

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 2837

To improve the systems for identifying the diversion of controlled substances.

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. GRASSLEY

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Drug Diversion Act of 2018”.
5

6 **SEC. 2. IMPROVEMENTS TO PREVENT DRUG DIVERSION.**

7 (a) DEFINITION.—

8 (1) IN GENERAL.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended
9 by adding at the end the following:
10

11 “(57) The term ‘suspicious order’ includes—

1 “(A) an order of a controlled substance of
2 unusual size;

3 “(B) an order of a controlled substance de-
4 viating substantially from a normal pattern;

5 “(C) orders of controlled substances of un-
6 usual frequency; and

7 “(D) an order or pattern of orders of a
8 controlled substance that meet such other cri-
9 teria as are established by the Attorney General
10 by regulation.”.

11 (2) REGULATIONS.—Not later than 1 year after
12 the date of enactment of this Act, the Attorney Gen-
13 eral shall promulgate regulations under paragraph
14 (57)(D) of section 102 of the Controlled Substances
15 Act, as added by paragraph (1) of this subsection.

16 (b) SUSPICIOUS ORDERS.—Part C of the Controlled
17 Substances Act (21 U.S.C. 821 et seq.) is amended by
18 adding at the end the following:

19 **“SEC. 312. SUSPICIOUS ORDERS.**

20 “(a) REPORTING.—Each registrant shall—

21 “(1) design and operate a system to identify
22 suspicious orders for the registrant;

23 “(2) ensure that the system designed and oper-
24 ated under paragraph (1) by the registrant complies
25 with applicable Federal and State privacy laws; and

1 “(3) upon discovering a suspicious order or se-
2 ries of orders, notify the Administrator of the Drug
3 Enforcement Administration and the Special Agent
4 in Charge of the Division Office of the Drug En-
5 forcement Administration for the area in which the
6 registrant is located or conducts business.

7 “(b) SUSPICIOUS ORDER DATABASE.—

8 “(1) IN GENERAL.—Not later than 1 year after
9 the date of enactment of this section, the Attorney
10 General shall establish a centralized database for
11 collecting reports of suspicious orders.

12 “(2) SATISFACTION OF REPORTING REQUIRE-
13 MENTS.—If a registrant reports a suspicious order
14 to the centralized database established under para-
15 graph (1), the registrant shall be considered to have
16 complied with the requirement under subsection
17 (a)(3) to notify the Administrator of the Drug En-
18 forcement Administration and the Special Agent in
19 Charge of the Division Office of the Drug Enforce-
20 ment Administration for the area in which the reg-
21 istrant is located or conducts business.

22 “(c) SHARING INFORMATION WITH THE STATES.—

23 “(1) IN GENERAL.—The Attorney General shall
24 prepare and make available information regarding
25 suspicious orders in a State, including information

1 in the database established under subsection (b)(1),
2 to the point of contact for purposes of administra-
3 tive, civil, and criminal oversight relating to the di-
4 version of controlled substances for the State, as
5 designated by the Governor or chief executive officer
6 of the State.

7 “(2) TIMING.—The Attorney General shall pro-
8 vide information in accordance with paragraph (1)
9 within a reasonable period of time after obtaining
10 the information.

11 “(3) COORDINATION.—In establishing the proc-
12 ess for the provision of information under this sub-
13 section, the Attorney General shall coordinate with
14 States to ensure that the Attorney General has ac-
15 cess to information, as permitted under State law,
16 possessed by the States relating to prescriptions for
17 controlled substances that will assist in enforcing
18 Federal law.”.

19 (c) INCREASED CIVIL PENALTIES.—Section 402(c) of
20 the Controlled Substances Act (21 U.S.C. 842(c)) is
21 amended—

22 (1) in paragraph (1)(B), by striking “shall not
23 exceed \$10,000.” and inserting the following: “shall
24 not exceed—

1 “(i) except as provided in clause (ii), \$10,000;
2 and

3 “(ii) if the violation relates to the reporting of
4 suspicious orders or failing to maintain effective con-
5 trols against diversion, \$100,000.”; and

6 (2) in paragraph (2)—

7 (A) in subparagraph (A), by inserting “or
8 (D)” after “subparagraph (B)”;

9 (B) by adding at the end the following:

10 “(D) In the case of a violation referred to in subpara-
11 graph (A) that was a violation of paragraph (5) or (10)
12 of subsection (a) that relates to the reporting of suspicious
13 orders or failing to maintain effective controls against di-
14 version, the criminal fine shall not exceed \$500,000.”.

15 (d) REPORTS TO CONGRESS.—

16 (1) DEFINITION.—In this subsection, the term
17 “suspicious order” has the meaning given that term
18 in section 102 of the Controlled Substances Act, as
19 amended by this Act.

20 (2) ONE TIME REPORT.—Not later than 1 year
21 after the date of enactment of this Act, the Attorney
22 General shall submit to Congress a report on the re-
23 porting of suspicious orders, which shall include—

24 (A) a description of the centralized data-
25 base established under section 312 of the Con-

1 trolled Substances Act, as added by this sec-
2 tion, to collect reports of suspicious orders;

3 (B) a description of the system and reports
4 established under section 312 of the Controlled
5 Substances Act, as added by this section, to
6 share information with States;

7 (C) information regarding how the Attor-
8 ney General used reports of suspicious orders
9 before the date of enactment of this Act and
10 after the date of enactment of this Act, includ-
11 ing how the Attorney General received the re-
12 ports and what actions were taken in response
13 to the reports; and

14 (D) descriptions of the data analyses con-
15 ducted on reports of suspicious orders to iden-
16 tify, analyze, and stop suspicious activity.

17 (3) *ADDITIONAL REPORTS.*—Not later than 1
18 year after the date of enactment of this Act, and an-
19 nually thereafter until the date that is 5 years after
20 the date of enactment of this Act, the Attorney Gen-
21 eral shall submit to Congress a report providing, for
22 the previous year—

23 (A) the number of reports of suspicious or-
24 ders;

1 (B) a summary of actions taken in re-
2 sponse to reports, in the aggregate, of sus-
3 picious orders; and

4 (C) a description of the information shared
5 with States based on reports of suspicious or-
6 ders.