

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 7834**

OFFERED BY M .

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Safe Cloud Storage
3 Act”.

4 SEC. 2. STORAGE OF CHILD PORNOGRAPHY AND CHILD OB-
5 SCENITY.

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

9 **“SEC. 202. MODERNIZING LAW ENFORCEMENT’S ABILITY TO**
10 **STORE CHILD PORNOGRAPHY AND CHILD OB-**
11 **SCENITY AND LIMITED LIABILITY FOR AP-**
12 **PROVED VENDORS.**

13 “(a) DEFINITIONS.—In this section:

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

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

4 “(B) has been contractually retained by a
5 covered agency to support the duties of such
6 agency by—

7 “(i) storing digital child pornography
8 or child obscenity;

9 “(ii) making such child pornography
10 or child obscenity available to the con-
11 tracting agency, or any law enforcement or
12 prosecutorial agency designated by the
13 contracting agency, upon request; and

14 “(iii) providing maintenance, technical
15 and analytical assistance, and forensic tool
16 processing support upon request by the
17 contracting agency.

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

21 “(3) CHILD OBSCENITY.—The term ‘child ob-
22 scenity’ has the meaning given that term in section
23 21101(2) of title 34, United States Code.

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

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

6 “(6) STATE.—The term ‘State’ means any of
7 the 50 States of the United States, the District of
8 Columbia, the Commonwealth of Puerto Rico, the
9 United States Virgin Islands, Guam, American
10 Samoa, or the Commonwealth of the Northern Mar-
11 iana Islands.

12 “(b) LIMITED LIABILITY FOR APPROVED VEN-
13 DORS.—

14 “(1) LIMITED LIABILITY FOR LAW ENFORCE-
15 MENT APPROVED VENDORS.—Except as provided in
16 paragraph (2), a civil claim or criminal charge may
17 not be brought in any Federal or State court against
18 an approved vendor relating to the approved ven-
19 dor’s performance of any contractual obligation or
20 service described in subsection (a)(1).

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

25 “(A) engaged in—

1 “(i) intentional misconduct; or

2 “(ii) negligent conduct; or

3 “(B) acted, or failed to act—

4 “(i) with actual malice;

5 “(ii) with reckless disregard to a sub-

6 stantial risk of causing injury without legal

7 justification; or

8 “(iii) for a purpose unrelated to the

9 performance of any responsibility or func-

10 tion described in subsection (a)(1)(B).

11 “(c) **VENDOR CYBERSECURITY REQUIREMENTS.**—

12 With respect to any child pornography or child obscenity

13 stored, maintained, or processed by an approved vendor,

14 such approved vendor shall—

15 “(1) secure such child pornography or child ob-

16 scenity in a manner that is consistent with the most

17 recent version of the Cybersecurity Framework de-

18 veloped by the National Institute of Standards and

19 Technology, or any successor thereto;

20 “(2) only access the child pornography or child

21 obscenity upon consent of the law enforcement or

22 prosecutorial agency contracting the service and for

23 the purpose of providing maintenance, technical as-

24 sistance, and forensic tool processing support in the

25 cloud;

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

5 “(4) employ end-to-end encryption for data
6 storage and transfer functions, or an equivalent
7 technological standard;

8 “(5) undergo an independent annual cybersecu-
9 rity audit to determine whether such child pornog-
10 raphy or child obscenity is secured as required by
11 paragraph (1), including by assessing compliance
12 with the National Institute of Standards and Tech-
13 nology Special Publication 800–53, Revision 5 (re-
14 lating to security and privacy controls for informa-
15 tion systems and organizations) or any successor
16 documents or revisions; and

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

19 “(d) EVIDENCE STORAGE.—Any covered agency that
20 stores child pornography and child obscenity pursuant to
21 a contract with an approved vendor shall ensure that such
22 evidence is retained—

23 “(1) in compliance with the security policy of
24 the Criminal Justice Information Services Division
25 of the Federal Bureau of Investigation, or any other

1 similar and appropriate division within the Federal
2 Bureau of Investigation;

3 “(2) for a period consistent with the evidence
4 retention requirements applicable to the inves-
5 tigating or prosecuting covered agency under the rel-
6 evant Federal, State, or local law, rule of criminal
7 procedure, or prosecutorial policy; or

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

12 “(e) ADDITIONAL REQUIREMENTS FOR APPROVED
13 VENDORS.—

14 “(1) LOCATION OF DATA.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), each approved vendor shall
17 ensure that child pornography and child obscen-
18 ity stored pursuant to this section remains in
19 the United States.

20 “(B) EXCEPTION.—Child pornography and
21 child obscenity under this section may be trans-
22 ferred outside the United States only with the
23 express consent of the contracting covered
24 agency if such agency deems the transfer nec-
25 essary for investigative purposes.

1 “(2) NOTIFICATION LETTER.—

2 “(A) IN GENERAL.—Approved vendors
3 shall file a notification letter with the Criminal
4 Division of the Department of Justice not later
5 than 30 days after entering into a contract de-
6 scribed in subsection (a)(1)(B).

7 “(B) CONTENTS.—The notification letter
8 described in subparagraph (A) shall include the
9 entity name and point of contact information of
10 the approved vendor, the name of the con-
11 tracting covered agency, the period of perform-
12 ance of the contract, and an acknowledgment
13 by the approved vendor that the approved ven-
14 dor will notify the Child Exploitation and Ob-
15 scenity Section of the Criminal Division of the
16 Department of Justice of any changes to the in-
17 formation in the letter.

18 “(3) BREACH OF CONTRACT.—

19 “(A) IN GENERAL.—If a covered agency
20 fails to make required payment under a con-
21 tract, breaches any material term of such con-
22 tract, or otherwise terminates such contract
23 without establishing lawful transfer of the evi-
24 dence, the approved vendor shall, not later than
25 30 days after the failure, breach, or termi-

1 nation, notify the Criminal Division of the De-
2 partment of Justice in the case of a breach by
3 a Federal agency, or the appropriate State at-
4 torney general in the case of a breach by a
5 State or local agency.

6 “(B) MAINTENANCE OF EVIDENCE.—Upon
7 making a notification under subparagraph (A),
8 the approved vendor shall continue to preserve
9 and maintain the integrity of the evidence until
10 a prompt and lawful transfer of custody occurs
11 to the Criminal Division of the Department of
12 Justice or another Federal, State, or local law
13 enforcement agency with jurisdiction.

14 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to—

16 “(1) limit bona fide use by the contracting cov-
17 ered agency of child pornography or child obscenity
18 being stored by the approved vendor, which includes
19 providing such child pornography or child obscenity
20 to any other party as necessary for an investigation
21 or prosecution;

22 “(2) limit the obligation of the contracting cov-
23 ered agency to comply with a constitutional or statu-
24 tory obligation, court order, or request from a victim

1 made pursuant to section 3509(m)(3) of title 18,
2 United States Code; or

3 “(3) authorize or require the audit, assessment,
4 or compliance verification of a governmental entity
5 or any system administered by a governmental enti-
6 ty.”.

7 (b) CLERICAL AMENDMENT.—Section 1(b) of the
8 PROTECT Our Children Act of 2008 (Public Law 110–
9 401; 122 Stat. 4229) is amended by inserting after the
10 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.”.

