



(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R. _____

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 HOUSE OF REPRESENTATIVES

Ms. CRAIG introduced the following bill; which was 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 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 and
5 Devin Norring 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 “REPORTING REQUIREMENTS OF ELECTRONIC COMMU-
11 NICATION SERVICE PROVIDERS AND REMOTE COM-
12 PUTING SERVICES FOR CERTAIN CONTROLLED SUB-
13 STANCES VIOLATIONS

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

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

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

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

24 “(4) the term ‘provider’ means an electronic
25 communication service provider or remote computing
26 service;

1 “(5) the term ‘remote computing service’ has
2 the meaning given that term in section 2711 of title
3 18, United States Code; and

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

9 “(b) DUTY TO REPORT.—

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

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

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

1 “(C) for purposes of subsection (j), infor-
2 mation indicating whether the facts or cir-
3 cumstances were discovered through content
4 moderation conducted by a human or via a non-
5 human method, including use of an algorithm,
6 machine learning, or other means.

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

11 “(A) creating, manufacturing, distributing,
12 dispensing, or possession with intent to manu-
13 facture, distribute, or dispense—

14 “(i) fentanyl; or

15 “(ii) methamphetamine;

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

21 “(C) offering, dispensing, or administering
22 an actual or purported prescription pain medi-
23 cation or prescription stimulant by any indi-
24 vidual or entity that is not a practitioner or on-
25 line pharmacy, including an individual or entity

1 that falsely claims to be a practitioner or online
2 pharmacy.

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

12 “(c) CONTENTS OF REPORT.—

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

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

1 count user, or any other identifying informa-
2 tion, including self-reported identifying informa-
3 tion, but not including the contents of a wire
4 communication or electronic communication, as
5 those terms are defined in section 2510 of title
6 18, United States Code, except as provided in
7 subparagraph (B) of this paragraph; and

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

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

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

21 “(B) GEOGRAPHIC LOCATION INFORMA-
22 TION.—Information relating to the geographic
23 location of the involved individual or website,
24 which may include the Internet Protocol ad-
25 dress or verified address, or, if not reasonably

1 available, at least one form of geographic iden-
2 tifying information, including area code or ZIP
3 Code, provided by the user, subscriber, or cus-
4 tomer, or stored or obtained by the provider,
5 and any information as to whether a virtual pri-
6 vate network was used.

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

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

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

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

23 “(3) USER, SUBSCRIBER, OR CUSTOMER SUB-
24 MITTED REPORTS.—In the case of a report under
25 subsection (b)(3), the provider may, at its sole dis-

1 cretion, include in the report information submitted
2 to the provider by a user, subscriber, or customer al-
3 leging facts or circumstances described in subsection
4 (b)(2) if the provider, upon review, has a reasonable
5 belief that the alleged facts or circumstances exist.

6 “(d) HANDLING OF REPORTS.—Upon receipt of a re-
7 port submitted under subsection (b), the Administrator of
8 the Drug Enforcement Administration—

9 “(1) shall conduct a preliminary review of such
10 report; and

11 “(2) after completing the preliminary review,
12 shall—

13 “(A) conduct further investigation of the
14 report, which may include making the report
15 available to other Federal, State, or local law
16 enforcement agencies involved in the investiga-
17 tion of crimes described in subsection (b)(2), if
18 the Administrator determines that the report
19 facially contains sufficient information to war-
20 rant and permit further investigation; or

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

25 “(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);

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; or

13 “(5) prohibit a provider from using end-to-end
14 encryption or require a provider to decrypt
15 encrypted communications.

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

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

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

1 “(A) to an attorney for the government for
2 use in the performance of the official duties of
3 that attorney, including providing discovery to a
4 defendant;

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

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

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

21 “(E) to a defendant in a criminal case or
22 the attorney for that defendant to the extent
23 the information relates to a criminal charge
24 pending 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
7 orders or other conditions that the court may
8 impose; 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 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) STORED COMMUNICATIONS
6 ACT.—The Drug Enforcement Admin-
7 istration may not submit a request to
8 a provider to continue preservation of
9 the contents of a report or other data
10 described in clause (i) under section
11 2703(f) of title 18, United States
12 Code, beyond the required period of
13 preservation under clause (i) of this
14 subparagraph unless the Drug En-
15 forcement Administration has an ac-
16 tive or pending investigation involving
17 the user, subscriber, or customer ac-
18 count at issue in the report.

19 “(II) RULE OF CONSTRUC-
20 TION.—Nothing in subclause (I) shall
21 preclude another Federal, State, or
22 local law enforcement agency from
23 seeking continued preservation of the
24 contents of a report or other data de-
25 scribed in clause (i) under section

1 2703(f) of title 18, United States
2 Code.

3 “(B) NOTIFICATION TO USER.—A provider
4 may not notify a user, subscriber, or customer
5 of the provider of a preservation request de-
6 scribed in subparagraph (A) unless—

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

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

12 “(2) PROTECTION OF PRESERVED MATE-
13 RIALS.—A provider preserving materials under this
14 section shall maintain the materials in a secure loca-
15 tion and take appropriate steps to limit access to the
16 materials by agents or employees of the service to
17 that access necessary to comply with the require-
18 ments of this subsection.

19 “(3) AUTHORITIES AND DUTIES NOT AF-
20 FECTED.—Nothing in this section shall be construed
21 as replacing, amending, or otherwise interfering with
22 the authorities and duties under section 2703 of title
23 18, United States Code.

24 “(4) RELATION TO REPORTING REQUIRE-
25 MENT.—Submission of a report as required by sub-

1 section (b)(1) does not satisfy the obligations under
2 this subsection.

3 “(j) ANNUAL REPORT.—Not later than 1 year after
4 the date of enactment of the Cooper Davis and Devin
5 Norring Act, and annually thereafter, the Administrator
6 of the Drug Enforcement Administration shall publish a
7 report that includes, for the reporting period—

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

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

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

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

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

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

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

4 “(A) content moderation conducted by a
5 human; or

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

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

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

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

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

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

1 “(k) PROHIBITION ON SUBMISSION OF USER, SUB-
2 SCRIBER, CUSTOMER, OR ANONYMOUS REPORTS BY LAW
3 ENFORCEMENT.—

4 “(1) IN GENERAL.—No Federal, Tribal, State,
5 or local law enforcement officer acting in an official
6 capacity may submit a report to a provider or ar-
7 range for another individual to submit a report to a
8 provider on behalf of the officer under this section.

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

19 “(l) EXEMPTIONS.—Subsections (b) through (k) shall
20 not apply to a provider of broadband internet access serv-
21 ice, as that term is defined in section 8.1(b) of title 47,
22 Code of Federal Regulations (or any successor regulation),
23 or a provider of a text messaging service, as that term
24 is defined in section 227 of the Communications Act of

1 1934 (47 U.S.C. 227), insofar as the provider is acting
2 as a provider of such service.”.

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

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

8 (b) CONFORMING AMENDMENTS TO STORED COMMU-
9 NICATIONS ACT.—

10 (1) IN GENERAL.—Section 2702 of title 18,
11 United States Code, is amended—

12 (A) in subsection (b)—

13 (i) in paragraph (8), by striking “or”
14 at the end;

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

17 (iii) by adding at the end the fol-
18 lowing:

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

22 (B) in subsection (c)—

23 (i) in paragraph (6), by striking “or”
24 at the end;

1 (ii) in paragraph (7), by striking the
2 period at the end and inserting “; or”; and

3 (iii) by adding at the end the fol-
4 lowing:

5 “(8) to the Drug Enforcement Administration,
6 in connection with a report submitted thereto under
7 section 521 of the Controlled Substances Act.”.

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

11 “(7) to a law enforcement agency if the con-
12 tents—

13 “(A) were inadvertently obtained by the
14 service provider; and

15 “(B) appear to pertain to the commission
16 of a crime;”.

17 **SEC. 3. SEVERABILITY.**

18 If any provision of this Act or amendment made by
19 this Act, or the application of such a provision or amend-
20 ment to any person or circumstance, is held to be uncon-
21 stitutional, the remaining provisions of this Act and
22 amendments made by this Act, and the application of such
23 provision or amendment to any other person or cir-
24 cumstance, shall not be affected thereby.