sub-*
23 *stance, including a counterfeit substance pur-*
24 *porting to be a prescription drug; or*

1 “(C) offering, dispensing, or administering
2 an actual or purported prescription pain medi-
3 cation or prescription stimulant by any indi-
4 vidual or entity that is not a practitioner or on-
5 line pharmacy, including an individual or enti-
6 ty that falsely claims to be a practitioner or on-
7 line pharmacy.

8 “(3) *PERMITTED ACTIONS BASED ON REASON-*
9 *ABLE BELIEF.*—In order to reduce the proliferation of
10 the unlawful sale, distribution, or manufacture (as
11 applicable) of counterfeit substances and certain con-
12 trolled substances, if a provider has a reasonable be-
13 lief that facts or circumstances described in para-
14 graph (2) exist, the provider may submit to the Drug
15 Enforcement Administration a report described in
16 paragraph (1).

17 “(c) *CONTENTS OF REPORT.*—

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

22 “(A) shall include, to the extent that it is
23 applicable and reasonably available, information
24 relating to the account involved in the commis-
25 sion of a crime described in subsection (b)(2),

1 *such as the name, address, electronic mail ad-*
2 *dress, user or account identification, Internet*
3 *Protocol address, uniform resource locator, screen*
4 *names or monikers for the account used or any*
5 *other accounts associated with the account user,*
6 *or any other identifying information, including*
7 *self-reported identifying information, but not in-*
8 *cluding the contents of a wire communication or*
9 *electronic communication, as those terms are de-*
10 *finied in section 2510 of title 18, United States*
11 *Code, except as provided in subparagraph (B) of*
12 *this paragraph; and*

13 *“(B) may, at the sole discretion of the pro-*
14 *vider, include the information described in para-*
15 *graph (2) of this subsection.*

16 *“(2) OTHER INFORMATION.—The information re-*
17 *ferred to in paragraph (1)(B) is the following:*

18 *“(A) HISTORICAL REFERENCE.—Informa-*
19 *tion relating to when and how a user, subscriber,*
20 *or customer of a provider uploaded, transmitted,*
21 *or received content relating to the report or when*
22 *and how content relating to the report was re-*
23 *ported to or discovered by the provider, including*
24 *a date and time stamp and time zone.*

1 “(B) *GEOGRAPHIC LOCATION INFORMA-*
2 *TION.—Information relating to the geographic*
3 *location of the involved individual or website,*
4 *which may include the Internet Protocol address*
5 *or verified address, or, if not reasonably avail-*
6 *able, at least one form of geographic identifying*
7 *information, including area code or ZIP Code,*
8 *provided by the user, subscriber, or customer, or*
9 *stored or obtained by the provider, and any in-*
10 *formation as to whether a virtual private net-*
11 *work was used.*

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

18 “(D) *COMPLETE COMMUNICATION.—The*
19 *complete communication containing the informa-*
20 *tion of the crime described in subsection (b)(2),*
21 *including—*

22 “(i) *any data or information regard-*
23 *ing the transmission of the communication;*
24 *and*

1 “(ii) any data or other digital files
2 contained in, or attached to, the commu-
3 nication.

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

12 “(d) *HANDLING OF REPORTS.*—*Upon receipt of a re-*
13 *port submitted under subsection (b), the Drug Enforcement*
14 *Administration—*

15 “(1) *shall conduct a preliminary review of such*
16 *report; and*

17 “(2) *after completing the preliminary review,*
18 *shall—*

19 “(A) *conduct further investigation of the re-*
20 *port, which may include making the report*
21 *available to other Federal, State, or local law en-*
22 *forcement agencies involved in the investigation*
23 *of crimes described in subsection (b)(2), if the*
24 *Drug Enforcement Administration determines*
25 *that the report facially contains sufficient infor-*

1 *mation to warrant and permit further investiga-*
2 *tion; or*

3 *“(B) conclude that no further investigative*
4 *steps are warranted or possible, or that insuffi-*
5 *cient evidence exists to make a determination,*
6 *and close 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.—The*
11 *Attorney General may designate a Federal law en-*
12 *forcement agency or agencies to which the Drug En-*
13 *forcement Administration may forward a report*
14 *under subsection (d).*

15 *“(3) DATA MINIMIZATION REQUIREMENTS.—The*
16 *Attorney General shall take reasonable measures to—*

17 *“(A) limit the storage of a report submitted*
18 *under subsection (b) and its contents to the*
19 *amount that is necessary to carry out the inves-*
20 *tigation of crimes described in subsection (b)(2);*
21 *and*

22 *“(B) store a report submitted under sub-*
23 *section (b) and its contents only as long as is*
24 *reasonably necessary to carry out an investiga-*
25 *tion of crimes described in subsection (b)(2) or*

1 *make the report available to other agencies under*
2 *subsection (d)(2)(A), after which time the report*
3 *and its contents shall be deleted unless the pres-*
4 *ervation of a report has future evidentiary value.*

5 “(f) *FAILURE TO COMPLY WITH REQUIREMENTS.—*

6 “(1) *CRIMINAL PENALTY.—*

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

10 “(B) *PENALTY.—A provider that violates*
11 *subparagraph (A) shall be fined—*

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

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

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

22 “(A) *contains materially false or fraudulent*
23 *information; or*

24 “(B) *omits information described in sub-*
25 *section (c)(1)(A) that is reasonably available.*

1 “(g) *PROTECTION OF PRIVACY.*—*Nothing in this sec-*
2 *tion shall be construed to—*

3 “(1) *require a provider to monitor any user, sub-*
4 *scriber, or customer of that provider;*

5 “(2) *require a provider to monitor the content of*
6 *any communication of any person described in para-*
7 *graph (1);*

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

11 “(4) *permit actual knowledge to be proven based*
12 *solely on a provider’s decision not to engage in addi-*
13 *tional verification or investigation to discover facts*
14 *and circumstances that are not readily apparent, so*
15 *long as the provider does not deliberately blind itself*
16 *to those violations.*

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

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

23 “(2) *PERMITTED DISCLOSURES BY LAW EN-*
24 *FORCEMENT.*—*A law enforcement agency may disclose*

1 *information in a report received under subsection*
2 *(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 an*
14 *attorney for the government to assist the attorney*
15 *in the performance of the official duties of the at-*
16 *torney in enforcing Federal criminal law;*

17 *“(D) if the report discloses an apparent vio-*
18 *lation of State criminal law, to an appropriate*
19 *official of a State or subdivision of a State for*
20 *the purpose of enforcing such State law;*

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

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

5 “(G) as ordered by a court upon a showing
6 of good cause and pursuant to any protective or-
7 ders or other conditions that the court may im-
8 pose; and

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

11 “(i) *PRESERVATION.*—

12 “(1) *IN GENERAL.*—

13 “(A) *REQUEST TO PRESERVE CONTENTS.*—

14 “(i) *IN GENERAL.*—Subject to clause
15 (ii), for the purposes of this section, a com-
16 pleted submission by a provider of a report
17 to the Drug Enforcement Administration
18 under subsection (b)(1) shall be treated as a
19 request to preserve the contents provided in
20 the report, and any data or other digital
21 files that are reasonably accessible and may
22 provide context or additional information
23 about the reported material or person, for
24 90 days after the submission to the Drug
25 Enforcement Administration.

1 “(i) *LIMITATIONS ON EXTENSION OF*
2 *PRESERVATION PERIOD.*—

3 “(I) *STORED COMMUNICATIONS*
4 *ACT.*—*The Drug Enforcement Admin-*
5 *istration may not submit a request to*
6 *a provider to continue preservation of*
7 *the contents of a report or other data*
8 *described in clause (i) under section*
9 *2703(f) of title 18, United States Code,*
10 *beyond the required period of preserva-*
11 *tion under clause (i) of this subpara-*
12 *graph unless the Drug Enforcement*
13 *Administration has an active or pend-*
14 *ing investigation involving the user,*
15 *subscriber, or customer account at*
16 *issue in the report.*

17 “(II) *RULE OF CONSTRUCTION.*—
18 *Nothing in subclause (I) shall preclude*
19 *another Federal, State, or local law en-*
20 *forcement agency from seeking contin-*
21 *ued preservation of the contents of a*
22 *report or other data described in clause*
23 *(i) under section 2703(f) of title 18,*
24 *United States Code.*

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

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

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

10 “(2) *PROTECTION OF PRESERVED MATERIALS.*—
11 A provider preserving materials under this section
12 shall maintain the materials in a secure location and
13 take appropriate steps to limit access to the materials
14 by agents or employees of the service to that access
15 necessary to comply with the requirements of this sub-
16 section.

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 “(4) *RELATION TO REPORTING REQUIREMENT.*—
23 Submission of a report as required by subsection
24 (b)(1) does not satisfy the obligations under this sub-
25 section.

1 “(j) *ANNUAL REPORT.*—Not later than 1 year after the
2 date of enactment of the Cooper Davis Act, and annually
3 thereafter, the Drug Enforcement Administration shall pub-
4 lish a report that includes, for the reporting period—

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

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

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

13 “(B) the subsidiary of a provider, if any, on
14 whose electronic communication service or re-
15 mote computing service the crime for which there
16 are facts or circumstances occurred;

17 “(3) the number of reports received under sub-
18 section (b)(1) that led to convictions in cases inves-
19 tigated by the Drug Enforcement Administration;

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

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

1 “(A) content moderation conducted by a
2 human; or

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

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

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

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

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

14 “(7) the number of requests to providers to con-
15 tinue preservation of the contents of a report or other
16 data described in subsection (i)(1)(A)(i) submitted by
17 the Drug Enforcement Administration under section
18 2703(f) of title 18, United States Code.

19 “(k) PROHIBITION ON SUBMISSION OF USER, SUB-
20 SCRIBER, CUSTOMER, OR ANONYMOUS REPORTS BY LAW
21 ENFORCEMENT.—

22 “(1) IN GENERAL.—No Federal, Tribal, State, or
23 local law enforcement officer acting in an official ca-
24 pacity may submit a report to a provider or arrange

1 for another individual to submit a report to a pro-
 2 vider on behalf of the officer under this section.

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

13 “(l) *EXEMPTION FOR PROVIDERS OF BROADBAND*
 14 *INTERNET ACCESS SERVICE.*—Subsections (b) through (k)
 15 shall not apply to a provider of broadband internet access
 16 service, as that term is defined in section 8.1(b) of title 47,
 17 Code of Federal Regulations (or any successor regulation),
 18 insofar as the provider is acting as a provider of such serv-
 19 ice.”.

20 “(2) *TECHNICAL AND CONFORMING AMEND-*
 21 *MENT.*—The table of contents for the Controlled Sub-
 22 stances Act (21 U.S.C. 801 et seq.) is amended by in-
 23 serting after the item relating to section 520 the fol-
 24 lowing:

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

1 **(b) CONFORMING AMENDMENTS TO STORED COMMU-**
2 **NICATIONS ACT.—**

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

5 **(A) in subsection (b)—**

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

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

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

12 **“(10) to the Drug Enforcement Administration,**
13 **in connection with a report submitted thereto under**
14 **section 521 of the Controlled Substances Act.”; and**

15 **(B) in subsection (c)—**

16 **(i) in paragraph (6), by striking “or”**
17 **at the end;**

18 **(ii) in paragraph (7), by striking the**
19 **period at the end and inserting “; or”; and**

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

22 **“(8) to the Drug Enforcement Administration,**
23 **in connection with a report submitted thereto under**
24 **section 521 of the Controlled Substances Act.”.**

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

4 “*(7) to a law enforcement agency if the con-*
5 *tents—*

6 “*(A) were inadvertently obtained by the*
7 *service provider; and*

8 “*(B) appear to pertain to the commission of*
9 *a crime;”.*

10 ***SEC. 3. SEVERABILITY.***

11 *If any provision of this Act or amendment made by*
12 *this Act, or the application of such a provision or amend-*
13 *ment to any person or circumstance, is held to be unconsti-*
14 *tutional, the remaining provisions of this Act and amend-*
15 *ments made by this Act, and the application of such provi-*
16 *sion or amendment to any other person or circumstance,*
17 *shall not be affected thereby.*

Calendar No. 200

118TH CONGRESS
1ST Session
S. 1080

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.

SEPTEMBER 5, 2023

Reported with an amendment