

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—119th Cong., 2d Sess.

S. 3023

To limit liability for certain entities storing child sexual abuse material for law enforcement agencies, and for other purposes.

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 Mrs. BLACKBURN (for herself, Ms. KLOBUCHAR, Mr. CORNYN, Mr. BLUMENTHAL, Mrs. BRITT, Mr. COONS, and Mr. LEE)

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 “Safe Cloud Storage
5 Act”.

6 **SEC. 2. STORAGE OF CHILD PORNOGRAPHY AND CHILD OB-**
7 **SCENITY.**

8 (a) IN GENERAL.—Title II of the PROTECT Our
9 Children Act of 2008 (34 U.S.C. 21101 et seq.) is amend-
10 ed by inserting after section 201 the following:

1 **“SEC. 202. MODERNIZING LAW ENFORCEMENT’S ABILITY TO**
2 **STORE CHILD PORNOGRAPHY AND CHILD OB-**
3 **SCENITY AND LIMITED LIABILITY FOR AP-**
4 **PROVED VENDORS.**

5 “(a) DEFINITIONS.—In this section:

6 “(1) APPROVED VENDOR.—The term ‘approved
7 vendor’ means an organization, corporation, or enti-
8 ty that—

9 “(A) offers digital storage services, includ-
10 ing remote or cloud-based storage, and analyt-
11 ical and forensic tool processing support; and

12 “(B) has been contractually retained by a
13 covered agency to support the duties of such
14 agency by—

15 “(i) storing digital child pornography
16 or child obscenity;

17 “(ii) making such child pornography
18 or child obscenity available to the con-
19 tracting agency, or any law enforcement or
20 prosecutorial agency designated by the
21 contracting agency, upon request; and

22 “(iii) providing maintenance, technical
23 and analytical assistance, and forensic tool
24 processing support upon request by the
25 contracting agency.

1 “(2) CHILD PORNOGRAPHY.—The term ‘child
2 pornography’ has the meaning given that term in
3 section 2256(8) of title 18, United States Code.

4 “(3) CHILD OBSCENITY.—The term ‘child ob-
5 scenity’ has the meaning given that term in section
6 21101(2) of title 34, United States Code.

7 “(4) COVERED AGENCY.—The term ‘covered
8 agency’ means a United States Federal, State, or
9 local law enforcement or prosecutorial agency.

10 “(5) LOCAL.—The term ‘local’ means any polit-
11 ical subdivision of a State.

12 “(6) STATE.—The term ‘State’ means any of
13 the 50 States of the United States, the District of
14 Columbia, the Commonwealth of Puerto Rico, the
15 Virgin Islands of the United States, Guam, Amer-
16 ican Samoa, or the Commonwealth of the Northern
17 Mariana Islands.

18 “(b) LIMITED LIABILITY FOR APPROVED VEN-
19 DORS.—

20 “(1) LIMITED LIABILITY FOR LAW ENFORCE-
21 MENT APPROVED VENDORS.—Except as provided in
22 paragraph (2), a civil claim or criminal charge may
23 not be brought in any Federal or State court against
24 an approved vendor relating to the approved ven-

1 dor’s performance of any contractual obligation or
2 service described in subsection (a)(1).

3 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
4 CONDUCT.—A civil claim or criminal charge may be
5 brought in any Federal or State court against an ap-
6 proved vendor if the approved vendor—

7 “(A) engaged in—

8 “(i) intentional misconduct; or

9 “(ii) negligent conduct; or

10 “(B) acted, or failed to act—

11 “(i) with actual malice;

12 “(ii) with reckless disregard to a sub-
13 stantial risk of causing injury without legal
14 justification; or

15 “(iii) for a purpose unrelated to the
16 performance of any responsibility or func-
17 tion described in subsection (a)(1)(B).

18 “(c) **VENDOR CYBERSECURITY REQUIREMENTS.**—
19 With respect to any child pornography or child obscenity
20 stored, maintained, or processed by an approved vendor,
21 such approved vendor shall—

22 “(1) secure such child pornography or child ob-
23 scenity in a manner that is consistent with the most
24 recent version of the Cybersecurity Framework de-

1 veloped by the National Institute of Standards and
2 Technology, or any successor thereto;

3 “(2) only access the child pornography or child
4 obscenity upon consent of the law enforcement or
5 prosecutorial agency contracting the service and for
6 the purpose of providing maintenance, technical as-
7 sistance, and forensic tool processing support in the
8 cloud;

9 “(3) minimize the number of employees that
10 may be able to obtain access to such child pornog-
11 raphy or child obscenity and maintain a list of em-
12 ployees who have obtained such access;

13 “(4) employ end-to-end encryption for data
14 storage and transfer functions, or an equivalent
15 technological standard;

16 “(5) undergo an independent annual cybersecu-
17 rity audit to determine whether such child pornog-
18 raphy or child obscenity is secured as required by
19 paragraph (1), including by assessing compliance
20 with the National Institute of Standards and Tech-
21 nology Special Publication 800–53, Revision 5 (re-
22 lating to security and privacy controls for informa-
23 tion systems and organizations) or any successor
24 documents or revisions; and

1 “(6) promptly address all issues identified by
2 an audit described in paragraph (5).

3 “(d) EVIDENCE STORAGE.—Any covered agency that
4 stores child pornography and child obscenity pursuant to
5 a contract with an approved vendor shall retain such evi-
6 dence—

7 “(1) in compliance with the security policy of
8 the Criminal Justice Information Services Division
9 of the Federal Bureau of Investigation, or any other
10 similar and appropriate division within the Federal
11 Bureau of Investigation;

12 “(2) for a period consistent with the evidence
13 retention requirements applicable to the inves-
14 tigating or prosecuting covered agency under the rel-
15 evant Federal, State, or local law, rule of criminal
16 procedure, or prosecutorial policy; or

17 “(3) in the absence of such law, rule, or policy,
18 for a period not less than the applicable statute of
19 limitations or the duration of any sentence imposed,
20 including the period of post-conviction review.

21 “(e) ADDITIONAL REQUIREMENTS FOR APPROVED
22 VENDORS.—

23 “(1) LOCATION OF DATA.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), each approved vendor shall

1 ensure that child pornography and child obscen-
2 ity stored pursuant to this section remains in
3 the United States.

4 “(B) EXCEPTION.—Child pornography and
5 child obscenity under this section may be trans-
6 ferred outside the United States only with the
7 express consent of the contracting covered
8 agency if such agency deems the transfer nec-
9 essary for investigative purposes.

10 “(2) NOTIFICATION LETTER.—

11 “(A) IN GENERAL.—Approved vendors
12 shall file a notification letter with the Criminal
13 Division of the Department of Justice not later
14 than 30 days after entering into a contract de-
15 scribed in subsection (a)(1)(B).

16 “(B) CONTENTS.—The notification letter
17 described in subparagraph (A) shall include the
18 entity name and point of contact information of
19 the approved vendor, the name of the con-
20 tracting covered agency, the period of perform-
21 ance of the contract, and an acknowledgment
22 by the approved vendor that the approved ven-
23 dor will notify the Child Exploitation and Ob-
24 scenity Section of the Criminal Division of the

1 Department of Justice of any changes to the in-
2 formation in the letter.

3 “(3) BREACH OF CONTRACT.—

4 “(A) IN GENERAL.—If a covered agency
5 fails to make required payment under a con-
6 tract, breaches any material term of such con-
7 tract, or otherwise terminates such contract
8 without establishing lawful transfer of the evi-
9 dence, the approved vendor shall, not later than
10 30 days after the failure, breach, or termi-
11 nation, notify the Criminal Division of the De-
12 partment of Justice in the case of a breach by
13 a Federal agency, or the appropriate State at-
14 torney general in the case of a breach by a
15 State or local agency.

16 “(B) MAINTENANCE OF EVIDENCE.—Upon
17 making a notification under subparagraph (A),
18 the approved vendor shall continue to preserve
19 and maintain the integrity of the evidence until
20 a prompt and lawful transfer of custody occurs
21 to the Criminal Division of the Department of
22 Justice or another Federal, State, or local law
23 enforcement agency with jurisdiction.

24 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to limit—

1 “(1) bona fide use by the contracting covered
2 agency of child pornography or child obscenity being
3 stored by the approved vendor, which includes pro-
4 viding such child pornography or child obscenity to
5 any other party as necessary for an investigation or
6 prosecution; or

7 “(2) the obligation of the contracting covered
8 agency to comply with a constitutional or statutory
9 obligation, court order, or request from a victim
10 made pursuant to section 3509(m)(3) of title 18,
11 United States Code.”.

12 (b) CLERICAL AMENDMENT.—Section 1(b) of the
13 PROTECT Our Children Act of 2008 (Public Law 110–
14 401; 122 Stat. 4229) is amended by inserting after the
15 item relating to section 201 the following:

“Sec. 202. Modernizing law enforcement’s ability to store child pornography
and child obscenity and limited liability for approved vendors.”.