

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 counterfeit substances and certain controlled substances.

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IN THE SENATE OF THE UNITED STATES

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Mr. MARSHALL (for himself and Mrs. SHAHEEN) 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 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 possible after obtaining actual knowledge of  
2           any facts or circumstances described in  
3           paragraph (2)(A), take the actions described in subparagraph (B); and

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

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

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

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

14           “(2) FACTS AND CIRCUMSTANCES.—

15           “(A) VIOLATIONS.—The facts or circumstances described in this subparagraph are  
16           any facts or circumstances that indicate a violation has occurred involving—  
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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 subscriber,  
17 or stored or obtained by the provider, and any infor-  
18 mation as to whether a virtual private network was  
19 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                  scriber, 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.”.