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

Mr. MARSHALL (for himself and Mrs. SHAHEEN) 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 the unlawful sale and distribution of counterfeit substances and certain controlled substances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. REPORTING REQUIREMENTS OF ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND REMOTE COMPUTING SERVICES FOR THE UNLAWFUL SALE AND DISTRIBUTION OF COUNTERFEIT SUBSTANCES AND CERTAIN CONTROLLED SUBSTANCES.

(a) IN GENERAL.—Part E of the Controlled Substances Act (21 U.S.C. 871 et seq.) is amended by adding at the end 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.

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

“(b) DUTY TO REPORT.—

“(1) IN GENERAL.—

“(A) DUTY.—In order to reduce the proliferation of the unlawful sale or distribution of counterfeit substances and certain controlled substances, a provider—
“(i) shall, as soon as reasonably possible after obtaining actual knowledge of any facts or circumstances described in paragraph (2)(A), take the actions described in subparagraph (B); and

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

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

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

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

“(2) FACTS AND CIRCUMSTANCES.—

“(A) VIOLATIONS.—The facts or circumstances described in this subparagraph are any facts or circumstances that indicate a violation has occurred involving—
“(i) fentanyl;
“(ii) methamphetamine; or
“(iii) the manufacture of a counterfeit substance.

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

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

“(1) INFORMATION ABOUT THE INVOLVED INDIVIDUAL.—Information relating to the identity of any individual who has committed a violation or plans to commit a violation described under subsection (b)(2)(A), which may, to the extent reasonably practicable, include the electronic mail address, Internet Protocol address, uniform resource locator, payment information (excluding personally identifiable information), screen names or monikers for the account used or any other accounts associated with
the individual, or any other identifying information, including self-reported identifying information.

“(2) Historical Reference.—Information relating to when and how a customer or subscriber of a provider uploaded, transmitted, or received content relating to the report or when and how content relating to the report was reported to or discovered by the provider, including a date and time stamp and time zone.

“(3) Geographic Location Information.—Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified address, or, if not reasonably available, at least one form of geographic identifying information, including area code or zip code, provided by the customer or subscriber, or stored or obtained by the provider, and any information as to whether a virtual private network was used.

“(4) Data Relating to the Sale of Counterfeit Substances and Certain Controlled Substances.—Any data, including symbols, photos, video, icons, or direct messages, relating to activity involving the unlawful sale or distribution of a substance described in subsection (b)(2)(A) or other
content relating to the incident such report is regarding.

“(5) COMPLETE COMMUNICATION.—The complete communication containing the intent to unlawfully sell or distribute a substance described in subsection (b)(2)(A), including—

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

“(B) any data or other digital files contained in, or attached to, the communication.

“(d) FORWARDING OF REPORT TO OTHER FEDERAL LAW ENFORCEMENT AGENCIES, STATE AND LOCAL LAW ENFORCEMENT AGENCIES, AND FOREIGN LAW ENFORCEMENT AGENCIES.—The Drug Enforcement Administration shall make available each report made under subsection (b)(1) to other Federal law enforcement agencies, State and local law enforcement agencies, and foreign law enforcement agencies involved in the investigation of violations described in subsection (b)(2)(A).

“(e) ATTORNEY GENERAL RESPONSIBILITIES.—

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

“(2) DESIGNATION OF FEDERAL AGENCIES.— The Attorney General may designate a Federal law enforcement agency or agencies to which the Drug
Enforcement Administration shall forward a report under subsection (d).

“(3) DESIGNATION OF FOREIGN AGENCIES.—
The Attorney General may—

“(A) in consultation with the Secretary of State, designate foreign law enforcement agencies to which a report may be forwarded under subsection (d);

“(B) establish the conditions under which such a report may be forwarded to such agencies; and

“(C) develop a process for foreign law enforcement agencies to request assistance from Federal law enforcement agencies in obtaining evidence related to a report referred under subsection (d).

“(4) REPORTING DESIGNATED FOREIGN AGENCIES.—The Attorney General may maintain and make available to the Department of State, providers, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a list of the foreign law enforcement agencies designated under paragraph (3).

“(5) NOTIFICATION TO PROVIDERS.—
“(A) IN GENERAL.—The Drug Enforcement Administration may notify a provider of the information described in subparagraph (B), if—

“(i) a provider notifies the Drug Enforcement Administration that the provider is making a report under this section as the result of a request by a foreign law enforcement agency; and

“(ii) the Drug Enforcement Administration forwards the report described in clause (i) to—

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

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

“(B) INFORMATION DESCRIBED.—The information described in this subparagraph is—

“(i) the identity of the foreign law enforcement agency to which the report was forwarded; and

“(ii) the date on which the report was forwarded.
“(C) Notification of Inability to Forward Report.—If a provider notifies the Drug Enforcement Administration that the provider is making a report under this section as the result of a request by a foreign law enforcement agency and the Drug Enforcement Administration is unable to forward the report as described in subparagraph (A)(ii), the Drug Enforcement Administration shall notify the provider that the Drug Enforcement Administration was unable to forward the report.

“(f) Failure to Report.—A provider that knowingly and willfully fails to make a report required under subsection (b)(1) shall be fined—

“(1) in the case of an initial knowing and willful failure to make a report, not more than $190,000; and

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

“(g) Protection of Privacy.—Nothing in this section shall be construed to require a provider to—

“(1) monitor any user, subscriber, or customer of that provider;
“(2) monitor the content of any communication
of any person described in paragraph (1); or
“(3) affirmatively search, screen, or scan for
facts or circumstances described in subsections (b)
and (c).

“(h) CONDITIONS OF DISCLOSURE OF INFORMATION
CONTAINED WITHIN REPORT.—
“(1) IN GENERAL.—Except as provided in para-
graph (2), a law enforcement agency that receives a
report under subsection (d) shall not disclose any in-
formation contained in that report.

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

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

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

“(C) to such other government personnel
(including personnel of a State or subdivision of
a State) as are determined to be necessary by
an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law;

"(D) if the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law;

"(E) to a defendant in a criminal case or the attorney for that defendant to the extent the information relates to a criminal charge pending against that defendant;

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

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

"(i) PRESERVATION.—

"(1) IN GENERAL.—

"(A) REQUEST TO PRESERVE CONTENTS.—
“(i) IN GENERAL.—Subject to clause (ii), for the purposes of this section, a completed submission by a provider of a report to the Drug Enforcement Administration under subsection (b)(1) shall be treated as a request to preserve the contents provided in the report, and any data or other digital files that are reasonably accessible and may provide context or additional information about the reported material or person, for 90 days after the submission to the Drug Enforcement Administration.

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

“(I) NOTIFICATION THAT DEA HAS FORWARDED REPORT TO FOREIGN LAW ENFORCEMENT AGENCY.—

The Drug Enforcement Administration may not extend the required period of preservation under clause (i) on the basis of a notification by the Drug Enforcement Administration to the provider under subsection (e)(5)(A).
“(II) Stored Communications

ACT.—The Drug Enforcement Adminis-

tration may not submit a request to

a provider to continue preservation of

the contents of a report or other data

described in clause (i) under section

2703(f) of title 18, United States

Code, beyond the required period of

preservation under clause (i) of this

subparagraph unless the Drug En-

forcement Administration intends in

good faith to investigate the user, sub-

scriber, or customer account at issue

in the report or make the report avail-

able to another Federal, State, or

local law enforcement agency.

“(III) Rule of Construc-

tion.—Nothing in subclause (II) shall

preclude another Federal, State, or

local law enforcement agency from

seeking continued preservation of the

contents of a report or other data de-

scribed in clause (i) under section

2703(f) of title 18, United States

Code.
“(B) Notification to User.—A provider may not notify a user, subscriber, or customer of the provider of a preservation request described in subparagraph (A) unless—

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

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

“(2) Protection of Preserved Materials.—A provider preserving materials under this section shall maintain the materials in a secure location and take appropriate steps to limit access to the materials by agents or employees of the service to that access necessary to comply with the requirements of this subsection.

“(3) Authorities and Duties Not Affected.—Nothing in this section shall be construed as replacing, amending, or otherwise interfering with the authorities and duties under section 2703 of title 18, United States Code.”.

(b) Technical and Conforming Amendment.—

The table of contents for the Controlled Substances Act (21 U.S.C. 801 et seq.) is amended by inserting after the 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.”