

117TH CONGRESS
2D SESSION

S. 4858

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 controlled substances.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2022

Mr. MARSHALL 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 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 CON-**
5 **TROLLED SUBSTANCES.**

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

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

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

19 “(b) DUTY TO REPORT.—

20 “(1) IN GENERAL.—

21 “(A) DUTY.—In order to reduce the pro-
22 liferation of the unlawful sale or distribution of
23 controlled substances, a provider—

24 “(i) shall, as soon as reasonably pos-
25 sible after obtaining actual knowledge of
26 any facts or circumstances described in

1 paragraph (2)(A), take the actions de-
2 scribed in subparagraph (B); and

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

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

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

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

18 “(2) FACTS AND CIRCUMSTANCES.—

19 “(A) APPARENT VIOLATIONS.—The facts
20 or circumstances described in this subparagraph
21 are any facts or circumstances from which there
22 is an apparent violation of section 401, 402,
23 403, or 406.

24 “(B) IMMINENT VIOLATIONS.—The facts
25 or circumstances described in this subparagraph

1 are any facts or circumstances that indicate
2 that a violation described in subparagraph (A)
3 may be planned or imminent.

4 “(c) CONTENTS OF REPORT.—In an effort to prevent
5 future violations of the sections described in subsection
6 (b)(2)(A), and to the extent the information is within the
7 custody or control of a provider, the facts and cir-
8 cumstances included in each report under subsection
9 (b)(1) shall, at the sole discretion of the provider, include
10 the following information:

11 “(1) INFORMATION ABOUT THE INVOLVED IN-
12 DIVIDUAL.—Information relating to the identity of
13 any individual who appears to have violated or plans
14 to violate the sections described in subsection
15 (b)(2)(A), which may, to the extent reasonably prac-
16 ticable, include the electronic mail address, Internet
17 Protocol address, uniform resource locator, payment
18 information (excluding personally identifiable infor-
19 mation), screen names or monikers for the account
20 used or any other accounts associated with the indi-
21 vidual, or any other identifying information, includ-
22 ing self-reported identifying information.

23 “(2) HISTORICAL REFERENCE.—Information
24 relating to when and how a customer or subscriber
25 of a provider uploaded, transmitted, or received con-

1 tent relating to the report or when and how content
2 relating to the report was reported to or discovered
3 by the provider, including a date and time stamp
4 and time zone.

5 “(3) GEOGRAPHIC LOCATION INFORMATION.—
6 Information relating to the geographic location of
7 the involved individual or website, which may include
8 the Internet Protocol address or verified address, or,
9 if not reasonably available, at least one form of geo-
10 graphic identifying information, including area code
11 or zip code, provided by the customer or subscriber,
12 or stored or obtained by the provider, and any infor-
13 mation as to whether a virtual private network was
14 used.

15 “(4) DATA RELATING TO THE SALE OF CON-
16 TROLLED SUBSTANCES.—Any data, including sym-
17 bols, photos, video, icons, or direct messages, relat-
18 ing to apparent activity involving the unlawful sale
19 or distribution of a controlled substance or other
20 content relating to the incident such report is re-
21 garding.

22 “(5) COMPLETE COMMUNICATION.—The com-
23 plete communication containing the intent to unlaw-
24 fully sell or distribute a controlled substance, includ-
25 ing—

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

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

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

14 “(e) ATTORNEY GENERAL RESPONSIBILITIES.—

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

17 “(2) DESIGNATION OF FEDERAL AGENCIES.—

18 The Attorney General may designate a Federal law
19 enforcement agency or agencies to which the Drug
20 Enforcement Administration shall forward a report
21 under subsection (d).

22 “(3) DESIGNATION OF FOREIGN AGENCIES.—

23 The Attorney General may—

24 “(A) in consultation with the Secretary of
25 State, designate foreign law enforcement agen-

1 cies to which a report may be forwarded under
2 subsection (d);

3 “(B) establish the conditions under which
4 such a report may be forwarded to such agen-
5 cies; and

6 “(C) develop a process for foreign law en-
7 forcement agencies to request assistance from
8 Federal law enforcement agencies in obtaining
9 evidence related to a report referred under sub-
10 section (d).

11 “(4) REPORTING DESIGNATED FOREIGN AGEN-
12 CIES.—The Attorney General may maintain and
13 make available to the Department of State, pro-
14 viders, the Committee on the Judiciary of the Sen-
15 ate, and the Committee on the Judiciary of the
16 House of Representatives a list of the foreign law
17 enforcement agencies designated under paragraph
18 (3).

19 “(5) NOTIFICATION TO PROVIDERS.—

20 “(A) IN GENERAL.—The Drug Enforce-
21 ment Administration may notify a provider of
22 the information described in subparagraph (B),
23 if—

24 “(i) a provider notifies the Drug En-
25 forcement Administration that the provider

1 is making a report under this section as
2 the result of a request by a foreign law en-
3 forcement agency; and

4 “(ii) the Drug Enforcement Adminis-
5 tration forwards the report described in
6 clause (i) to—

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

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

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

14 “(i) the identity of the foreign law en-
15 forcement agency to which the report was
16 forwarded; and

17 “(ii) the date on which the report was
18 forwarded.

19 “(C) NOTIFICATION OF INABILITY TO FOR-
20 WARD REPORT.—If a provider notifies the Drug
21 Enforcement Administration that the provider
22 is making a report under this section as the re-
23 sult of a request by a foreign law enforcement
24 agency and the Drug Enforcement Administra-
25 tion is unable to forward the report as de-

1 scribed in subparagraph (A)(ii), the Drug En-
2 forcement Administration shall notify the pro-
3 vider that the Drug Enforcement Administra-
4 tion was unable to forward the report.

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

8 “(1) in the case of an initial knowing and will-
9 ful failure to make a report, not more than
10 \$150,000; and

11 “(2) in the case of any second or subsequent
12 knowing and willful failure to make a report, not
13 more than \$300,000.

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

16 “(1) monitor any user, subscriber, or customer
17 of that provider;

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

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

23 “(h) CONDITIONS OF DISCLOSURE OF INFORMATION
24 CONTAINED WITHIN REPORT.—

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

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

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

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

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

23 “(D) if the report discloses a violation of
24 State criminal law, to an appropriate official of

1 a State or subdivision of a State for the pur-
2 pose of enforcing such State law;

3 “(E) to a defendant in a criminal case or
4 the attorney for that defendant to the extent
5 the information relates to a criminal charge
6 pending against that defendant;

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

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

15 “(i) PRESERVATION.—

16 “(1) IN GENERAL.—

17 “(A) REQUEST TO PRESERVE CON-
18 TENTS.—For the purposes of this section, a
19 completed submission by a provider of a report
20 to the Drug Enforcement Administration under
21 subsection (b)(1) shall be treated as a request
22 to preserve the contents provided in the report
23 for 90 days after the submission to the Drug
24 Enforcement Administration.

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;

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

10 “(iii) the Drug Enforcement Adminis-
11 tration has not obtained a court order for
12 nondisclosure.

13 “(2) PRESERVATION OF COMMINGLED CON-
14 TENT.—Pursuant to paragraph (1)(A), a provider
15 shall preserve any data or other digital files that are
16 reasonably accessible and may provide context or ad-
17 ditional information about the reported material or
18 person.

19 “(3) PROTECTION OF PRESERVED MATE-
20 RIALS.—A provider preserving materials under this
21 section shall maintain the materials in a secure loca-
22 tion and take appropriate steps to limit access to the
23 materials by agents or employees of the service to
24 that access necessary to comply with the require-
25 ments of this subsection.

1 “(4) AUTHORITIES AND DUTIES NOT AF-
2 FECTED.—Nothing in this section shall be construed
3 as replacing, amending, or otherwise interfering with
4 the authorities and duties under section 2703 of title
5 18, United States Code.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENT.—
7 The table of contents for the Controlled Substances Act
8 (21 U.S.C. 801 et seq.) is amended by inserting after the
9 item relating to section 520 the following:

 “Sec. 521. Reporting requirements of electronic communication service pro-
 viders and remote computing services for the unlawful sale and
 distribution of controlled substances.”.

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