

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. DURBIN

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

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

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

9 (a) AMENDMENTS TO CONTROLLED SUBSTANCES
10 ACT.—

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

4 **“SEC. 521. REPORTING REQUIREMENTS OF ELECTRONIC**
5 **COMMUNICATION SERVICE PROVIDERS AND**
6 **REMOTE COMPUTING SERVICES FOR CER-**
7 **TAIN CONTROLLED SUBSTANCES VIOLA-**
8 **TIONS.**

9 “(a) DEFINITIONS.—In this section—

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

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

16 “(3) the term ‘Internet’ has the meaning given
17 that term in section 1101 of the Internet Tax Free-
18 dom Act (47 U.S.C. 151 note);

19 “(4) the term ‘provider’ means an electronic
20 communication service provider or remote computing
21 service;

22 “(5) the term ‘remote computing service’ has
23 the meaning given that term in section 2711 of title
24 18, United States Code; and

1 “(6) the term ‘website’ means any collection of
2 material placed in a computer server-based file ar-
3 chive so that it is publicly accessible, over the Inter-
4 net, using hypertext transfer protocol or any suc-
5 cessor protocol.

6 “(b) DUTY TO REPORT.—

7 “(1) GENERAL DUTY.—In order to reduce the
8 proliferation of the unlawful sale, distribution, or
9 manufacture (as applicable) of counterfeit sub-
10 stances and certain controlled substances, a provider
11 shall, as soon as reasonably possible after obtaining
12 actual knowledge of any facts or circumstances de-
13 scribed in paragraph (2), and in any event not later
14 than 60 days after obtaining such knowledge, submit
15 to the Drug Enforcement Administration a report
16 containing—

17 “(A) the mailing address, telephone num-
18 ber, facsimile number, and electronic mailing
19 address of, and individual point of contact for,
20 such provider;

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

23 “(C) for purposes of subsection (j), infor-
24 mation indicating whether the facts or cir-
25 cumstances were discovered through content

1 moderation conducted by a human or via a non-
2 human method, including use of an algorithm,
3 machine learning, or other means.

4 “(2) FACTS OR CIRCUMSTANCES.—The facts or
5 circumstances described in this paragraph are any
6 facts or circumstances establishing that a crime is
7 being or has already been committed involving—

8 “(A) creating, manufacturing, distributing,
9 dispensing, or possession with intent to manu-
10 facture, distribute, or dispense—

11 “(i) fentanyl; or

12 “(ii) methamphetamine;

13 “(B) creating, manufacturing, distributing,
14 dispensing, or possession with intent to manu-
15 facture, distribute, or dispense a counterfeit
16 substance, including a counterfeit substance
17 purporting to be a prescription drug; or

18 “(C) offering, dispensing, or administering
19 an actual or purported prescription pain medi-
20 cation or prescription stimulant by any indi-
21 vidual or entity that is not a practitioner or on-
22 line pharmacy, including an individual or entity
23 that falsely claims to be a practitioner or online
24 pharmacy.

1 “(3) PERMITTED ACTIONS BASED ON REASON-
2 ABLE BELIEF.—In order to reduce the proliferation
3 of the unlawful sale, distribution, or manufacture
4 (as applicable) of counterfeit substances and certain
5 controlled substances, if a provider has a reasonable
6 belief that facts or circumstances described in para-
7 graph (2) exist, the provider may submit to the
8 Drug Enforcement Administration a report de-
9 scribed in paragraph (1).

10 “(c) CONTENTS OF REPORT.—

11 “(1) IN GENERAL.—To the extent the informa-
12 tion is within the custody or control of a provider,
13 the facts or circumstances included in each report
14 under subsection (b)(1)—

15 “(A) shall include, to the extent that it is
16 applicable and reasonably available, information
17 relating to the account involved in the commis-
18 sion of a crime described in subsection (b)(2),
19 such as the name, address, electronic mail ad-
20 dress, user or account identification, Internet
21 Protocol address, uniform resource locator,
22 screen names or monikers for the account used
23 or any other accounts associated with the ac-
24 count user, or any other identifying informa-
25 tion, including self-reported identifying informa-

1 tion, but not including the contents of a wire
2 communication or electronic communication, as
3 those terms are defined in section 2510 of title
4 18, United States Code, except as provided in
5 subparagraph (B) of this paragraph; and

6 “(B) may, at the sole discretion of the pro-
7 vider, include the information described in para-
8 graph (2) of this subsection.

9 “(2) OTHER INFORMATION.—The information
10 referred to in paragraph (1)(B) is the following:

11 “(A) HISTORICAL REFERENCE.—Informa-
12 tion relating to when and how a user, sub-
13 scriber, or customer of a provider uploaded,
14 transmitted, or received content relating to the
15 report or when and how content relating to the
16 report was reported to or discovered by the pro-
17 vider, including a date and time stamp and
18 time zone.

19 “(B) GEOGRAPHIC LOCATION INFORMA-
20 TION.—Information relating to the geographic
21 location of the involved individual or website,
22 which may include the Internet Protocol ad-
23 dress or verified address, or, if not reasonably
24 available, at least one form of geographic iden-
25 tifying information, including area code or ZIP

1 Code, provided by the user, subscriber, or cus-
2 tomer, or stored or obtained by the provider,
3 and any information as to whether a virtual pri-
4 vate network was used.

5 “(C) DATA RELATING TO FACTS OR CIR-
6 CUMSTANCES.—Any data, including symbols,
7 photos, video, icons, or direct messages, relating
8 to activity involving the facts or circumstances
9 described in subsection (b)(2) or other content
10 relating to the crime.

11 “(D) COMPLETE COMMUNICATION.—The
12 complete communication containing the infor-
13 mation of the crime described in subsection
14 (b)(2), including—

15 “(i) any data or information regard-
16 ing the transmission of the communication;
17 and

18 “(ii) any data or other digital files
19 contained in, or attached to, the commu-
20 nication.

21 “(3) USER, SUBSCRIBER, OR CUSTOMER SUB-
22 MITTED REPORTS.—In the case of a report under
23 subsection (b)(3), the provider may, at its sole dis-
24 cretion, include in the report information submitted
25 to the provider by a user, subscriber, or customer al-

1 leging facts or circumstances described in subsection
2 (b)(2) if the provider, upon review, has a reasonable
3 belief that the alleged facts or circumstances exist.

4 “(d) HANDLING OF REPORTS.—Upon receipt of a re-
5 port submitted under subsection (b), the Drug Enforce-
6 ment Administration—

7 “(1) shall conduct a preliminary review of such
8 report; and

9 “(2) after completing the preliminary review,
10 shall—

11 “(A) conduct further investigation of the
12 report, which may include making the report
13 available to other Federal, State, or local law
14 enforcement agencies involved in the investiga-
15 tion of crimes described in subsection (b)(2), if
16 the Drug Enforcement Administration deter-
17 mines that the report facially contains sufficient
18 information to warrant and permit further in-
19 vestigation; or

20 “(B) conclude that no further investigative
21 steps are warranted or possible, or that insuffi-
22 cient evidence exists to make a determination,
23 and close the report.

24 “(e) ATTORNEY GENERAL RESPONSIBILITIES.—

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

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

8 “(3) DATA MINIMIZATION REQUIREMENTS.—
9 The Attorney General shall take reasonable meas-
10 ures to—

11 “(A) limit the storage of a report sub-
12 mitted under subsection (b) and its contents to
13 the amount that is necessary to carry out the
14 investigation of crimes described in subsection
15 (b)(2); and

16 “(B) store a report submitted under sub-
17 section (b) and its contents only as long as is
18 reasonably necessary to carry out an investiga-
19 tion of crimes described in subsection (b)(2) or
20 make the report available to other agencies
21 under subsection (d)(2)(A), after which time
22 the report and its contents shall be deleted un-
23 less the preservation of a report has future evi-
24 dentiary value.

25 “(f) FAILURE TO COMPLY WITH REQUIREMENTS.—

1 “(1) CRIMINAL PENALTY.—

2 “(A) OFFENSE.—It shall be unlawful for a
3 provider to knowingly fail to submit a report re-
4 quired under subsection (b)(1).

5 “(B) PENALTY.—A provider that violates
6 subparagraph (A) shall be fined—

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

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

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

17 “(A) contains materially false or fraudu-
18 lent information; or

19 “(B) omits information described in sub-
20 section (c)(1)(A) that is reasonably available.

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

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

1 “(2) require a provider to monitor the content
2 of any communication of any person described in
3 paragraph (1);

4 “(3) require a provider to affirmatively search,
5 screen, or scan for facts or circumstances described
6 in subsection (b)(2); or

7 “(4) permit actual knowledge to be proven
8 based solely on a provider’s decision not to engage
9 in additional verification or investigation to discover
10 facts and circumstances that are not readily appar-
11 ent, so long as the provider does not deliberately
12 blind itself to those violations.

13 “(h) CONDITIONS OF DISCLOSURE OF INFORMATION
14 CONTAINED WITHIN REPORT.—

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

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

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

1 that attorney, including providing discovery to a
2 defendant;

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

7 “(C) to such other government personnel
8 (including personnel of a State or subdivision of
9 a State) as are determined to be necessary by
10 an attorney for the government to assist the at-
11 torney in the performance of the official duties
12 of the attorney in enforcing Federal criminal
13 law;

14 “(D) if the report discloses an apparent
15 violation of State criminal law, to an appro-
16 priate official of a State or subdivision of a
17 State for the purpose of enforcing such State
18 law;

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

23 “(F) to a provider if necessary to facilitate
24 response to legal process issued in connection to

1 a criminal investigation, prosecution, or post-
2 conviction remedy relating to that report;

3 “(G) as ordered by a court upon a showing
4 of good cause and pursuant to any protective
5 orders or other conditions that the court may
6 impose; and

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

9 “(i) PRESERVATION.—

10 “(1) IN GENERAL.—

11 “(A) REQUEST TO PRESERVE CON-
12 TENTS.—

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

1 “(ii) 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
10 Code, beyond the required period of
11 preservation under clause (i) of this
12 subparagraph unless the Drug En-
13 forcement Administration has an ac-
14 tive or pending investigation involving
15 the user, subscriber, or customer ac-
16 count at issue in the report.

17 “(II) RULE OF CONSTRUC-
18 TION.—Nothing in subclause (I) 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) 45 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 “(4) RELATION TO REPORTING REQUIRE-
23 MENT.—Submission of a report as required by sub-
24 section (b)(1) does not satisfy the obligations under
25 this subsection.

1 “(j) ANNUAL REPORT.—Not later than 1 year after
2 the date of enactment of the Cooper Davis Act, and annu-
3 ally thereafter, the Drug Enforcement Administration
4 shall publish a report that includes, for the reporting pe-
5 riod—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(1) IN GENERAL.—No Federal, Tribal, State,
25 or local law enforcement officer acting in an official

1 capacity may submit a report to a provider or ar-
2 range for another individual to submit a report to a
3 provider on behalf of the officer under this section.

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

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

21 (2) TECHNICAL AND CONFORMING AMEND-
22 MENT.—The table of contents for the Controlled
23 Substances Act (21 U.S.C. 801 et seq.) is amended
24 by inserting after the item relating to section 520
25 the following:

“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)
2 of section 2702(b) of title 18, United States Code,
3 is 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
9 of 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 uncon-
14 stitutional, the remaining provisions of this Act and
15 amendments made by this Act, and the application of such
16 provision or amendment to any other person or cir-
17 cumstance, shall not be affected thereby.