

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE HEARING

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MAJORITY CAUCUS ROOM
ROOM 140
HARRISBURG, PENNSYLVANIA

MONDAY, JULY 14, 2008
10:06 A.M.

PRESENTATION ON
HOUSE BILL 1371 AND HOUSE BILL 2371
PREPAID WIRELESS PHONE SALES

BEFORE:

HONORABLE THOMAS R. CALTAGIRONE, MAJORITY CHAIRMAN
HONORABLE CRAIG A. DALLY
HONORABLE JOHN R. EVANS
HONORABLE CARL W. MANTZ
HONORABLE DON WALKO

ALSO IN ATTENDANCE:

HONORABLE JAMES E. CASORIO, JR.
HONORABLE JAY R. MOYER
HONORABLE EDDIE DAY PASHINSKI
HONORABLE CHRIS SAINATO
HONORABLE DANTE SANTONI, JR.

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ALSO PRESENT:
WILLIAM H. ANDRING, ESQ.
MAJORITY LEGAL COUNSEL

DEBRA B. MILLER
REPORTER

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P R O C E E D I N G S

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CHAIRMAN CALTAGIRONE: Good morning.

I would like to open the House Judiciary Committee hearing on House Bills 1371 and 2371, and we have two of our Representatives here that would like to open up with some opening remarks.

We will start off with Jay, Representative Jay Moyer, and then we will go to Representative Eddie Pashinski.

REPRESENTATIVE MOYER: Thank you, Mr. Chairman, and good morning to the committee as well, and I want to thank you all for coming here this morning.

Breakthroughs in communications technology have made all of our lives easier. Cell phones have improved our work and personal lives, making it possible for us to stay in touch with our workplaces and our families from nearly anywhere.

So-called disposable, or pay-as-you-go, cell phones have provided consumers with convenient, less expensive access to this wonderful technology.

However, as is often the case with technological advances, the criminal elements of our society have found ways to use this progress to

1 further their illegal activities.

2 Because they can purchase disposable
3 cell phones without divulging their name, address,
4 or other personal information, criminals and
5 terrorists are able to use these devices to commit
6 their illegal deeds without fear of detection by
7 law enforcement.

8 In my own district in Montgomery County, a
9 local police department recently found 500 empty
10 boxes that once contained these disposable cell
11 phones.

12 Where are these phones now? Are they being
13 used in the illegal drug trade or to plan terrorist
14 attacks on our citizens? Unfortunately, without
15 any kind of registration system or means of
16 tracking them, we cannot know the answer to these
17 questions.

18 At a recent hearing of the Republican Policy
19 Committee at Ursinus College, former Montgomery
20 County district attorney, Bruce Castor, testified
21 about a recent drug trade in Norristown that yielded
22 \$13 million in illegal drugs and a case of disposable
23 cell phones.

24 Now, clearly these phones were intended to
25 play an important part in the criminals' efforts to

1 distribute their drugs in our communities. We must
2 act now to cut off this means of communication for
3 criminals and terrorists.

4 House Bill 1371 is a bipartisan effort to do
5 just that. Under this bill, anyone purchasing a
6 disposable cell phone with cash or three or more with
7 any form of consideration would be required to
8 provide at least two forms of identification,
9 including one form of photo ID, upon purchase.
10 Sellers would be required to maintain records of
11 these purchases for at least 2 years from the date of
12 purchase.

13 I have heard from law enforcement officials
14 throughout my district that this legislation will
15 provide them with a valuable tool in their efforts to
16 stem the tide of illegal activity.

17 Although he could not be with us today,
18 former district attorney in Montgomery County,
19 Bruce Castor, has expressed his support for this
20 legislation, as has the Pennsylvania District
21 Attorneys Association, the Chiefs of Police, the
22 Pennsylvania State Police, and other law enforcement
23 agencies.

24 In fact, Pennsylvania Attorney General,
25 Tom Corbett, has voiced his support for this

1 important piece of legislation.

2 And, Mr. Chairman, I became interested in
3 this legislation when I myself was victimized by one
4 of these phones in my 2006 election. As a result,
5 the perpetrator is now serving time in prison.

6 However, the pain that was inflicted upon
7 myself and my family pales little to the suffering
8 inflicted by the criminal element in this country or
9 that which is inflicted, more importantly, upon our
10 troops abroad in theaters such as Afghanistan and Iraq
11 where these cell phones are used and weaponized.

12 In closing, Mr. Chairman, I would like to
13 thank Representative Pashinski for reaching across
14 the aisle to work with me on this bill. Oftentimes,
15 partisanship and political maneuvering make for good
16 news stories and, therefore, seem to get the most
17 attention from the press. However, in this case, we
18 have put partisan rancor aside to push for
19 legislation that is in the best interests of every
20 Pennsylvanian.

21 I urge my colleagues from both parties to
22 join Eddie and I in this effort. Thank you.

23 CHAIRMAN CALTAGIRONE: Thank you for your
24 testimony.

25 And I was a little remiss. I would like to

1 have the members of the panel who are here today, if
2 they would just introduce themselves and the counties
3 they are from.

4 REPRESENTATIVE SAINATO: I'm Representative
5 Chris Sainato. I represent parts of Lawrence and a
6 small section of Beaver County.

7 REPRESENTATIVE WALKO: Don Walko, Allegheny
8 County.

9 REPRESENTATIVE MANTZ: Carl Mantz, the
10 187th, Berks and Lehigh Counties.

11 MR. ANDRING: Bill Andring, Chief Counsel.

12 CHAIRMAN CALTAGIRONE: And Carl is sitting
13 in as my Chair for the Republicans. Ronnie Marsico,
14 I'm not sure if he will be here. I talked to him
15 last week, and he was on vacation, so Carl is sitting
16 in for him today.

17 Eddie, you are up.

18 REPRESENTATIVE PASHINSKI: Thank you very
19 much, Mr. Chairman, and thank you to the members of
20 the committee for taking this time to listen to our
21 presentation.

22 Representative Moyer said a lot of wonderful
23 things, things that are very accurate, and also the
24 fact that both Representative Moyer and I have been
25 working on this particular bill, House Bill 2371 as

1 amended, since February of '07.

2 Let me just give you a little background of
3 how this thing took place.

4 Back in the election of '06, one of the
5 major concerns of our constituents back in my
6 district was the deterioration of neighborhoods,
7 which was brought about by an increase of drug
8 trafficking and drug dealing.

9 In my conversation with law enforcement, not
10 one conversation went by without the fact that law
11 enforcement indicated time and time again that one of
12 the major tools that drug dealers use is the cell
13 phone.

14 It was to my astonishment to find out that
15 particular cell phones can be purchased with cash and
16 provide total anonymity to the purchaser.

17 I'm not quite understanding how that could
18 be. I went to a local retail store and purchased a
19 TracFone. I purchased it for cash. It cost about
20 \$20 plus tax. I took it back to my office, and with
21 my staff, we went through the process of how we could
22 initiate phone communication.

23 To my total amazement, we called the number,
24 and then they instructed us as to what we had to do.
25 They asked us to give us our name. The name

1 indicated was "Mickey Mouse." They asked for our
2 address. The address was "000 Goofy Lane." They
3 asked for the city. We put down "Wally World,
4 Pennsylvania." Our zip code, we said, was "12345."
5 And with that, that telephone was initiated,
6 activated, and was able to be used.

7 So we gave absolutely ridiculous responses
8 to those requests -- never questioned -- and that
9 phone was now capable of being used. That is the
10 main reason why the drug dealers are using this,
11 because there is total anonymity.

12 You will hear from law enforcement; they are
13 going to tell you the frustration that they have in
14 order to try to find out who is using this form of
15 communication.

16 Because of the fact that it is untraceable,
17 prepaid cell phones are among the favorite tools of
18 drug dealers, sex offenders, and terrorists since
19 those, unlike those cell phones purchased throughout
20 the contract arrangements, they cannot be traced.

21 I want to make it very clear that those that
22 have the contracts, those that have gone through the
23 process, can be traced. It is the cash phones that
24 we are talking about.

25 Law enforcement has noted the growing use of

1 these phones, even to the point that some criminals
2 will set up a phony corporation enabling them to buy
3 hundreds of phones at one time. Once again, all
4 untraceable.

5 Law enforcement officials have repeatedly
6 requested assistance from the Legislature.

7 House Bill 2371 provides a tool that can be used to
8 track down the criminals who utilize these phones for
9 illegal activities.

10 Let me clarify some areas. House Bill 2371
11 does not limit the number of phones that an
12 individual can purchase. House Bill 2371 does not
13 place any restrictions on the number of prepaid cell
14 phones that can be purchased within a specific period
15 of time. House Bill 2371 does not require the
16 purchaser to provide any information when purchasing
17 one or two phones that are purchased by a credit card
18 or a bank-issued debit card.

19 What does House Bill 2371 do? It does
20 require the purchaser to provide two acceptable
21 forms of ID when purchasing three or more phones and
22 they are made using credit cards, debit cards not
23 linked to a bank account, gift cards, or gift
24 certificates.

25 In other words, any form of tender other

1 than a bank-issued credit card or a bank-issued debit
2 card, they will have to offer two forms of ID when
3 purchasing three or more.

4 The kinds of acceptable identification, of
5 course, are a driver's license issued by PENNDOT or
6 an identification card with the photo for those that
7 do not drive.

8 It will request their name, date of birth,
9 residential address, date of sale, name of
10 manufacturer of the prepaid cell phone, name of the
11 prepaid cell phone provider, and the serial number of
12 the telephone.

13 House Bill 2371 will require sellers to
14 maintain this information and file it with the
15 State Police on a quarterly basis.

16 House Bill 2371 requires law enforcement to
17 have access to this information only if they have
18 secured a subpoena or a warrant.

19 House Bill 2371 provides immunity for
20 sellers if they provide information on purchases in
21 accordance with the terms of the subpoena or the
22 warrant.

23 In this world, after 9/11, all of us have a
24 responsibility to ourselves as individuals and to
25 those that we represent. I want to make it very

1 clear that there has been tremendous discussion
2 between the retailers, between the phone companies,
3 between law enforcement, and our staff here.

4 It is the desire by Representative Moyer and
5 myself to aid law enforcement in protecting the
6 people of Pennsylvania, but also in allowing the
7 retailers to continue to profit and to allow the
8 telephone companies to continue to produce these
9 outstanding forms of communication.

10 We are looking for, at this time, common
11 ground so that the retailers, the phone companies,
12 this government, can all work together in order to
13 protect the people of Pennsylvania by aiding
14 law enforcement in their efforts to do exactly
15 that.

16 On behalf of Representative Moyer and myself
17 -- a bipartisan effort. I might also add that in
18 February of '07, Representative Moyer and I very
19 energetically and in a very excited fashion thought
20 we could be the first two freshmen to show
21 bipartisanship by working together on what we
22 considered to be incredible and important
23 legislation.

24 It is now about 19 months later, and we have
25 not achieved that goal. So we are very confident

1 and very hopeful that all of those concerned with
2 House Bill 2371 on both sides of the issue can come
3 together, again, to allow law enforcement to do their
4 job and protect the people of Pennsylvania.

5 We thank you again, sir, and we are
6 available for questions. Thank you.

7 CHAIRMAN CALTAGIRONE: Thank you.

8 Panel, questions? No questions? Bill,
9 questions?

10 Thank you for your entertainment on the
11 floor of the House, by the way. It was well received
12 on July 4.

13 REPRESENTATIVE PASHINSKI: It was my honor
14 to do that, sir.

15 CHAIRMAN CALTAGIRONE: Great job.

16 REPRESENTATIVE MOYER: Thank you,
17 Mr. Chairman.

18 REPRESENTATIVE PASHINSKI: Thank you very
19 much.

20 CHAIRMAN CALTAGIRONE: Thank you both.

21 We would like to next hear from Brian Rider
22 from the Pennsylvania Retailers' Association.

23 If the two of you would like to come up here
24 and join the panel, you are more than welcome. We
25 have seats right here.

1 REPRESENTATIVE MOYER: Thank you, sir.

2 MR. RIDER: Good morning, Mr. Chairman,
3 members of the committee.

4 You have our written testimony before you,
5 and I do apologize, because we have geared our
6 remarks toward House Bill 1371 and not House Bill
7 2371, which was mentioned earlier by the prime
8 sponsors that the legislation are very similar but
9 there are some changes that had been made.

10 But I apologize for not addressing both of
11 them in our written testimony. We were kind of on
12 short notice for preparing this and short staffed at
13 the end of last week.

14 But again, I thank you, Chairman Caltagirone
15 and members of the Judiciary Committee, for the
16 opportunity to testify on behalf of the Pennsylvania
17 Retailers' Association and our concerns with certain
18 aspects of House Bill 1371 and House Bill 2371.

19 I would also like to thank Representatives
20 Pashinski and Moyer for their ongoing willingness to
21 meet with interested parties on this legislation.

22 Although we understand and respect their
23 support in sponsorship of these two bills, we do have
24 concerns with the legislation in its current form
25 that we have discussed and would like to openly

1 mention today.

2 Prepaid cell phones are purchased as
3 "emergency" phones: as gifts by parents for children,
4 by low-income individuals or individuals with credit
5 issues that prevent subscriptions, or by consumers
6 simply not wanting long-term wireless contracts and
7 only want to pay for the minutes that they use.

8 House Bill 1371 and House Bill 2371 would
9 require a sales associate in any of our member stores
10 selling a prepaid wireless phone to a customer for
11 cash, or selling three or more prepaid wireless
12 phones for any payment form, to collect specific
13 information from customers.

14 We not only have concerns about the delays
15 that this could very well create in stores, but also
16 about the possible unwillingness of legitimate
17 customers to provide this information because of
18 personal privacy concerns.

19 The sales associate would be required to, as
20 Representative Pashinski had mentioned, collect the
21 purchaser's name, date of birth, residential address,
22 date of sale, name of the manufacturer of the prepaid
23 wireless phone, name of the prepaid wireless
24 provider, and a serial number of the phone sold.

25 If a sales associate fails to obtain this

1 information during a transaction, he or she not only
2 commits a summary offense but also violates
3 Section 4120 relating to identity theft, and that
4 has also raised some concerns.

5 Also, many prepaid wireless carriers
6 presently request the name, address, phone number,
7 and e-mail address of the person activating the phone
8 for marketing reasons. However, providing this
9 information is not mandatory to activate the phone.
10 At least, that's the information that we have been
11 able to acquire.

12 And if I stand to be corrected here, please
13 do so following my remarks, but we have also been
14 told that wireless phone service is generally under
15 Federal jurisdiction, and there are concerns that the
16 bill may violate Federal communication law, and if I
17 am inaccurate in that, I would appreciate being
18 corrected once I conclude.

19 If House Bill 1371 or House Bill 2371 is to
20 be considered by the House Judiciary Committee, we
21 would respectfully ask that the following changes be
22 considered.

23 First, we would like the committee to
24 consider an exemption for legitimate commercial
25 purposes. I know Representative Moyer had made the

1 remarks of finding boxes of numerous empty phones,
2 but at times, stores will sell a large amount of
3 prepaid wireless phones to other legitimate
4 businesses, and that is something we have been having
5 some ongoing conversations with the prime sponsors.
6 And when that happens, we feel it should not be
7 mandatory to collect and remit this information when
8 those types of sales occur.

9 Now, we would also request that the number
10 of phones purchased to require the collection of this
11 information, when other than cash be considered, be
12 increased from three to four.

13 Also, we have concerns with the term "cash."
14 Now, does this include payment with personal checks
15 and debit cards from bank accounts? Because often
16 retailers treat these as cash transactions.

17 In addition -- and we have also raised this
18 in some meetings we have had -- we feel that if we
19 must comply with this legislation if it becomes law,
20 that 90 days may not be sufficient for retailers to
21 make the necessary changes to comply with this
22 legislation.

23 Again, we would ask that these concerns
24 be addressed if the Judiciary Committee is to
25 consider these two bills in the future. And again,

1 we understand and respect the supporters of
2 House Bill 1371 and House Bill 2371's intent.
3 However, we just want to make sure that legitimate
4 customers and retailers are not negatively impacted
5 if they must comply with this legislation should it
6 become law.

7 Again, Mr. Chairman, I would like to thank
8 you and the committee members and staff and the
9 prime sponsors for our opportunity to relay our
10 concerns and comments today, and I would be happy to
11 answer any questions that you may have.

12 CHAIRMAN CALTAGIRONE: Thank you, Brian.

13 MR. RIDER: You are welcome.

14 CHAIRMAN CALTAGIRONE: Questions? Jay?
15 Ed.

16 REPRESENTATIVE PASHINSKI: Thank you,
17 Mr. Chairman.

18 Thank you very much, Brian, for being here
19 today.

20 MR. RIDER: You are welcome, sir.

21 REPRESENTATIVE PASHINSKI: As you know, we
22 have had a number of discussions on this, and both
23 Representative Moyer and myself have indicated that
24 we are more than willing to sit down and continue the
25 conversation.

1 The 90-day period of time does not seem as
2 though that would be difficult to deal with. Three
3 to four is something that could be discussed.

4 Let us talk about, just for a minute, you
5 made a few statements there.

6 Number one, keep in mind that this
7 legislation will not prevent those people that want
8 to purchase these TracFones from purchasing them. It
9 is just a matter of trying to give law enforcement
10 some kind of trail back to the purchase, to the
11 purchaser.

12 So even if they do not have an ID, like a
13 driver's license, I mean, what would be wrong with
14 all people to have some form of ID in the State of
15 Pennsylvania? I think it only costs 10 bucks to go
16 to PENNDOT and get an ID if you do not drive.

17 MR. RIDER: Representative, we are not, by
18 no means, objecting to them having to produce some
19 form of ID to verify that the individual purchasing
20 the prepaid phone is in fact he or she. It is having
21 to record the information, and also sometimes with
22 customers being more and more concerned about
23 personal privacy, being unwilling to provide this
24 information.

25 REPRESENTATIVE PASHINSKI: Okay. Let us see

1 if we can talk about it from this standpoint.

2 If I want to get a fishing license, what do
3 I have to do?

4 MR. RIDER: Having not purchased a fishing
5 license in about 25 years, I couldn't answer that.

6 REPRESENTATIVE PASHINSKI: Well, it is time
7 that you do, Brian. This is a big thing.

8 When you go to purchase a fishing license,
9 you have to show your driver's license. You have to
10 fill out the form. The person has to make sure the
11 form is filled out before they issue it to you.

12 What has happened here with this incredible
13 invention, this prepaid phone, is just that the bad
14 guys are using them. Now, what can we do together to
15 help law enforcement prevent that from occurring?

16 Remember, if you are a law-abiding citizen,
17 you can buy it with your debit card as long as it is
18 bank issued or your credit card. Swipe it. That is
19 what all the retailers are promoting now anyway; buy
20 it with a credit card, for obvious reasons -- no
21 hassle, no names, no identification, nothing. So if
22 you do it with cash, then you have got to provide
23 this stuff.

24 And the same thing, there is no restriction
25 on how many you purchase, so when you talked about

1 those 500 cell phones or those boxes or a hundred
2 boxes, that is not a problem either. But the company
3 has to identify who is buying it and who they are
4 selling it to. That is all it is.

5 MR. RIDER: But again, we had talked about,
6 in the past, the possibility of getting four
7 commercial transactions where, usually one of our
8 member stores, as an example, IBM may go into their
9 local Walmart, they may contract with the local AT&T
10 and/or Verizon Wireless Store to purchase large
11 numbers of these phones for their associates, and
12 what we are asking for is that there be a carve-out
13 there for legitimate business purposes.

14 I mean, because if it is IBM coming in, you
15 know, it is Highmark or any other larger employer in
16 south-central PA here or anywhere throughout the
17 Commonwealth, we feel that there should be a
18 carve-out for legitimate businesses making these
19 commercial transactions.

20 But somebody coming in that is questionable
21 or as a business that nobody has ever heard of or
22 cannot produce documentation that wants to purchase
23 100 of these phones, what you are driving at is a
24 legitimate concern and I think a legitimate request.

25 REPRESENTATIVE PASHINSKI: Okay; that is

1 good.

2 But, I mean, if IBM buys it, they know that
3 everybody that is involved in that transaction is
4 going to know the number and they are also going to
5 have the codes, so they will know if any of those
6 phones are involved in a nefarious act---

7 MR. RIDER: Correct.

8 REPRESENTATIVE PASHINSKI: ---that came from
9 IBM.

10 MR. RIDER: Correct. But what we are saying
11 is that the retailer should not have to get the
12 information out---

13 REPRESENTATIVE PASHINSKI: Every person that
14 is---

15 MR. RIDER: Everybody that is going to be
16 possessing one of the prepaid cell phones.

17 REPRESENTATIVE PASHINSKI: Does IBM get all
18 the information when they sell their products?

19 MR. RIDER: I don't know. We would have to
20 speak to some larger commercial businesses, how they
21 handle that once these phones are then distributed to
22 their employees and associates.

23 REPRESENTATIVE PASHINSKI: Okay. That is a
24 good concern. Thank you.

25 MR. RIDER: You are welcome.

1 CHAIRMAN CALTAGIRONE: Jay.

2 REPRESENTATIVE MOYER: Mr. Rider, you
3 mentioned a carve-out for legitimate businesses. I
4 mean, could you expand on that? Because basically,
5 wouldn't that just exempt all the known legitimate
6 businesses of the United States, and the only ones
7 that we would be concerned about then would be the
8 illegitimate businesses? I mean, can you expand on
9 that a little bit?

10 MR. RIDER: Well, we may want to consider,
11 or in future discussions, having a number in there,
12 say legitimate established businesses purchasing --
13 and I am throwing this number out off the top of my
14 head -- 25 or more prepaid cell phones are not
15 required to or the stores are not required to then
16 collect this information.

17 REPRESENTATIVE MOYER: For example, let us
18 just use as an example Walmart. In other words, if I
19 am Walmart and I purchase, let us say, 100 phones for
20 retail business, I would be exempt from this law? Is
21 that what you are saying?

22 MR. RIDER: Yes, or Walmart is probably
23 going to purchase them from themselves.

24 REPRESENTATIVE MOYER: Well, then that would
25 basically, unless I misunderstand what you are

1 saying, Mr. Rider, that would defeat the intent of
2 this bill.

3 MR. RIDER: Oh, I do not believe so, not at
4 all, because you are nonlegitimate businesses. You
5 are individuals who are obtaining these prepaid
6 phones, whether they are purchasing them in bulk or
7 they are stealing them, and have access to these.
8 Those are the people.

9 If somebody comes in off the street and
10 cannot produce some type of documentation that he or
11 she is representing a legitimate business and wants
12 to buy a hundred of these, well, that is going to
13 throw up a red flag if your legislation becomes law.
14 And the sales associates will be trained by their
15 employers at the point, well, this isn't IBM, this
16 isn't Highmark coming in here, this isn't the Bon-Ton
17 Department Store coming in here to purchase a hundred
18 of these for their sales associates or their
19 corporate employees, and then, therefore, that
20 information would be required to be obtained by the
21 purchaser.

22 REPRESENTATIVE MOYER: Okay. Well again,
23 let me see if I understand this. Maybe I do not
24 understand your point.

25 I'm Walmart and I buy a thousand of these

1 phones on delivery for my stores in, let us say, the
2 southeastern region of Pennsylvania. Do I understand
3 you to say that those phones then would not be
4 subject to this law?

5 MR. RIDER: No; no.

6 REPRESENTATIVE MOYER: In other words, now
7 when the bad guys come in, the bad guys come in and
8 they are exempt from showing any form of ID, do I
9 understand---

10 MR. RIDER: No; I apologize. I was unclear.
11 I was talking about these stores selling them to a
12 legitimate business.

13 REPRESENTATIVE MOYER: Okay.

14 MR. RIDER: Not just because you are a
15 legitimate business buying these for resale; I'm
16 talking about the individual or company that is
17 coming in to purchase them from the retailer.

18 REPRESENTATIVE MOYER: Okay. I understand
19 that then. Okay; fine.

20 Thank you, Mr. Chairman.

21 CHAIRMAN CALTAGIRONE: Certainly.

22 We have had another Representative join us.
23 If you could please introduce yourself for the
24 record, John.

25 REPRESENTATIVE EVANS: Yes; thank you,

1 Mr. Chairman.

2 Representative John Evans from Erie County.

3 Thank you.

4 CHAIRMAN CALTAGIRONE: Thank you, John.

5 Questions? John, do you have a question?

6 And then Counsel Andring.

7 John.

8 REPRESENTATIVE EVANS: Thank you,

9 Mr. Chairman.

10 Thank you, Mr. Rider, for your testimony.

11 MR. RIDER: You are welcome.

12 REPRESENTATIVE EVANS: I may have missed
13 this earlier, but I am curious about the violations
14 here for the clerks and so on who would be selling
15 these cell phones.

16 What would the companies, say, for example,
17 if a Target sells these types of phones, would they
18 be required to have training programs for their
19 employees who may work in that department to
20 understand the nuance of the law?

21 MR. RIDER: They are going to have to in
22 best efforts of not violating this should it become
23 law, because again, you are talking about a summary
24 offense per violation, and it could get quite costly
25 for stores that have hundreds of employees and

1 literally thousands throughout the Commonwealth.

2 REPRESENTATIVE EVANS: Is it commonplace for
3 many large retailers to have employees who move from
4 department to department? For example, one could be
5 selling furniture one day; one could be selling
6 electronics another day; toys another day. I am just
7 wondering, from a management standpoint, is that
8 something that would be very difficult to put
9 together in a training aspect?

10 MR. RIDER: It varies upon stores and
11 departments, and it is store policy that varies from
12 company to company as opposed to if our sales
13 associates are interchangeable in different
14 departments.

15 But it is something, again, that the stores
16 would have to take very seriously and make sure that
17 their sales associates are trained in complying with
18 the new law, which is time-consuming and costly
19 initially. But again, if it is something that they
20 must comply with, then they will comply.

21 REPRESENTATIVE EVANS: And this is not being
22 done in any other State to your knowledge?

23 MR. RIDER: To our knowledge, no.

24 REPRESENTATIVE EVANS: Okay.

25 MR. RIDER: And if I am incorrect, please

1 correct me.

2 REPRESENTATIVE EVANS: And the other
3 question I have, if an employee was to be cited for a
4 violation, would the company also be party to a
5 lawsuit on a larger scale?

6 MR. RIDER: I would defer to the committee's
7 counsel on that, not being an attorney myself, that
8 not only would the sales associate violate the act,
9 and/or would his or her employer? I'm not sure -- or
10 to the prime sponsors.

11 REPRESENTATIVE EVANS: Okay. That concludes
12 my questions. Thank you.

13 MR. RIDER: Thank you.

14 CHAIRMAN CALTAGIRONE: Thank you.
15 Counsel Andring.

16 MR. ANDRING: Brian, one of the questions I
17 have, the bill does not cover somebody who walks into
18 a store and buys a couple of phones and uses a credit
19 card.

20 Now, if we have a retailer who maybe in a
21 day sells 30 of these, and you go back and you look
22 at those purchases, the store is going to know who
23 purchased a phone that day by going through the
24 credit records. Are they going to be able to
25 identify which purchaser purchased which phone?

1 MR. RIDER: If they are using a credit card,
2 they may not know, unless -- and I have just started
3 learning about the sale of prepaid phones with the
4 introduction of this legislation, so I'm by no means
5 an expert. But unless there is some item through the
6 UPC scanning system when the product itself is
7 scanned and some type of number to identify that
8 phone itself, then I don't know if you will be able
9 to know that Bill Andring came into Boscov's, used
10 his Boscov's proprietary card, and purchased two
11 prepaid cell phones. I don't know.

12 MR. ANDRING: But you don't know that there
13 is any way you are going to be able to pin down
14 specific numbers to a specific purchaser?

15 MR. RIDER: Well, if you are recording the
16 information that is being requested---

17 MR. ANDRING: Yeah, but I'm talking about
18 the situations where we are not recording
19 information.

20 MR. RIDER: Then you may not know---

21 MR. ANDRING: If I just buy two phones with
22 a debit card or a credit card, like I said---

23 MR. RIDER: Then you may not know who
24 purchased those two phones.

25 MR. ANDRING: Which specific phones. So in

1 fact if we really want to be able to trace everything
2 back, every phone number back, every purchaser, then
3 we are going to have to start doing this for every
4 cell phone purchase of one of these.

5 MR. RIDER: Well, I would hope not, but that
6 is a possible scenario.

7 MR. ANDRING: And there is no limitation on
8 age in terms of who purchases cell phones, is there?

9 MR. RIDER: Representative Pashinski, I do
10 not believe you addressed an age limitation, did you?

11 MR. ANDRING: It is not addressed in this
12 bill. I was wondering if you were aware of any other
13 limitations that your retailers have?

14 MR. RIDER: Limitations on purchasing
15 firearms.

16 MR. ANDRING: But not on cell phones.

17 MR. RIDER: No, and I believe the Federal
18 law is on pseudoephedrine products, too.

19 MR. ANDRING: Right.

20 MR. RIDER: I believe you must be 18 or
21 older.

22 MR. ANDRING: Right.

23 MR. RIDER: But on cellular phone products,
24 no.

25 MR. ANDRING: And there is no limitation on

1 reselling cell phones? I mean, and again, my
2 questions are going to the issue of whether we
3 accomplish anything by passing this bill.

4 As I understand it, the idea is somehow we
5 are going to trace drug dealers because they will
6 have to fill out forms if they are buying multiple
7 phones. Well, if they buy fewer phones, we may not
8 know exactly which number is attributable to some
9 specific person.

10 In addition to that, it seems to me the drug
11 dealers, once this would pass, are simply going to
12 have somebody go down to the store, buy 50 phones who
13 has a clean record, like they do with guns right now,
14 and then that person is just going to have a little
15 secondary business reselling cell phones in the
16 neighborhood. You are simply going to inject the
17 middleman into the whole process, but I do not see
18 where you are really going to be accomplishing much.

19 Thank you.

20 CHAIRMAN CALTAGIRONE: Just a follow-up on
21 that.

22 We were kicking this around in the office
23 the other week and we were saying, well, you know,
24 even if this were to become law in Pennsylvania, with
25 the bordering States that we have, you know, that

1 enterprising drug dealer, could he not just go across
2 one of our borders and purchase the phones? If they
3 don't have any kind of similar legislation, how do
4 you control that? See, that was one of my concerns.

5 The other concern was--- Go ahead.

6 MR. RIDER: Well, hopefully if that occurs,
7 Mr. Chairman, and the product is subject to the
8 sales and use tax, they are remitting the use tax to
9 the Department of Revenue.

10 CHAIRMAN CALTAGIRONE: Good point. The
11 Governor would like to know that.

12 You know, we have thought about this long
13 and hard. As you know, we have had some serious
14 discussions about trying to do the right thing
15 without creating an additional burden on our
16 businesses in the Commonwealth.

17 And just as an aside, you know, many of us
18 that have young children -- or grandchildren, in my
19 case -- getting cell phones for them is a matter of
20 safety and giving them to them so that they know how
21 to communicate whenever, God knows, in any type
22 situation. So there are a lot of younger kids that
23 have cell phones provided by their parents or loved
24 ones just to guarantee their safety, and especially
25 many of the women that have the throw-away cell

1 phones that use up the time and then get rid of them.

2 But you had some other questions, and then I
3 have another thing to come back to. But go ahead.

4 REPRESENTATIVE PASHINSKI: Thank you,
5 Mr. Chairman.

6 Let us see if we can take these in order
7 here.

8 First of all, as far as the young children,
9 I totally agree. You know, they should have them,
10 especially when they are away or they are going to go
11 on a trip. And some of the senior citizens are
12 purchasing them because they do not want to have a
13 monthly bill and not use the phone. This would be
14 something for extra safety for them.

15 House Bill 2371 does not prevent any of
16 that, though. You know, if you are a law-abiding
17 citizen and you use your credit card, you can buy
18 two, and the next day you can buy two, and the next
19 day you can buy two, and the next day you can buy
20 two.

21 But what I'm having the problem with here is
22 that some of you are saying that there is no way to
23 identify who purchased that phone, yet in this age of
24 computers, and if we are talking about Walmart,
25 Walmart knows exactly how many phones they have

1 received because there is a number on each one.

2 MR. RIDER: No; I understand that. My only
3 question was, when asked that question,
4 Representative, is that when that phone is scanned at
5 the UPC scanning system -- and maybe, I do not have
6 the agenda here, if somebody from Verizon or AT&T
7 maybe can attest to this -- that number on there,
8 does that directly identify that phone when it is
9 activated? I do not know. Maybe it does, and maybe
10 then when that phone is scanned, then they know whom
11 it was sold to if it was purchased with a credit
12 card. Maybe they do that. I do not know.

13 REPRESENTATIVE PASHINSKI: It is my
14 understanding that each phone has a chip, okay? So
15 therefore, you would identify that phone. You could
16 identify a phone 0001 as opposed to phone 1,090.

17 MR. SNOWDEN: After activation.

18 MR. PASHINSKI: Okay.

19 MR. ANDRING: But the question is the
20 purchaser. The purchaser cannot identify a specific
21 phone to a specific purchaser.

22 MR. SNOWDEN: Not at time of sale.

23 MR. ANDRING: Not at time of sale. Thank
24 you.

25 REPRESENTATIVE PASHINSKI: Okay. All right.

1 Well, we have just decided something here then.

2 First of all, we have to decide whether or
3 not the phones are being used for nefarious things.
4 We have to find out whether or not the phones create
5 a threat to society, okay?

6 I think we are creating the fact that these
7 phones are being used illicitly. Now, if it means
8 that we have to try to get a number that matches the
9 phone or some kind of identification that matches the
10 phone, then maybe that is the way we will have to go.

11 But just because the system right now will
12 not allow for that to take place does not mean it is
13 an open and shut case. What I'm saying is, it is
14 2008. We have just discovered something that is a
15 major problem, and we now have also discovered that
16 if law enforcement had a way to deal with that, they
17 could minimize and help curtail the illicit use of
18 these instruments.

19 When we had our discussion with all the
20 folks in the room just a few weeks ago, I think it is
21 incumbent upon all of us to use our ingenuity and the
22 technology that is available to help law enforcement
23 prevent this kind of stuff from going on. That is
24 what I am asking for here.

25 If House Bill 2371 does not do enough to

1 help law enforcement, then let us try to find
2 something else that will. The reason we have forged
3 ahead is because law enforcement has indicated to us
4 it will help them. It may not help as much as we
5 want, but it will give them another tool. So that is
6 the reason why Representative Moyer and myself and
7 others that understand the problem are forging ahead
8 on this.

9 Now that a new development has taken place,
10 maybe there is something else that can be added to
11 make the change. But we all agree here that whatever
12 product comes into Walmart, Walmart knows they have a
13 record of it and they know that it goes back out or
14 it goes back into inventory, because that is the only
15 way you can manage your products, so you know whether
16 you have a profit, you know what is selling and what
17 is not selling.

18 All right. I also felt that in our
19 discussion, that because of what is happening with
20 these phones, you know, they should be treated almost
21 like a firearm, because it is being used for those
22 kinds of nefarious activities.

23 And when Attorney Andring had mentioned
24 about the fact that a law-abiding person could buy
25 something and then sell it to somebody else, well,

1 that is against the law, so they are not a
2 law-abiding person. They are doing something against
3 the law.

4 We have identified that these phones are
5 being used in countless activities that are creating
6 havoc. It is costing billions of dollars in the drug
7 trade for law enforcement. So I think that these
8 hearings are fantastic in the sense that we are going
9 to develop a little better understanding and see if
10 there is another way that we can come up with
11 something.

12 But I do appreciate your time on that.

13 Thank you.

14 MR. RIDER: You are welcome, Representative.

15 CHAIRMAN CALTAGIRONE: Jay.

16 REPRESENTATIVE MOYER: Yeah; Mr. Chairman,
17 just two comments.

18 One, to your concern about crossing State
19 lines, I personally, you know, I thought that through
20 as well, and I had an opportunity, I bumped into the
21 Attorney General last year and I personally asked him
22 about that, and I remember his response to me was,
23 General Corbett, he said, "Jay, I can only be
24 responsible for what happens in Pennsylvania." And
25 his other comment was that generally the bad guys

1 aren't very bright and they generally don't think
2 through those situations. I am not saying that won't
3 happen, but that was his response.

4 And also to Solicitor Andring's question,
5 you know, Mr. Solicitor, this will, I believe, firmly
6 believe, and Representative Pashinski believes, that
7 this bill as enacted, it will provide a paper trail
8 for law enforcement that is nonexistent at this
9 point.

10 Thank you, Mr. Chairman.

11 CHAIRMAN CALTAGIRONE: The other question I
12 had, Brian, was---

13 MR. RIDER: Yes, sir?

14 CHAIRMAN CALTAGIRONE: ---do you have a
15 number as to how many throw-away cell phones are
16 purchased each year in the Commonwealth? And if you
17 don't, if you can provide this. I'm just curious.

18 MR. RIDER: No, I do not. We can work with
19 the manufacturers and see if we can ascertain a
20 number for the committee, but right now, I do not
21 have that information.

22 CHAIRMAN CALTAGIRONE: Okay.

23 Any other questions? Representative Mantz.
24 Carl.

25 REPRESENTATIVE MANTZ: Brian, I'm not sure

1 whether you will know this, this question, but I
2 wonder how pervasive, is there any information that
3 might indicate how pervasive the use of cell phones,
4 these disposable prepaid cell phones, are used in the
5 perpetration of a crime? How frequently? How
6 pervasive this practice is?

7 MR. RIDER: I can't answer that,
8 Representative. I would respectfully defer. I
9 believe there are some representatives from
10 law enforcement that will be testifying later in the
11 hearing that may be able to provide that information.

12 REPRESENTATIVE MANTZ: Okay. Thank you. I
13 will redirect my question to one of those witnesses.
14 Thank you.

15 MR. RIDER: You are welcome.

16 CHAIRMAN CALTAGIRONE: Thank you, Brian. I
17 appreciate your testimony.

18 MR. RIDER: Thank you, Mr. Chairman. Thank
19 you.

20 CHAIRMAN CALTAGIRONE: We will next hear
21 from one of those law enforcement officers,
22 Joe Coffay, Detective from the Wilkes-Barre Police
23 Department.

24 DETECTIVE COFFAY: Thank you, Mr. Chairman.
25 I would first like to thank Representatives

1 Pashinski and Moyer for listening to our concerns in
2 law enforcement and proposing this bill, because I
3 believe it is an important issue that has to be
4 addressed based on the concerns that we have.

5 I work in Luzerne County. I work in the
6 city of Wilkes-Barre as a narcotics detective, and I
7 have done so for the past 19 years.

8 In the beginning, in the eighties, you used
9 to have, one of the major tools that drug dealers
10 used to use would be pagers. With the emergence of
11 cell phones, the primary tool that they use is cell
12 phones.

13 Pretty much if you are not a street dealer
14 out on the streets, the corners of Philadelphia,
15 dealing on a corner, most dealers, I would say all
16 dealers I have run into in the past 10 years, have
17 utilized cell phones or cellular facilities to
18 facilitate their drug trafficking.

19 So I think it is important for the committee
20 to understand a little bit on the role the cell phone
21 has in the commission of this criminal activity such
22 as drug trafficking.

23 For the most part, they play a major role.
24 A drug dealer cannot operate his drug business
25 without a cell phone. Drugs are not just local, they

1 are worldwide. The drugs have to come from -- we do
2 not grow heroin poppies in Pennsylvania, we do not
3 grow cocoa leaves in Pennsylvania, and those drugs
4 have to come from other countries, usually into
5 source cities such as New York or Philadelphia and
6 then into the local areas and our local streets.
7 That is usually accomplished by the retail people
8 contacting the wholesale people in reference to
9 getting the drugs here so they can be sold on the
10 streets.

11 The wholesale people, usually what we are
12 finding is that they use multiple phones to conduct
13 their business. They will have phones that they talk
14 to just their supply and then they have phones that
15 they talk to their dealers. And in past
16 investigations, we have encountered several
17 individuals that have been arrested with multiple
18 phones. Usually it is a TracFone and usually it is a
19 phone that is pretty much untraceable.

20 The retail people, they usually use the
21 phones to conduct their business where we have come
22 across a drug dealer that will have a phone and he
23 puts that phone number out -- what they will do is
24 they will put their number on a piece of paper and
25 they will just hand it out on the streets that they

1 have product, and those people are then contacted and
2 they provide the drugs. Usually that is how they get
3 the word out when they are dealing at the retail
4 level.

5 Usually what they will do is contact their
6 supplier, and the supplier would then supply the
7 drugs to the retail person. In an investigation like
8 that, when you identify that happening, you usually
9 try to do an investigation that involves a
10 conspiracy.

11 When you have a drug dealer contacting a
12 source, usually you try to identify the retail dealer
13 by the sales or being able to buy drugs. Once you
14 have that phone number, then you try to trace those
15 numbers back to the supply.

16 Usually you have to do that through the
17 subpoena process. You send a subpoena to the phone
18 company, and they will send you back the subscriber
19 information. Many times, it will come back with no
20 information. Many times it will come back with a
21 fictitious name, just as Representative Pashinski had
22 alluded to the fact that, you know, a character had
23 purchased that cell phone.

24 That in itself does not help us identify the
25 supply or sometimes even the retailer. The lack of

1 accountability allows these dealers to avoid
2 detection. That is the main reason that they are
3 able to do that, because they don't have to go and
4 they do not have to show ID.

5 We actually have to have insurance on a
6 vehicle and we have to have a driver's license to
7 drive a vehicle. If we didn't have that, people
8 would be smashing cars all over and they would just
9 leave the scene. There is a way of investigating and
10 tracking that information in an accident like that.

11 It is illegal in Pennsylvania to utilize a
12 cellular facility to commit a felony. So if a
13 customer -- or we -- call a drug dealer on his
14 cellular telephone, then the customer and the dealer
15 can be charged with criminal use of a communication
16 facility, which is a felony.

17 Usually when we identify these conspiracies
18 through subpoena and the records for the phones and
19 records for the suspected dealers, we usually
20 subpoena those records, and a lot of times when we
21 can't go any further with that case or we run out of
22 means of investigation, we usually use wiretaps,
23 which are costly, they are manpower exhaustive, and
24 what usually happens is we identify a lot of
25 resources or sources of supply through investigations

1 like that or it gives us the whole conspiracy.

2 For example, in one case, we identified
3 several local dealers in the city of Wilkes-Barre,
4 and upon doing so, we attempted to identify the
5 supply or show that that supply was involved in that
6 conspiracy. When we sent the subpoena to the phone
7 company, we actually received the information back
8 and continued our wiretap investigation.

9 At the time, the subscriber was Santa Claus.
10 So we actually did a wiretap on Santa Claus.
11 Fortunately, we were able to identify that person
12 through surveillance that that is the person
13 utilizing that phone, but those phone records were of
14 no help to us.

15 More recently, we had a homicide in the city
16 of Wilkes-Barre whereupon detectives attempted to
17 subpoena the records to the cell phone company, and
18 those phones, those block of phones were sold to
19 another company. So now the detective has to go back
20 and subpoena that company so they can get the
21 records.

22 Nine times out of ten, in a drug-related
23 homicide and/or our drug traffic investigations, it
24 comes back with no subscriber or something
25 ridiculous. Sometimes I have seen them where they

1 have come back with just numbers or letters. That
2 kind of slows us down. We have to find other means
3 then to actually go out and identify who is utilizing
4 that phone, which costs us time. And in an
5 investigation such as a wiretap investigation, time
6 is of the essence, because those types of
7 investigations, like I said, are costly and manpower
8 intensive.

9 For the most part, there is a definite need
10 for accountability with the phone companies in
11 reference to these cell phones, because for the most
12 part, we in law enforcement are kind of hampered and
13 slowed down in our investigations when we cannot get
14 the information that is provided.

15 That is the major tool utilized by them, and
16 most of the time there is no accountability and/or
17 any way of tracking them down other than to
18 physically do surveillance.

19 Sometimes you have to go out and actually
20 see the individual you suspect of having that phone
21 and you have to actually call the phone, and if he
22 picks it up, then you can actually testify to the
23 fact that that is the phone that is being utilized.
24 Otherwise, there is no other way to track it.

25 It just slows us down, and it causes us

1 problems.

2 CHAIRMAN CALTAGIRONE: Okay.

3 One of the things I was wondering about --
4 maybe you could answer this -- does your police
5 department have the ability to do intercepts,
6 telecommunications intercepts? On cell phones.

7 DETECTIVE COFFAY: Yes; yes, we do.

8 The police department, specifically my
9 police department, the Wilkes-Barre Police
10 Department, locally we work in conjunction with the
11 Attorney General's Office. And me, myself, I am
12 assigned to the Drug Enforcement Administration, and
13 we are able to do intercept investigations through
14 the State Attorney General's Office and with Federal
15 assistance.

16 CHAIRMAN CALTAGIRONE: Do you then, of
17 course, go through the same procedures as far as
18 getting a court-ordered approval for a wiretap?

19 DETECTIVE COFFAY: Yes.

20 CHAIRMAN CALTAGIRONE: Okay. Because the
21 report, I just got it this past Friday from the
22 Attorney General on the wiretaps conducted in the
23 last year, and I was just wondering how this plays
24 out with problems that you have.

25 And in smaller police departments, I am

1 sure, it is probably even more difficult, unless they
2 work through the Attorney General's Office, to get
3 some help from them on the intercepts with cell
4 phones.

5 DETECTIVE COFFAY: Well, in that type of
6 investigation, an intercept investigation, the
7 problem is magnified, because you are actually doing
8 an investigation -- you have exhausted all
9 investigative means, and you know that phones are
10 being utilized to facilitate the drug trafficking.
11 So your investigation leads to an intercept
12 investigation, which at that point in time, one of
13 the steps that you would take is to utilize a trap
14 and trace, where you would identify a target phone
15 being used, and then you would have to do a trap and
16 trace to see what numbers are calling that phone or
17 what numbers that phone is calling. That helps you
18 identify other players and coconspirators in that
19 investigation.

20 The problem with that is, a lot of times
21 when you send the subpoenas out for the cell phones,
22 a lot of times they are coming back as prepaid or
23 TracFones, and there is no way to identify that
24 person. So when you do your investigation, sometimes
25 you have to know a little more. That would help us

1 identify at least who bought the phone.

2 Now, somebody can buy, if I'm a drug dealer,
3 somebody can buy me a phone, but then again, that
4 still gives us a trail for us to go and speak to that
5 person and find out who, they bought the phone, now
6 who did you give that phone to?

7 I mean, sometimes a drug dealer will get an
8 individual, somebody that is a drug user, for drugs,
9 they would get that drug user to do things for them
10 -- rent them cars, rent them hotel rooms -- so that
11 they do not have to put anything in their name,
12 because their job, in their mind, is to avoid us.

13 So they usually do do that, but then again,
14 this also gives me the opportunity to go back and
15 interview that person and possibly get them to
16 testify against the drug dealer. It actually
17 provides me with more witnesses against the drug
18 dealer itself, and it also rounds out the conspiracy.
19 I would have more of an idea of the scope of the
20 conspiracy.

21 CHAIRMAN CALTAGIRONE: Well, let me ask you
22 this also about your years of experience and with the
23 evolution of the cell phones.

24 Has it been your experience that more than a
25 handful of phones are purchased at one time by some

1 of these drug operations in your community?

2 DETECTIVE COFFAY: Yes. Actually---

3 CHAIRMAN CALTAGIRONE: What is the number
4 that you usually find that they purchase these
5 phones?

6 DETECTIVE COFFAY: I had recently done a
7 case in the past 2 years where they purchased like
8 12 or 13 phones, and that drug dealer would hand them
9 out to his retail people, kind of what I was trying
10 to explain before. He buys the phones, and then he
11 hands them out to his retail people.

12 A lot of times, it is the phone itself that
13 is worth the money. If we turn around and arrest the
14 drug dealer and he is in jail, then sometimes, if you
15 do not confiscate that phone, sometimes other drug
16 dealers will want to buy that phone, they will offer
17 money for that phone, because they know it is a money
18 phone: Hey, I want his phone because he was making a
19 lot of money off that phone; a lot of customers call
20 that phone.

21 So they have actually gotten to the point
22 where they actually buy the phone, you know, and then
23 there is no way of tracking that at that point in
24 time. You know, you arrested one drug dealer, and
25 then that phone goes to another one. Or sometimes

1 the phones are distributed out, and then they are
2 mixed between dealers. But you are still showing
3 that these phones belong in that specific conspiracy.

4 CHAIRMAN CALTAGIRONE: You are close to the
5 New York border, okay?

6 DETECTIVE COFFAY: Yes.

7 CHAIRMAN CALTAGIRONE: And the problem that
8 I foresee with the legislation, and I know that, you
9 know, we would have this problem no matter what, I
10 guess, with just about anything we deal with in the
11 Commonwealth. A drug dealer goes across the border
12 -- we enact the legislation and it becomes law --
13 goes across the border and buys a cell phone. You
14 know, if New York or New Jersey or Ohio, if they do
15 not have similar legislation on their books, how do
16 we control that? They go over the border; they buy
17 the cells; they come back; they distribute it --
18 bingo, we are in the same jackpot.

19 DETECTIVE COFFAY: I'm not sure if you can
20 control it, but at least in Pennsylvania, we are
21 doing what we have to do to try to just end the tide,
22 just to try to stop what is going on as far as the
23 phones go.

24 CHAIRMAN CALTAGIRONE: Okay.

25 DETECTIVE COFFAY: Besides, most drug

1 dealers, for the most part, when they come here,
2 usually they will go back to their source city to
3 pick up drugs and bring back here. A lot of times,
4 they are staying here. And quite honestly, they are
5 lazy. Otherwise, they would probably be out with a
6 legitimate job.

7 But most of them, you know, I would say most
8 of them would either try to have somebody get them a
9 phone or they would actually just continue. They
10 really don't think of those things.

11 CHAIRMAN CALTAGIRONE: Thank you.

12 Questions? Jay.

13 REPRESENTATIVE MOYER: Yes; thank you, Mr.
14 Chairman.

15 For Detective Coffay, thank you again for
16 being here and taking the time to come up from
17 Wilkes-Barre this morning. I really appreciate it.
18 I know that I am speaking for Representative
19 Pashinski as well.

20 Let me ask you this: You mentioned about
21 obtaining records. How helpful -- and I'm not
22 picking on anybody in this room here, but there are a
23 lot of different phone companies out there,
24 manufacturers of these phones -- how helpful, when
25 you are trying to investigate a crime and you make a

1 phone call to that particular company for records,
2 how helpful do you find those companies are in
3 trying to furnish you with the records? Does it take
4 a long time? Are they being helpful? I'm just
5 curious.

6 DETECTIVE COFFAY: I probably could answer
7 that quickly and say it is a problem, but there are a
8 lot of factors that go into it.

9 I'm sure that the cell phone companies, it
10 is such a big business, that there is so much of it
11 and that they receive so many requests from law
12 enforcement as far as subpoenas, that things do take
13 a long time.

14 It depends. Sometimes I have sent a
15 subpoena to one company and they will have the
16 information back within a day or two, and I have had
17 other companies where it takes a month. That in
18 itself hinders our investigation.

19 But you send a subpoena to them and then
20 they comply with that subpoena, so they are being
21 helpful in that respect. Sometimes in an emergency
22 situation, you can call and advise them it is an
23 emergency situation and you get the information
24 immediately, such as a homicide or something like
25 that, or if you are actually looking for somebody or

1 a kidnapping.

2 But the phone companies generally are
3 helpful, but it is a process. It is a process that
4 takes time.

5 REPRESENTATIVE MOYER: Okay.

6 DETECTIVE COFFAY: So in my mind, it takes
7 too long. But for the most part, they comply with
8 the subpoenas.

9 A lot of times, what is happening now, I did
10 have an example there. On that homicide, they sent
11 the information to one cell phone company--- I will
12 have to look and see which one it was.

13 They sent the phone records to Sprint, but
14 they were notified back after about a week that that
15 block of numbers was sold to Virgin Mobile, which is
16 a resaler for Sprint, and that is starting to happen
17 a lot more, where you send the subpoena to a company,
18 you plug in and find which number that that phone
19 belongs to, and then when you send the subpoena, it
20 was actually sold to another company. So now you
21 have to restart the process and send that subpoena to
22 that company.

23 A lot of these smaller companies, it is very
24 difficult, because it takes a long time for that
25 information to get back. And like I said, in some

1 types of investigations, such as intercept
2 investigations, time is kind of of the essence.

3 Not to mention that drug dealers, it is very
4 easy. You know, I have seen drug dealers turn around
5 and they will do this: They will have a phone, and
6 they understand how law enforcement works or they
7 have been through this before, so they will wait
8 29 days and go get a new one, throw that one away,
9 and then they will continue to do that to avoid us.

10 So that is a problem also, where if they
11 know about how we work and what we do, at times it is
12 easy for them to just go buy one phone and throw it
13 away, and get another one and throw that away, and
14 continually change phones. It is not uncommon for us
15 to see seven or eight phones on one dealer, so that
16 gets to be a problem.

17 REPRESENTATIVE MOYER: Thank you, Detective.

18 CHAIRMAN CALTAGIRONE: Thank you.

19 Go ahead, Eddie.

20 REPRESENTATIVE PASHINSKI: Thank you, Mr.

21 Chairman.

22 Just a couple of things here.

23 I want to try to establish that even though
24 you may not be able to identify the specific phone
25 that is purchased by that specific person, having the

1 list of those people purchasing the phones,
2 especially for cash or in larger numbers, would that
3 help you in your investigation since you may
4 recognize a name or two that are within the criminal
5 society?

6 DETECTIVE COFFAY: I would have to answer
7 that yes, that would help, and for the most part,
8 anything is better than nothing.

9 When you have something to work with, it is
10 better than not having anything to work with and not
11 having a lead. When you send a subpoena for a cell
12 phone record and there is nothing there, you know,
13 like I gave the example Santa Claus, I can't go to
14 the North Pole and interview Santa Claus, so we just
15 have to try to continue to investigate Santa Claus
16 and identify him and arrest him.

17 REPRESENTATIVE PASHINSKI: Okay.

18 And you have also indicated that if you do
19 have a contact, you have a chance, at least, to roll
20 that person, to find other names and possibly put
21 them into a position where they would testimony.

22 DETECTIVE COFFAY: I would say so, because
23 in my mind, if they buy that phone for that
24 individual knowing what that individual does -- most
25 of the time, it is going to be a customer of theirs

1 -- then as far as I'm concerned, they are involved in
2 the conspiracy. They are facilitating that drug
3 trafficking also.

4 REPRESENTATIVE PASHINSKI: That is correct.

5 DETECTIVE COFFAY: It is not just the phone
6 facilitating the drug trafficking; it is that
7 individual that can be charged and put in the
8 conspiracy, because once they do something to, you
9 know, facilitate that crime, then they are just as
10 culpable.

11 REPRESENTATIVE PASHINSKI: You also
12 indicated that relative to border situations, there
13 are some States that sell liquor for less money than
14 maybe Pennsylvania or will sell other products. You
15 indicated that as long as we are doing our job here
16 in Pennsylvania, we should continue to do that.

17 I personally feel that that is the same.
18 Just because other States do not have whatever we
19 feel is necessary, that does not mean that we as
20 Pennsylvania should not take the lead on it, and I
21 think you confer with that. At least here in
22 Pennsylvania, we would have those laws that would
23 allow you at least some latitude in order to carry
24 out your duties.

25 DETECTIVE COFFAY: Yes.

1 REPRESENTATIVE PASHINSKI: Okay.

2 All right. Thank you very much. I
3 appreciate your time.

4 Thank you, Mr. Chairman.

5 CHAIRMAN CALTAGIRONE: Thank you.

6 I want to recognize Representative Dally,
7 who has joined the panel.

8 John. Representative Evans.

9 REPRESENTATIVE EVANS: Thank you, Mr.
10 Chairman.

11 Thank you, Detective, for your testimony
12 this morning -- this afternoon, I should say. It is
13 getting close to the noon hour.

14 I wanted to ask as far as the collection is
15 concerned of the data. At the point of sale, the ID
16 would be required, that information would be required
17 of the purchaser. I'm just wondering where that data
18 goes. Is there a clearinghouse that would handle
19 this? Would this be an arm of law enforcement?
20 Would this be something in Harrisburg? Where would
21 that information go that is collected at the time of
22 sale?

23 REPRESENTATIVE PASHINSKI: May I answer,
24 sir?

25 REPRESENTATIVE EVANS: Sure.

1 REPRESENTATIVE PASHINSKI: It is quarterly
2 to the Pennsylvania State Police.

3 REPRESENTATIVE EVANS: It is sent---

4 REPRESENTATIVE PASHINSKI: Every quarter of
5 the year. Four times a year, it would be sent to the
6 State Police.

7 REPRESENTATIVE EVANS: By every retailer.

8 REPRESENTATIVE PASHINSKI: Yes.

9 REPRESENTATIVE EVANS: Okay.

10 And the other question I had concerns, you
11 know, we are seeking changes in technology all the
12 time, and unfortunately, many times when we try to
13 legislate technology, it is changed before the
14 legislation becomes a reality. So that has to be a
15 concern.

16 But, I mean, going back, how is this
17 different from a drug dealer using a pay phone?

18 DETECTIVE COFFAY: Well, a pay phone, they
19 actually have to physically go there and utilize that
20 pay phone. That is a much easier investigation than
21 somebody having a cell phone. They could be anywhere
22 utilizing that cell phone, but tying that activity to
23 the cell phone is what you are trying to do and tying
24 that cell phone to a specific individual.

25 If somebody was utilizing a -- back in the

1 early eighties, they used to use pagers. Now, most
2 drug dealers utilized -- that was their tool.
3 They would use pagers, and then they would utilize
4 pay phones, but now it is all cell phones.

5 Sometimes, a lot of towns, such as mine in
6 the city of Wilkes-Barre, they were getting rid of
7 the pay phones due to that reason, because it was
8 becoming a nuisance in the neighborhood, because the
9 customers were constantly going and using the
10 pay phone to call the drug dealer on his cell phone
11 and then they would meet. So that was the problem
12 there.

13 But for the most part, they are mobile.
14 They are easier to be, you know, anywhere. Actually,
15 you can be anywhere utilizing that cell phone.

16 REPRESENTATIVE EVANS: It is a different set
17 of technology, but isn't the anonymity still the
18 common variable there? I mean, are you able to tap
19 into a pay phone if you have suspicion that it is
20 being used for drug activity?

21 DETECTIVE COFFAY: I have never been
22 involved in a case like that, but I'm sure you can.
23 You would just have to minimize everybody that was
24 not, you know, suspect or a target of that
25 investigation.

1 REPRESENTATIVE EVANS: All right.

2 Thank you, Mr. Chairman.

3 DETECTIVE COFFAY: Thank you, sir.

4 CHAIRMAN CALTAGIRONE: Representative Mantz,
5 and then Moyer and Counselor Andring.

6 REPRESENTATIVE MANTZ: Thank you, sir.

7 Detective Coffay, thank you for your
8 testimony.

9 Could you tell us how, in your own law
10 enforcement experience, how frequently has the lack
11 of such prepaid cell phone purchasers, the identity
12 of a prepaid cell phone, been crucial to the
13 charging, your charging, let alone successful
14 prosecution of a suspected drug dealer?

15 DETECTIVE COFFAY: It has been constant. I
16 do not have a specific number, but in most cases that
17 I have been involved in as of recently, in the past
18 7 or 8 years, there have been instances of me not
19 being able to identify somebody in that conspiracy
20 because of not being able to trace the phone.

21 I mean, there are also other ways and means
22 to do that and they just didn't pan out, so to speak.
23 But for the most part, the cell phone is a start,
24 especially in an intercept investigation where a lot
25 of your information is based on phone and phone

1 information.

2 But in the past years, there have been
3 numerous cases where this has hampered the
4 investigation.

5 REPRESENTATIVE MANTZ: I mean, I am saying
6 crucial, not just tampering but crucial to the
7 successful ID-ing of a suspect.

8 DETECTIVE COFFAY: I mean, it has happened.

9 It has happened. There have been people I
10 have not been able to identify that I might have been
11 able to identify, or had a lead if this was passed.

12 REPRESENTATIVE MANTZ: Okay. Thank you.

13 CHAIRMAN CALTAGIRONE: Jay.

14 REPRESENTATIVE MOYER: Thank you, Mr.
15 Chairman.

16 Detective, just a question.

17 Actually, you know, Representative Evans
18 brought up the pay-phone aspect, and it is my
19 understanding -- correct me if I am wrong, and maybe
20 you are the wrong person to ask this question -- but
21 prior to 9/11, drug dealers, criminals, loved to use
22 the pay phones, because in many instances, they were
23 not traceable, is my understanding of that.

24 I know that when I was the regional director
25 for Revenue and I had the southeastern region, which

1 spanned from the Philadelphia area all the way up to
2 Reading, I remember in my Lancaster office it was
3 pointed out to me that just, you know, "Mr. Moyer,
4 just down the street, that is the pay phone of
5 choice" -- this was in 1999 -- "of the drug dealers,"
6 and they would just, one after another, just would go
7 back to that pay phone.

8 My understanding is now, if you use a pay
9 phone and I call you, my number shows up. That is my
10 understanding. Is that correct?

11 DETECTIVE COFFAY: That I'm not sure, but
12 going back to that, and, you know, the pay phone, at
13 least you can do surveillance.

14 REPRESENTATIVE MOYER: Right.

15 DETECTIVE COFFAY: It will identify where
16 the pay phone is at if you had that information, that
17 that is the pay phone calling in, and then you would
18 have to actually physically do surveillance to
19 identify the people that are utilizing the phone at
20 that specific time.

21 REPRESENTATIVE MOYER: Right.

22 In your opinion, Detective, if we passed
23 this law in the Commonwealth of Pennsylvania, I mean,
24 obviously the criminals are not using the pay phone
25 and they are not using, unless they are stupid,

1 totally stupid, they are not using a regular
2 cell phone because they know it could be traced. In
3 your opinion, Detective, if we in the Legislature
4 were to pass this law, what impact will it have on
5 the interdiction of drug dealers and drug dealing in
6 the Commonwealth of Pennsylvania?

7 DETECTIVE COFFAY: Well, that is just one
8 step and one more tool to help us do our job. And
9 not so much to do our job; we can do our job possibly
10 without the bill, but it just helps us and it gives
11 us another tool to do it more efficiently. That is
12 my opinion.

13 REPRESENTATIVE MOYER: Thank you.

14 CHAIRMAN CALTAGIRONE: Counsel.

15 MR. ANDRING: You mentioned subpoenas that
16 you have issued in connection with drug cases. Now,
17 those subpoenas, how exactly did you issue those?
18 Were they for a specific number that you intercepted
19 or numbers that you came up with on phones? How
20 would you initially obtain the information to even
21 issue the subpoena?

22 DETECTIVE COFFAY: Just for example, a case
23 a few years ago, we identified a drug dealer through
24 interviews with drug customers.

25 MR. ANDRING: Right.

1 DETECTIVE COFFAY: All of those customers
2 would say, Joe Blow, this is his phone number; he is
3 the one who is dealing. So you would have to then
4 try to identify that individual who has been dealing.
5 A lot of times, you would get that phone number, find
6 out what company issued that phone number, and then
7 you would get a subpoena for the subscriber
8 information.

9 At that point in time, what you would like
10 to do is then run toll records to look at all the
11 different numbers that this individual is calling,
12 and then you take those numbers and you send
13 subpoenas out for subscribers of those numbers, and
14 then you take those numbers and send subpoenas out
15 for those.

16 So you continually send out subpoenas to
17 identify who is calling that individual phone, and
18 then a lot of times you already have a list of
19 numbers that you look at anyway of different dealers,
20 and you see who is calling who or what numbers are
21 associated with what, and then you take those and
22 subpoena those.

23 MR. ANDRING: Okay. Now, in the first
24 instance, you knew the name of the person who was
25 using the phone.

1 DETECTIVE COFFAY: In that case, no. That
2 is the case I was talking about. When I subpoenaed
3 that drug dealer's phone, the subscriber information?

4 MR. ANDRING: Right.

5 DETECTIVE COFFAY: It came back to Santa
6 Claus.

7 MR. ANDRING: Okay. And what you are
8 subpoenaing then is the subscriber information that
9 the cell phone company has.

10 DETECTIVE COFFAY: That is correct.

11 MR. ANDRING: And you are not aware of them
12 being able to trace that back to buyer information at
13 the retail level?

14 DETECTIVE COFFAY: Well, no, because this
15 law is not enacted yet, if it is going to be enacted.
16 But no, there is no way of telling that phone company
17 -- all they know is that this person came in and
18 bought this prepaid phone and this is the information
19 that they gave. This is all that they could provide.
20 That is in reference, when you subpoena that number,
21 that they have a record of---

22 MR. ANDRING: No; actually, it is my
23 understanding that these things are usually activated
24 by the phone. You buy the phone; you take it home;
25 you dial some numbers, and that is how it is

1 activated, and the only information that the phone
2 company has is the information that is punched into
3 that phone, be it Mickey Mouse or Donald Duck or
4 anything else.

5 And that is, again, one of the points I am
6 making. There seems to be an assumption that if we
7 pass this law, law enforcement is going to have a
8 list of the phone numbers of every drug dealer in the
9 State, and I am having trouble picturing how that is
10 going to happen.

11 Number one, if you do not have this
12 registration information, if you are using a credit
13 card or, you know, using those things, that phone is
14 still not going to be traceable for the most part.
15 And if you send your subpoena to the phone company,
16 you are still not going to get any information if,
17 when they activated the phone, they put in false
18 information.

19 And you yourself said that often these drug
20 dealers go out and buy phones every 30 days because
21 they know how you operate. And, I mean, if drug
22 dealers are able to obtain illegal weapons, I do not
23 think they are going to have a real problem with
24 circumventing the requirements as to the traceability
25 of these portable cell phones.

1 I guess my point is, if you are serious
2 about doing this and you actually want to accomplish
3 a law enforcement purpose, you are going to have to
4 have a far more draconian piece of legislation than
5 what this bill encompasses. You are going to have to
6 require every one of these cell phones to be
7 registered when it is purchased. You are going to
8 have to require every single purchaser to show ID.
9 You are going to have to prohibit the resale of them.
10 You are going to have to prohibit multiple purchases
11 of them.

12 Frankly, you are almost going to have to
13 treat them just like handguns. And short of that, I
14 just have serious questions as to whether you
15 accomplish much with this legislation.

16 DETECTIVE COFFAY: Well, to go back to the
17 beginning of what you were saying, when I do subpoena
18 a phone number and, like I said, it comes back to
19 something fictitious, it is not kind of the cell
20 phone that you are getting the information. You are
21 asking for toll records on that phone number, okay?
22 The phone company does keep a record of that.

23 MR. ANDRING: Right.

24 DETECTIVE COFFAY: So when you get those
25 toll records, they will send you the subscriber

1 information and then they will send you the toll
2 records on what number is called to and from that
3 phone.

4 MR. ANDRING: But if those people want to
5 have a mobile phone that is not traceable, they are
6 going to be able to get one, I think, regardless of
7 what you do here.

8 Again, you know, if it is one drug dealer
9 calling another drug dealer, they are going to do
10 what they have to do to have phones that can't be
11 traced, and it is not going to be that hard to do
12 that.

13 And as far as the average person calling in
14 on one of these phones, you know, if it is traceable,
15 it is traceable; if it is not, it is not. It all
16 depends on what they put into the system whenever
17 they activate the phone.

18 And again, I'm just trying to make the point
19 that we have talked to a lot of people about these
20 provisions, and I'm still trying to see how it is
21 going to be effective. That is the one thing I just
22 can't quite get clear in my mind, how this is really
23 going to be a substantial tool in fighting crime.

24 DETECTIVE COFFAY: Well, to me, it is going
25 to make the phone companies and the retailers have

1 accountability for an item that is being used to
2 facilitate drug trafficking.

3 Right now, there is no accountability.
4 There is no way of tracing that information. At
5 least if somebody comes to buy the phone and they
6 have to show identification and I have a record of
7 that, and then I can show that that number is dealing
8 drugs, at least I can go back to the retailer and
9 then I can find out who actually bought that phone.
10 If it is not the drug dealer him or herself, then at
11 least it could be somebody that they had do that.
12 There is some kind of record. Even at the retail
13 level, there will be a record of that phone number
14 being bought.

15 MR. ANDRING: For some of the phones. And
16 again, you are going to know which ones require the
17 records and which ones do not.

18 CHAIRMAN CALTAGIRONE: If I could jump in
19 here.

20 Detective, the issue and I think the point
21 he is making is that these drug dealers are not
22 stupid, number one, or they would not be in the
23 business.

24 Number two, they are certainly not going to
25 give identifiable information. They can come up with

1 phony documentation on name, address, whatever. So
2 you go back and you do the trace only to find out
3 that there is no address that is identifiable. That
4 person, for all intents and purposes, does not exist.
5 Then you run into a dead end.

6 And the problem that I have in dealing with
7 the legislation is, are we putting excessive
8 requirements on our retailers and the phone companies
9 for something that we know just will not be
10 enforceable? And I'm not saying it is bad
11 legislation; do not misunderstand me. I think the
12 point that you are making is well taken, and we know
13 that they are operating out there. But putting
14 excessive burdens on the sale of these phones, does
15 it really accomplish what we are setting out to do,
16 and that is the nagging question that I have.

17 I understand where you are coming from, and
18 I know that this is a problem. In my city in
19 Reading, it is no different than in your city in
20 Wilkes-Barre.

21 And the State Police, which we have not
22 heard from yet as far as how they are going to handle
23 that information and the excess man-hours and
24 compilation of all that information -- where you are
25 going to store it and how you are going to deal with

1 it -- you know, it gets be a layer cake, and if we
2 can come up with some solutions in working with the
3 industry in trying to figure out a methodology in
4 trying to curb this kind of activity, that is the
5 real challenge that we face.

6 And I'm not saying we are not interested in
7 helping you; I think we have to do something, but
8 what that something is right now, it is just a little
9 bit elusive.

10 So do not go away here feeling that, you
11 know, these guys are not listening, and ladies. We
12 are, but we do not want to create an extra burden on
13 the administration of this and whether or not it
14 would really be helpful if we can actually get some
15 results and nail some of these drug dealers.

16 I'm sorry; go ahead. Questions from any of
17 the panelists? Go ahead.

18 REPRESENTATIVE MOYER: Thank you, Mr.
19 Chairman.

20 You know, just a comment. I mean, obviously
21 something is better than nothing, and I guess one of
22 the problems I have been having since Representative
23 Pashinski and I have been working on this since
24 February last year is the push-back we have been
25 getting. And I am not saying that, Mr. Chairman,

1 with respect to anybody in this room, but when you
2 have groups, organizations, like the District
3 Attorneys Association of the Commonwealth of
4 Pennsylvania supporting this legislation and saying
5 this is a serious problem, drug trafficking in the
6 Commonwealth of Pennsylvania is a serious problem,
7 when we have the Chiefs of Police Association
8 supporting this legislation, when we have our own
9 Pennsylvania State Police saying we need this
10 legislation, I just do not understand the push-back.

11 We have, right now, legislation working with
12 respect to the sale of pseudopheds. I have not
13 heard, I have not read since I have been in this
14 office, of any complaints from the retail industry
15 regarding how terrible it is. We have been able to
16 get a handle on the use of pseudopheds by the bad
17 guys, and I just, quite frankly, do not understand
18 why we are having the push-back we are having on this
19 legislation.

20 And law enforcement says, my former district
21 attorney, Bruce Castor, told me that this is a
22 serious issue. It has been a serious issue. We need
23 to get a handle on it. The Attorney General himself
24 said this is a serious issue.

25 And yes, there are a lot of imperfections in

1 it, and yes, we could be very draconian, and we may
2 have to get to that point. If we pass this
3 legislation, it may very well be that we will have to
4 go to step two and step three, but at least we need
5 to get to step one. We need to get a handle on this.

6 Just to close our eyes and not do anything
7 and bury our heads in the sand is not the direction
8 that we need to go, and that is just a comment.

9 CHAIRMAN CALTAGIRONE: Eddie.

10 REPRESENTATIVE PASHINSKI: If I could just
11 piggyback on what Representative Moyer said.

12 Just because it is too hard, we do not do
13 it? You know, I take the same view that
14 Representative Moyer takes, and that is, look, we
15 have identified a problem; now let's all work
16 together so that we can begin to eliminate this
17 problem.

18 We also know that in any wartime situation,
19 in any kind of law enforcement situation,
20 communication is a vital source for whatever side is
21 involved in a conflict. And we have identified here
22 that just about every drug dealer is using these
23 TracFones because they are untraceable, you know,
24 and we cannot deny that fact. That is why
25 law enforcement wants us to try to move forward on

1 this.

2 On behalf of Representative Moyer and
3 myself, we said it before and we will say it again,
4 that door is open, the table is open, for us to
5 figure out a way that is going to allow our
6 law-abiding retailers and producers of these
7 instruments to continue, you know, to sell them,
8 profit by it, et cetera. But I'm looking for, I
9 think we are both looking for a way that we can help
10 law enforcement. That is the whole key thing here.

11 And again, just because it is hard, just
12 because this thing isn't maybe perfect, let us try to
13 improve upon it so that it becomes a viable product,
14 a viable instrument, for law enforcement to help
15 protect the citizens of Pennsylvania, and that is why
16 I think we are all here.

17 We are all Americans; we want the same
18 thing. I think we want the same thing.

19 And again, I would encourage all of us to be
20 honest and forthright in this situation so that we
21 can come up with a solution that is going to help in
22 this crazy thing, the drugs.

23 The drugs are costing us billions of
24 dollars, incarceration, incredible man-hours in law
25 enforcement. We have got to do something about it.

1 We just cannot sit back and say it can't be done.

2 Thank you.

3 CHAIRMAN CALTAGIRONE: Any other questions?

4 Thank you, Detective. We appreciate your
5 time.

6 DETECTIVE COFFAY: Thank you.

7 CHAIRMAN CALTAGIRONE: We will next hear
8 from Kevin Lutkins, Esq., Pennsylvania Convenience
9 Store Council.

10 MR. LUTKINS: Good morning.

11 First, I would like to thank Mr. Chairman
12 and the committee for allowing us to come here today
13 and testify on this matter.

14 We have already heard a lot of testimony
15 about what the phones are used for. We would echo
16 that. I mean, many of the phones are purchased for
17 perfectly legitimate reasons, including parents
18 trying to limit high phone bills caused by their
19 children and the elderly who use it to call for
20 assistance.

21 Many of the phones are sold at convenience
22 stores.

23 CHAIRMAN CALTAGIRONE: Could you pull the
24 mike closer?

25 MR. LUTKINS: Sorry about that. I'm new at

1 this. This is my first one, so I apologize.

2 CHAIRMAN CALTAGIRONE: No problem.

3 MR. LUTKINS: Many of the phones are
4 purchased at convenience stores, whose main selling
5 point is the speed of transactions.

6 The requirements identified in the bills are
7 unduly burdensome on retailers who will be forced to
8 expend significant resources to train their
9 employees, create the necessary forms to record the
10 required information, and modify their information
11 technology systems to encrypt and transfer the
12 information to the Pennsylvania State Police.

13 These requirements will also harm
14 convenience stores selling such phones by slowing
15 transactions to a crawl. We ask the Legislature to
16 weigh the benefit to law enforcement against the
17 enormous burden this will place on retailers.

18 And again, in terms of the record retention
19 in the bill, some of the things were discussed
20 earlier, so I feel I want to comment on that.

21 In the bill, there really is no time limit
22 for keeping these records by the retailer. So of
23 course the longer the retailer is required to retain
24 these records, the more expensive it is going to be
25 for the retailer.

1 If the retailer transfers the records to the
2 Pennsylvania State Police on a quarterly basis, and
3 therefore they are released, they do not have to
4 retain them after the court order, well, then that
5 sort of raises a legal question, from my standpoint,
6 of who is going to be subpoenaed? Is the
7 Pennsylvania State Police going to be subpoenaed or
8 is the retailer going to be subpoenaed?

9 I do not see any reason why you would
10 subpoena a retailer who no longer has the records
11 because they have already transferred them to the
12 Pennsylvania State Police. And again, the whole
13 point of a subpoena is to protect rights, so I do not
14 know that the Pennsylvania State Police, as honorable
15 as they are, really have an incentive to challenge
16 any subpoena from a fellow law enforcement agency.

17 I think those are some issues that probably
18 should be addressed in the legislation if it moves
19 forward.

20 Other issues are that the bill allows for
21 selective enforcement against those stores who happen
22 to sell phones to an individual who is the subject of
23 a criminal investigation. The violation of the
24 proposed statute will only be discovered during a
25 criminal investigation of a person or entity

1 unrelated to the selling store.

2 There is no enforcement mechanism in place
3 to test general compliance with the bills or the
4 proposed statute, similar to cigarettes, whereas with
5 cigarettes, you know, you would send out teams to
6 verify that stores are not selling them to people
7 under 18 years of age.

8 The result is that some stores that are not
9 compliant with the proposed statute will not be
10 prosecuted for violations if they are lucky enough
11 not to have sold a prepaid phone to an individual
12 that is the subject of a criminal investigation.

13 Additionally, it places the employees of the
14 store in greater legal jeopardy than set forth in the
15 bill. The employees of the store may face
16 obstruction charges; facilitating criminal activity,
17 as the detective mentioned earlier. The penalties
18 for these charges are much more severe than the fines
19 that are identified in the bills.

20 Thank you.

21 CHAIRMAN CALTAGIRONE: Questions? Jay.

22 REPRESENTATIVE MOYER: Thank you, Mr.

23 Chairman.

24 A question for Mr. Lutkins.

25 Would you explain to me how the sale of

1 pseudopheds is handled at the retail point of sale?

2 MR. LUTKINS: I couldn't comment on that. I
3 don't know.

4 REPRESENTATIVE MOYER: I'm sorry?

5 MR. LUTKINS: I couldn't comment on that. I
6 don't know.

7 My understanding, I believe, is that it
8 is--- Well, I couldn't comment on that. I
9 apologize.

10 I'm actually -- and I guess I should have
11 made this clear in the beginning -- I am actually
12 filling in for someone else who couldn't make it
13 today from the Pennsylvania Convenience Store
14 Council. They would have greater expertise on that
15 than I would.

16 REPRESENTATIVE MOYER: Okay. Thank you.

17 CHAIRMAN CALTAGIRONE: Eddie.

18 REPRESENTATIVE PASHINSKI: Thank you,
19 Mr. Chairman.

20 Thank you very much for coming here today
21 and testifying, Kevin.

22 You talked about training. How do you train
23 your employees relative to a check transaction?

24 MR. LUTKINS: Well, the training, generally
25 the training at a convenience store is done when you

1 initially hire someone. But, of course, what you
2 have to remember is that when you hire someone at a
3 convenience store, you are really already kind of in
4 the hole with them. You have expended a lot of money
5 setting up the training programs, sending them
6 through the training, and they really have not even
7 worked a day at a convenience store.

8 And convenience stores have a high employee
9 turnover as well. So generally, I would believe,
10 that the training relating to check cashing or
11 anything else would be done upon hire.

12 REPRESENTATIVE PASHINSKI: Okay. So in this
13 initial training, which may take how long, a day?

14 MR. LUTKINS: It depends on the particular
15 convenience store. For example, a large chain may
16 have a longer, more extensive training program than
17 your neighborhood mom-and-pop store.

18 REPRESENTATIVE PASHINSKI: Okay.

19 Could you tell us about what are the
20 different categories of training?

21 MR. LUTKINS: Well, you would train on, you
22 know, how to run the register; how to, you know, ring
23 up the sale, the sales of anything. You know, the
24 cigarettes, you would train them on that. You would
25 train them on, you know, if there are any other

1 products that require specific, that have specific
2 requirements other than just running it through
3 the cash register, you would have to train them on
4 that.

5 REPRESENTATIVE PASHINSKI: That is indeed
6 the very point that I'm coming to, because if the
7 cell phone, let us say, went through, the various
8 employees would have to be aware of the safeguards,
9 the reason why, et cetera, in order to follow through
10 on the orientation to make sure you follow the law.

11 Could you tell us, coming back to the check,
12 what does your employee have to do when someone gives
13 them a check for their purchases?

14 MR. LUTKINS: Well, every store is
15 different. You know, some stores may require -- I'm
16 sure every store requires ID, but, you know, to the
17 extent to which, you know, other policies are in
18 place relating to that, I couldn't comment. I mean,
19 every store is going to be different.

20 Some stores may not require ID because they
21 know the individual, because the individual lives
22 around the corner. Or they frequent the store so
23 often that, you know -- I honestly couldn't comment
24 as to what every store's policy is or what the
25 general policy is relating to cashing one check

1 versus another.

2 REPRESENTATIVE PASHINSKI: Okay. All right.
3 Thank you.

4 CHAIRMAN CALTAGIRONE: Thank you.

5 Questions from members? No?

6 I do want to recognize James Casorio, who
7 has joined our panel today. Thank you, Jimmy.

8 Jay.

9 REPRESENTATIVE MOYER: Thank you,
10 Mr. Chairman. Just one other question.

11 How many convenience stores do we have in
12 the Commonwealth of Pennsylvania?

13 MR. LUTKINS: Probably tens of thousands, if
14 not hundreds of thousands.

15 REPRESENTATIVE MOYER: Okay.

16 MR. LUTKINS: And I couldn't give you a
17 specific number if that is what you are looking for.

18 REPRESENTATIVE MOYER: And you are obviously
19 here this morning because you have an interest in the
20 sale of these phones, correct?

21 MR. LUTKINS: Yes. The Pennsylvania
22 Convenience Store Council represents some of them.

23 REPRESENTATIVE MOYER: Could you name some
24 of the convenience stores that sell these phones?

25 MR. LUTKINS: You are probably looking at --

1 you know, it actually would be easier for me to
2 identify the ones that sell the cards as opposed to
3 the actual phones. But the phones, you know, you are
4 probably looking at a Sheetz or a Wawa. They may
5 sell the phones.

6 REPRESENTATIVE MOYER: They may sell them.

7 MR. LUTKINS: They may sell the phones.

8 REPRESENTATIVE MOYER: How about a 7-Eleven?

9 MR. LUTKINS: You know, I have not checked
10 specifically those stores to verify if they do or
11 they do not.

12 REPRESENTATIVE MOYER: And since you are
13 here, you probably know the question, I mean, what
14 percentage of sales do these phones represent in the
15 convenience stores of Pennsylvania?

16 MR. LUTKINS: I wouldn't know.

17 REPRESENTATIVE MOYER: I would very much
18 like if you could get back to us with some of that
19 information.

20 MR. LUTKINS: Sure.

21 REPRESENTATIVE MOYER: The questions that I
22 asked you?

23 I would like to know which convenience
24 stores in the Commonwealth of Pennsylvania sell these
25 phones, and I would like to know the percentage of

1 sales of these phones to the convenience store
2 industry in the Commonwealth of Pennsylvania. I
3 would like to know the names of the stores that sell
4 these phones.

5 MR. LUTKINS: Certainly.

6 REPRESENTATIVE MOYER: Thank you,
7 Mr. Chairman.

8 CHAIRMAN CALTAGIRONE: Counsel Andring.

9 MR. ANDRING: Just briefly, does your
10 organization represent independent neighborhood-type
11 stores or are you primarily representing the chain
12 convenience stores?

13 MR. LUTKINS: We have a combination. We
14 have some chains that are members and some
15 independent neighborhood convenience stores.

16 MR. ANDRING: Because especially in a lot of
17 urban neighborhoods and, frankly, poorer
18 neighborhoods, small independent stores, as I
19 understand it, sell these things.

20 MR. LUTKINS: That is my understanding as
21 well.

22 MR. ANDRING: And that in fact it is a
23 relatively common way for people in a lot of
24 neighborhoods to obtain their phone service.

25 MR. LUTKINS: Yes. I mean, that is my

1 understanding; there are a lot of convenience stores
2 that sell them.

3 MR. ANDRING: Okay. Thank you.

4 CHAIRMAN CALTAGIRONE: Thank you for your
5 testimony. We appreciate it.

6 We will next hear from Captain Dante
7 Orlandi, Director of the Drug Law Enforcement
8 Division, the Pennsylvania State Police, Bureau of
9 Criminal Investigation.

10 CAPTAIN ORLANDI: Good morning.

11 CHAIRMAN CALTAGIRONE: Good morning, sir.

12 CAPTAIN ORLANDI: Good morning. I am
13 Captain Dante Orlandi, Director of the Drug Law
14 Enforcement Division, Bureau of Criminal
15 Investigation, in the Pennsylvania State Police.

16 On behalf of Colonel Jeffrey B. Miller,
17 Commissioner of the Pennsylvania State Police, I
18 would like to take the opportunity to present
19 testimony to the committee.

20 The Bureau of Criminal Investigation is
21 tasked with a wide variety of responsibilities
22 that support the unique investigative needs of
23 16 Pennsylvania State Police troops that protect our
24 Commonwealth.

25 One of our responsibilities is to approve

1 and oversee electronic surveillance operations. I
2 would like to take this opportunity to talk to you
3 about a problem currently confronting law enforcement
4 -- the use of high-tech, prepaid wireless telephones.

5 When there is probable cause to believe that
6 a specific telephone is used in the furtherance of
7 certain criminal offenses, law enforcement officers
8 can intercept communications on that phone through a
9 court-authorized nonconsensual interception, or a
10 wiretap.

11 Under current law, however, probable cause
12 must be established for each individual telephone to
13 be intercepted. Every time a criminal changes
14 phones, law enforcement must prove there is probable
15 cause to believe the new phone will be used to
16 continue criminal activity.

17 Establishing probable cause for the new
18 telephone can take hours and sometimes days. As a
19 result, law enforcement often misses valuable
20 communications.

21 The problem is compounded by the use of
22 prepaid wireless telephones that allow virtually
23 untraceable communications. These prepaid wireless
24 telephones do not require a contract or credit check.
25 Subsequently, almost anyone can purchase one without

1 formal proof of identification.

2 Unlike a contract for a cellular telephone
3 service plan with a provider, there is no way to link
4 a prepaid wireless phone to its owner.

5 The low price of prepaid phones allows
6 criminals and terrorists to avoid traditional
7 intercepts by quickly changing telephones. For these
8 reasons, criminal organizations often use prepaid
9 wireless telephones to avoid electronic surveillance
10 by law enforcement.

11 We have seen a rapid increase in the use of
12 prepaid cellular phones by those engaged in illegal
13 activity. The State Police has encountered the use
14 of prepaid wireless phones in 80 percent of
15 electronic surveillance investigations that it has
16 conducted since 2006.

17 In fact, prepaid wireless telephones were
18 involved in every single wiretap investigation
19 conducted by Troop L, Reading, since 2005.

20 Here is how it works. Drug traffickers will
21 provide a prepaid wireless telephone to a customer or
22 distributor. This telephone is used exclusively to
23 call the trafficker.

24 At the next meeting, the trafficker will
25 provide the customer or distributor a new telephone.

1 In some cases, criminal organizations purchase
2 telephones and continually replace them after prepaid
3 minutes are used. It is not uncommon to find a half
4 a dozen discarded prepaid wireless telephones inside
5 traffickers' homes.

6 Nonconsensual wiretaps are an essential tool
7 in gathering the information necessary to build a
8 picture of a criminal organization, identify the
9 individual members, and obtain evidence necessary to
10 dismantle them.

11 Allowing criminal organizations to purchase
12 prepaid wireless telephones without verifying their
13 identity complicates the efforts of law enforcement.
14 Unless this situation is quickly addressed, our
15 ability to keep pace with criminal organizations will
16 be seriously impeded.

17 So what can we do? First, customers should
18 be required to produce photo identification when
19 purchasing the telephone.

20 Second, anyone who pays cash for a prepaid
21 wireless telephone or purchases three or more phones
22 should be subject to registration requirements.

23 To be most effective, the legislation should
24 require retailers to electronically record this
25 information into a database, which would be

1 immediately accessible to law enforcement. These
2 measures would remove the anonymity criminals
3 currently enjoy using prepaid cellular telephones.

4 In closing, we appreciate Representative
5 Pashinski's willingness to examine this law
6 enforcement issue and look forward to continuing
7 working with him on effective legislation.

8 On behalf of Colonel Jeffrey B. Miller, I
9 would like to thank you for the opportunity to appear
10 before you today, and I would be happy to answer any
11 of your questions.

12 CHAIRMAN CALTAGIRONE: Thank you, Captain.

13 Questions? Yes; go ahead, John.

14 REPRESENTATIVE EVANS: Thank you very much,
15 Mr. Chairman.

16 Thank you, Captain, for your testimony.

17 Just to cite an example, a hypothetical, I
18 guess. If I went to a store and purchased three cell
19 phones and distributed them to members of my family
20 for safety reasons or other considerations, perhaps a
21 young child would lose the phone at a school bus
22 stop. A drug dealer would grab that phone and start
23 using it for drug transactions. If that phone is
24 traced, could I possibly have a State trooper
25 knocking on my door in the middle of the night

1 because that phone was purchased by me?

2 CAPTAIN ORLANDI: Well, it is a lot more
3 complicated than that. You need to have enough
4 probable cause to apply for the nonconsensual wiretap
5 intercept on that particular phone.

6 It is not just -- you just do not pick it
7 out of thin air that there are phone calls. In that
8 example, your child's lost phone, they would have to
9 start calling, that person would start calling
10 different drug dealers that we would have to build
11 probable cause out. In all likelihood, the time
12 would expire on that phone before we would ever
13 get the information approved to go open that
14 wiretap.

15 So yeah, could that possibly happen that we
16 would at some point knock on your door to say this
17 phone was registered to you? Certainly. That would
18 be no different than a handgun purchase.

19 You purchase a handgun -- I am sorry; excuse
20 me -- a long gun, you are required to register that
21 first one. If that exchanges hands 10 times, we
22 would then go to that first person and say, what
23 happened to that gun? They would say, well, I sold
24 that to person A, and then we would go from A to B
25 and slowly track that down. But yes, that could be a

1 possibility.

2 REPRESENTATIVE EVANS: Following up on what
3 Attorney Andring had mentioned earlier, are you
4 concerned that the data that you are collecting may
5 not be worth that much?

6 If these criminals are using false IDs and
7 making these purchases under assumed names and so on
8 and so forth, I mean, with data in and data out, I
9 mean, if it is bad data going in, I do not see how it
10 is going to serve you as a very useful tool.

11 CAPTAIN ORLANDI: But it gives us a starting
12 point. It gives us something -- right now, the
13 subscriber information will come back as cellular
14 phone. That is all we have, so we know somebody that
15 has a wireless cellular phone is making phone calls
16 and is connected to terrorism, drug dealings,
17 whatever type of crime it would be, but we have
18 nowhere to go. There is nothing to go further on
19 that.

20 At least in this situation, we at least have
21 a contact place. We could at least say that it was
22 purchased, even if it was a straw purchase where the
23 girlfriend or the boyfriend bought it for the drug
24 dealer, at least we have it narrowed down to a town.
25 Right now, there is nothing; there is nothing for us

1 to go on.

2 REPRESENTATIVE EVANS: But certainly I don't
3 want to sound as though I am not supporting law
4 enforcement in this effort. I mean, we have a severe
5 problem with these drug dealers and with illegal
6 activities, but it seems as though the cat is already
7 out of the bag to a degree. And short of making
8 these types of purchases illegal across the board, I
9 do not know how effective this type of a program or
10 that this legislation calls for would be.

11 As far as collecting the data, how many
12 people do you think in the State Police Headquarters
13 would it take to manage these quarterly filings by
14 every retail outlet in Pennsylvania?

15 CAPTAIN ORLANDI: I don't know. I'm not an
16 information technology expert, so I couldn't tell you
17 what would occur. I just know that if we are
18 mandated to do it, we will certainly do it and we
19 will give it 100 percent. But I could not answer
20 on as far as how many personnel it will take to do
21 that.

22 REPRESENTATIVE EVANS: And going back to the
23 charges in this legislation against the clerks who
24 would violate the terms of the law, what kinds of
25 fines and penalties would they be facing? How severe

1 would that be?

2 CAPTAIN ORLANDI: My understanding, it would
3 be a summary offense. It is all in the bill. A
4 subsequent offense, I believe, is a misdemeanor 3,
5 and I think at some point it can go up to a
6 misdemeanor 2.

7 REPRESENTATIVE EVANS: Would those clerks
8 have to be over a certain age to sell a phone? I
9 mean, if an employee is 16, 17 years of age, would
10 they be restricted from selling that type of a phone?

11 CAPTAIN ORLANDI: That would be a labor and
12 industry question. I do not know.

13 REPRESENTATIVE EVANS: All right.
14 Thank you, Mr. Chairman.

15 CHAIRMAN CALTAGIRONE: Thank you.
16 Ed.

17 REPRESENTATIVE PASHINSKI: Thank you very
18 much, Captain.

19 And to my colleague, first of all, it is a
20 \$500 fine, a summary offense, and if it were any
21 subsequent, it would be a third-degree misdemeanor, a
22 thousand dollar fine.

23 Now, to answer the answer about the age of
24 the employee, once again, we are identifying
25 something that is being used throughout a tremendous

1 amount of the crime industry, if we could use that
2 term. So possibly these phones need to be sold in a
3 different manner, like we would liquor or like we
4 would some medication. That is just a consideration.

5 Captain, I wonder if you could just bear
6 with us for a minute. If I buy the phone with a
7 credit card and the phone is now used for nefarious
8 acts of whatever degree, you confiscate the phone,
9 now what do you do?

10 CAPTAIN ORLANDI: We confiscate the phone---

11 REPRESENTATIVE PASHINSKI: Let's say you
12 find the phone. The phone is involved in these
13 various nefarious effects. What is your process?

14 Somebody is arrested; you have the phone;
15 the phone was purchased with a credit card. I
16 purchased the phone with a credit card.

17 CAPTAIN ORLANDI: Okay.

18 REPRESENTATIVE PASHINSKI: The phone is
19 considered used in drug dealing. Now, what would be
20 the process? How would you go through---

21 CAPTAIN ORLANDI: At that point, we would
22 get a search warrant to retrieve the numbers that
23 were stored in that phone. But as far as doing any
24 kind of wiretap---

25 REPRESENTATIVE PASHINSKI: No, no; I'm not

1 asking about that.

2 CAPTAIN ORLANDI: Okay.

3 REPRESENTATIVE PASHINSKI: I'm trying to
4 show the distinction---

5 CAPTAIN ORLANDI: Then what we can do to
6 prove ownership, at least we can get the credit card
7 company's information so that we would have somebody
8 to link that phone to.

9 REPRESENTATIVE PASHINSKI: That's the point.

10 CAPTAIN ORLANDI: I'm not necessarily saying
11 that the person that purchased it was the person that
12 had it, but it gives us that first step to take.

13 REPRESENTATIVE PASHINSKI: That's correct.

14 CAPTAIN ORLANDI: Where if it were just a
15 cash phone, there would be no first step.

16 REPRESENTATIVE PASHINSKI: You have nothing.

17 CAPTAIN ORLANDI: Correct.

18 REPRESENTATIVE PASHINSKI: Okay. Thanks.

19 CHAIRMAN CALTAGIRONE: Jay.

20 REPRESENTATIVE MOYER: Thank you,

21 Mr. Chairman.

22 Captain, thank you again for being here with
23 us this morning. We really appreciate it.

24 In your testimony, and I have it in front of
25 me, I thought it was very telling that you had

1 indicated that 80 percent of the investigations have
2 shown that these phones were used in those crimes?
3 Am I right?

4 CAPTAIN ORLANDI: That is correct.

5 REPRESENTATIVE MOYER: And you mentioned
6 Troop L in Reading, that since 2005, these phones
7 were involved in every single wiretap investigation?

8 CAPTAIN ORLANDI: That is correct.

9 And just for a distinction, if a wiretap
10 investigation involved, say, 15 phones or 5 phones,
11 out of those 5 phones, some of them would have been
12 prepaid. I'm not saying that all of those phones
13 were, but in each investigation since 2005, somewhere
14 in the phones that were tapped it involved those
15 wireless cellular phones.

16 REPRESENTATIVE MOYER: Is it fair to say, I
17 mean, Troop L, does it basically just have the city
18 of Reading or does it also---

19 CAPTAIN ORLANDI: They cover Lebanon County,
20 Berks County, and Schuylkill County.

21 REPRESENTATIVE MOYER: And how significant
22 is the drug trafficking in that particular area,
23 particularly in the Reading and Lebanon area?

24 CAPTAIN ORLANDI: Pretty significant.

25 REPRESENTATIVE MOYER: It is coming out of

1 New York City, I understand. Correct?

2 CAPTAIN ORLANDI: One of the places, yes.

3 REPRESENTATIVE MOYER: Again, I was a
4 revenue director for the southeast region, and I had
5 the Reading City office, which I know our
6 distinguished Chairman is from Reading, and I was
7 told, they pointed out to me the bus company, and the
8 bad guys literally come up in buses to traffic drugs,
9 and that is one of their modes of transportation.

10 In your opinion, Captain, if we enacted this
11 legislation into law, what impact would it have in
12 clamping down on drug trafficking in the Commonwealth
13 of Pennsylvania?

14 CAPTAIN ORLANDI: I think it gives us
15 another tool for us in law enforcement. There are
16 certainly -- it is a step in the right direction.

17 REPRESENTATIVE MOYER: Right.

18 Do you think, Captain, this is better than
19 doing nothing?

20 CAPTAIN ORLANDI: Absolutely.

21 REPRESENTATIVE MOYER: All right. Thank
22 you, Captain.

23 CHAIRMAN CALTAGIRONE: Chris.

24 REPRESENTATIVE SAINATO: Thank you, Mr.
25 Chairman.

1 Thank you, Captain. This, so far, has been
2 very enlightening today, listening to the testimony.

3 My question sort of follows up on
4 Representative Evans a little bit. When you get into
5 the penalties against those that are selling these
6 phones in the convenience stores and everything else,
7 who is going to enforce these penalties? Are the
8 State Police going to go in and investigate the
9 convenience stores, such as they do the liquor
10 establishments and things like that? Is there a cost
11 involved in that?

12 CAPTAIN ORLANDI: Well, we certainly will
13 enforce all the laws in Pennsylvania. You know, the
14 costs of enforcing that, I do not have that
15 information. I can provide that to you.

16 REPRESENTATIVE SAINATO: And I'm just
17 curious, because we are creating another penalty for
18 this, and someone has to enforce it, and it probably
19 would be in the State Police and/or the local law
20 enforcement.

21 CAPTAIN ORLANDI: Correct.

22 REPRESENTATIVE SAINATO: I mean, drugs are a
23 very serious problem in Pennsylvania as well as the
24 whole nation.

25 CAPTAIN ORLANDI: Right. I mean, we are

1 there regardless---

2 REPRESENTATIVE SAINATO: Right.

3 CAPTAIN ORLANDI: ---so if there is another
4 reported crime, certainly we are going to respond to
5 that. We are already in place. It is not like you
6 are hiring additional law enforcement specifically
7 for that.

8 It is just like any other law that is
9 enacted. It just becomes another law that we need to
10 enforce. We don't necessarily get more manpower for
11 that; it is just one other law that we enforce.

12 REPRESENTATIVE SAINATO: What about the
13 black market? Do you think this would cause a black
14 market in the cell phone industry where they would,
15 you know, set that up? Because earlier, I think, the
16 chief legal counsel for the committee brought that
17 up.

18 For some reason, drug dealers and the
19 criminal element always try to find ways of finding,
20 you know, we stop one thing and it starts somewhere
21 else. They come up with another way to get around
22 the system. They were using the pay phones and then
23 they went to the cell phones, now they are into
24 prepaid cell phones. What is next?

25 What about the cards? I will let you answer

1 that, but what about the cards, the prepaid cards?

2 CAPTAIN ORLANDI: As far as the black
3 market, there are probably easier ways for them to
4 get around it than a black market.

5 Like someone had mentioned earlier, just
6 going to a border State and purchasing them, they
7 certainly can do that. But I think if Pennsylvania
8 is the lead here and we are showing other States that
9 we are taking this serious and we are going to
10 support law enforcement in this particular role here,
11 that may cause other States to see what we are doing
12 and maybe they will follow suit, too. I do not know.

13 I mean, as far as the black market, if it is
14 lucrative enough, I guess criminals will find a way
15 to make money at it. I do not know.

16 REPRESENTATIVE SAINATO: Just when I think
17 about, you know, sometimes when we do this, and when
18 you talk about cigarettes, you talk about the other
19 things---

20 CAPTAIN ORLANDI: Sure.

21 REPRESENTATIVE SAINATO: ---there is always
22 an element out there that is ready to jump on the
23 bandwagon to, you know, break the law, and I'm sure
24 you have seen it in your profession.

25 I appreciate your testimony. I think it was

1 enlightening, and we are here to listen. Thank you.

2 Thank you, Mr. Chairman.

3 CHAIRMAN CALTAGIRONE: Captain, I just, you
4 know, in listening to this -- and you know I
5 certainly respect the work that the State Police do.
6 I have always been there 100 percent to support you
7 guys, and you know that. But I also am concerned
8 that in a free society, as we have in this country,
9 law enforcement must respect the civil rights and
10 constitutional rights that we hold near and dear to
11 our hearts. That is what we are all about.

12 We know from our country's history that this
13 can be done while simultaneously pursuing and
14 protecting those who break the law. Our Fourth
15 Amendment rights, we have to be very cognizant of
16 that.

17 Some of the concerns that I have, not just
18 with this legislation, but I have been very, very
19 protective over the years, especially in this
20 position as Chairman of the Judiciary, to make sure
21 that those less fortunate than us, that are
22 law-abiding citizens, to be poor is not a sin, but do
23 we create an additional burden on them and the
24 innocence of those people who are low-income
25 residents in our Commonwealth? And they have budget

1 considerations, and they buy these type phones for
2 their use; domestic violence victims who absolutely
3 want to maintain anonymity so that their lives are
4 not threatened by the use of the cell phones; and/or
5 parents and grandparents that purchase these for
6 their children and grandchildren for the degree of
7 protection that it provides to them.

8 And we are in an informational society, and
9 I can accept that and I understand that, and it is
10 probably going to get crazier as the years go by.
11 But all the gathering of the personal information
12 about each and every one of us and the use and/or
13 abuse of that information gets a little scary at
14 times, because government, do we know best? I do not
15 think so. Do we know a lot about our people? Oh,
16 yeah. Are there chances that information can be
17 abused at times? I know from our history that we
18 know that that is the case; it has been.

19 I just want a guarantee that we have the
20 right protections, you know, in entering these areas
21 that that kind of information is not abused or
22 accessed in a way that it could hurt those that we
23 are trying to protect, and I think you would share
24 that same concern, I believe.

25 CAPTAIN ORLANDI: And you are absolutely

1 right, and I am sworn to uphold the Constitution.
2 Part of being a police officer is to swear to the
3 Constitution and to uphold it, and I take that very
4 seriously.

5 And nobody is saying that wireless cell
6 phones are bad; they are an excellent thing, and you
7 made some excellent points -- victims of domestic
8 violence; you want to keep track of your children
9 without having them run up a phone bill. It is not a
10 bad thing at all; it is an excellent thing.

11 This is just merely saying, let us document
12 it. Let us know who has these telephones as far as
13 -- and it has nothing to do with what they are
14 saying, who they are calling. All of that is private
15 information, and their rights cannot be violated and
16 they won't be violated, and that is not what this is
17 about. It is merely saying who purchased that
18 telephone, no different than many of the other things
19 that we provide retailers when we purchase things.

20 I mean, I'm sure you have been there where
21 you have gone to a hardware store buying nails and
22 they are asking you for your home phone number and
23 your zip code. All we are asking for is, if you are
24 paying cash for this, that we have some way of
25 tracking this, and there is a reason behind it,

1 because of terrorism, because of the drug trafficking
2 organizations.

3 And again, there is nothing wrong with these
4 phones; they are excellent. I mean, they are a good
5 thing. It is just that this legislation will support
6 law enforcement in our efforts to take down criminal
7 organizations.

8 CHAIRMAN CALTAGIRONE: Thank you, Captain.
9 Thank you for your testimony.

10 Any other questions? No?

11 Thank you, sir.

12 CAPTAIN ORLANDI: Thank you.

13 CHAIRMAN CALTAGIRONE: We will next hear
14 from K. Dane Snowden, Vice President of External and
15 State Affairs, CTIA -- The Wireless Association.

16 MR. SNOWDEN: Good afternoon, Mr. Chairman.

17 I understand I am between you and lunch, so
18 I will quickly go through---

19 CHAIRMAN CALTAGIRONE: Take your time.

20 MR. SNOWDEN: I will quickly go through my
21 oral testimony, and then I'll leave some time for
22 questions.

23 Thank you very much for having this hearing
24 and for allowing all the panelists, including the
25 wireless industry, to come and be before you to talk

1 about this important issue.

2 I represent the wireless industry down in
3 Washington, DC, representing many companies that you
4 are familiar with -- AT&T, Alltel, Sprint, Nextel,
5 Verizon, and T-Mobile -- and I'm here today to talk
6 to you about no-contract wireless service plans that
7 we have and prepaid plans as well.

8 Just a quick bit of background. I
9 appreciate what this committee is trying to do.
10 This is a noble effort, and I think the sponsors, I
11 understand where you are going with this.

12 I spent 4 years working for the Federal
13 Communications Commission on homeland security
14 issues, so I have a bit of understanding and
15 appreciation for some of the efforts and some of the
16 issues and challenges that you are working on here
17 today.

18 We have in our industry, as has been talked
19 about a lot, many types of offerings for consumers.
20 We have the postpaid, which many of you are familiar
21 with, and we have prepaid, and these prepaid devices
22 are sold through what we call MVNOs, mobile virtual
23 network operators, or resellers, and this is done
24 throughout the country. You may know some of those
25 MVNOs, or resellers, as TracFone, Virgin Mobile, or

1 Cricket.

2 We also have something called -- excuse me.
3 And those resellers, they are everything and everyone
4 from a Walmart to a Target to a small independent
5 mom-and-pop shop on the corner of a local
6 neighborhood.

7 Estimates show that approximately 8 percent
8 of prepaid wireless phones are incurred through
9 third-party retailers. So this is, obviously, a very
10 important market for consumers and for the industry
11 and for retailers writ large.

12 We also have month-to-month plans as well,
13 and a lot of this is a derivative of what we see from
14 consumers.

15 It is interesting that in this Legislature
16 last year, there was a bill that had concerns about
17 the wireless industry having contracts for their
18 consumers, and so we are responding in large part to
19 what consumers want, which are no-contract plans. So
20 with those no-contract plans, you have options like
21 prepaid that we have before you today.

22 When you look at these plans, consumers in
23 the prepaid space, consumers purchase minutes by
24 either buying a card at a retail store, buying
25 minutes on line, or refilling minutes using the

1 actual wireless device.

2 So one might ask, why do consumers choose
3 no-contract plans? Quite often -- and this is the
4 largest majority -- quite often, purchasers of
5 prepaid services are low-income consumers. Those
6 consumers either have no credit histories or very
7 poor credit histories, and so this is their vehicle
8 to have communication services. And that is not
9 merely just to talk and gab on the phone; it is also
10 to make sure they can call a future employer or a
11 future employer can call them back. This is a
12 lifeline to many consumers, and this mechanism of
13 having prepaid devices has offered that to consumers.

14 And simply put, this is all that they can
15 afford, and I think we do not want to lose sight of
16 what consumers are facing today.

17 I want to emphasis, though, that based on
18 consumer demand, the intent of the wireless prepaid
19 services is to provide services to those who do not
20 want to enter into a fixed-term contract, have no
21 credit or poor credit history, or simply wish to have
22 a product that may simplify the management of their
23 wireless use. It is not intended to provide
24 consumers with anonymity.

25 I think about my own situation with my

1 grandmother. She has a wireless device, but she
2 always forgets to put it in her car when she drives,
3 so we made sure she had a prepaid device that is in
4 her glove compartment at all times. That is a great
5 benefit to someone who is a senior who wants to use
6 it on a very casual basis.

7 And I want to be careful that we don't set
8 up a structure or a mechanism that those consumers
9 are treated differently or more or less like someone
10 like criminals because they have to go behind a
11 different counter or a different mechanism to buy
12 these devices.

13 So how does the activation process work? We
14 heard a lot today earlier in terms of what happens in
15 this entire process. Consumers usually have two
16 options. The consumer can either call the wireless
17 provider or go on line to activate the account. When
18 a consumer purchases a prepaid device at a
19 company-owned store, they may activate the phone at
20 the register and the provider will assign a phone
21 number at that time. However, many consumers
22 purchasing a prepaid or wireless device at
23 company-owned stores still activate via the Internet
24 or over the phone.

25 Accordingly, there is no one-size-fits-all

1 when it comes to prepaid devices. For that reason,
2 the wireless industry has serious concerns with the
3 proposed legislation on the sale of prepaid mobile
4 telephones.

5 First, I do want to reaffirm our commitment
6 to law enforcement. The wireless industry has a
7 long, and I think most telecommunications services
8 have a long history of working with law enforcement,
9 and we will continue to do that. And that is
10 everything from assisting in, as you heard earlier
11 from the law enforcement community, wiretaps and
12 assisting in call records, in addition to ensuring
13 our devices are used in the 290,000 9-1-1 calls that
14 are made every single day through wireless devices,
15 prepaid and postpaid, to stop a crime, to report an
16 accident, or to participate in a wireless AMBER Alert
17 Program.

18 Our concern is that the legislation may not
19 enhance our effectiveness in providing law
20 enforcement agencies with the tools that will bear
21 the most fruit in apprehending the criminals.

22 Specifically, it should be noted that the
23 real focus of law enforcement is not on who owns the
24 phone but rather who is using the phone. We have
25 already set up exigent circumstances that are handled

1 immediately, and all other requests are handled as
2 expeditiously as possible, and the same is the case
3 with postpaid phones as well.

4 Wireless providers work each day with State
5 and local and Federal government and law enforcement
6 agencies to respond to subpoena requests for call
7 records to carry out court-ordered wiretaps and to
8 respond to emergency requests.

9 Wireless providers also comply with all
10 Federal laws in this area and have dedicated
11 centralized teams in place to ensure that the
12 requests and orders are expedited as quickly as
13 possible.

14 Although well intentioned, the industry
15 believes that the proposed legislation might have
16 unintended consequences of hampering law-abiding
17 citizens from purchasing prepaid and no-contract
18 plans.

19 If administrative and compliance costs were
20 to increase, our concern is that small retailers may
21 stop selling prepaid or no-contract plans in the
22 communities where the consumers need it the most,
23 while providers may be forced to either increase the
24 costs of these plans or stop offering them
25 altogether.

1 Consumers using prepaid or no-contract plans
2 for lawful activities may be discouraged from
3 purchasing these plans, because either they do not
4 want to provide personal identification information
5 to retail sales clerks for privacy reasons, which are
6 legitimate, or because they might be led to believe
7 that the proposed legislation has some type of
8 Big Brother aspect to that. And if you just take any
9 solace in what has been going on in Washington, DC,
10 over the FISA issue right now, no matter where you
11 stand on that, this is an issue, privacy is a huge
12 issue with Americans, and we have to be very cautious
13 of what our consumers want as we go forward.

14 By requiring no-contract wireless consumers
15 to provide personal information to retail store
16 clerks and the retail establishment maintain such
17 information, the wireless industry believes that the
18 proposed legislation would provide another avenue for
19 identity thieves to access consumer information. And
20 this is a major concern, not just for the
21 Commonwealth here but for all Americans across the
22 country.

23 If the proposal is enacted, criminals who
24 use prepaid devices will either turn to other
25 communications methods, as we have seen over time

1 through history, or will find a way around the
2 proposed identification requirements, whether it is
3 through producing bogus or stolen identification
4 documents; stealing prepaid devices outright, either
5 from retail stores or from consumers themselves or
6 intimidating retail sales clerks; or as it has been
7 pointed out, merely driving to a border city like
8 Trenton, Youngstown, and New York City.

9 Additionally, to get around certain aspects
10 of the proposed law, Pennsylvania criminals may use
11 caller ID spoofing to hide the identity of the real
12 user, or they may just swap out the SIM card to take
13 care of their issue as well.

14 In turn, the proposal might only harm those
15 who can least afford it -- law-abiding, low-income
16 users, limited cell phone users, and senior citizens
17 who rely on prepaid or no-contract plans for
18 accessible, affordable wireless services.

19 One possible approach to this issue and
20 lessons learned, I might add, can be found in what
21 the Georgia State Legislature did, by passing a
22 resolution to study this issue further.

23 It was interesting. In their study they
24 found that, and I quote, "Placing extra burdens on
25 resellers of prepaid phones only within the State of

1 Georgia would do little to prevent their use in
2 organized crime but would have adverse effects on
3 retailers," end quote.

4 Again, the wireless industry stands ready to
5 work with the sponsors, stands ready to work with
6 this committee, and we look forward to any
7 opportunity we have to help explain our process and
8 how this bill could affect the consumers that use our
9 services.

10 I thank you.

11 CHAIRMAN CALTAGIRONE: Thank you.

12 Jay.

13 REPRESENTATIVE MOYER: Thank you, Mr.
14 Chairman.

15 Thank you, Mr. Snowden, for being with us
16 this afternoon. A few questions.

17 You mentioned you were involved with
18 homeland security, correct?

19 MR. SNOWDEN: For the Federal Communications
20 Commission; correct.

21 REPRESENTATIVE MOYER: Okay.

22 Now, it is my understanding, although I have
23 not corroborated this, but it is my understanding
24 that those terrorists that flew those airplanes into
25 the buildings on 9/11 -- the World Trade Center, the

1 Pentagon, and also here in Pennsylvania in Somerset
2 County -- used these phones. Is that correct?

3 MR. SNOWDEN: I believe they used wireless
4 phones, but I'm not sure if they were prepaid or
5 postpaid.

6 REPRESENTATIVE MOYER: Okay. I could be
7 wrong, but I was told that they used these phones
8 because they knew of their anonymity.

9 The other question I have is, in terms of
10 the dollar amount of this industry, what market share
11 does -- and I understand and I heard the argument
12 about the credit challenge, and obviously we do not
13 want to hurt our citizens who are using these phones
14 honestly. That is not Representative Pashinski and
15 my intent. Our intent is to go after the bad guys.

16 MR. SNOWDEN: Absolutely.

17 REPRESENTATIVE MOYER: What market share
18 does this represent in the wireless industry?

19 MR. SNOWDEN: It is approximately 10 to
20 15 percent of the overall wireless market. We have
21 about 255, 260 million consumers right now, so it is
22 about 15 percent.

23 Let me actually go back to your question
24 about the terrorist issue of September 11. Those
25 terrorists also used their real names when they

1 boarded those flights, and so they would have used
2 their real names when they actually, if this law were
3 in effect, to buy their cell phone use as well, no
4 matter if it was prepaid or postpaid. So I'm not
5 sure if that would have changed anything, sir.

6 REPRESENTATIVE MOYER: Yeah. But my
7 understanding in talking to people in this industry,
8 getting back to my question, it is about \$4 billion.
9 Is that correct?

10 MR. SNOWDEN: Give or take, yes.

11 REPRESENTATIVE MOYER: That's a lot of
12 money, right?

13 MR. SNOWDEN: It is. It shows you the
14 demand, and it is out there for consumers, the
15 law-abiding consumers that are using these services.

16 REPRESENTATIVE MOYER: I guess one of the
17 concerns that I have as a legislator, and my job is
18 to look out not just for my constituents. I tell
19 people that I represent over 60,000 people in my
20 district, but when I push that green or red button on
21 the House floor along with my colleagues here, I am
22 looking out for about 12.3 million people in the
23 State of Pennsylvania.

24 So I want to do the right thing, and the
25 concern that I have been hearing, the concern that I

1 have ever since the Representative and I have been
2 working on this, is that it seems like there is more
3 concern about the bottom line -- and I'm not picking
4 on anybody here, but I'm going to lay it out -- that
5 there is more concern about the bottom line at retail
6 than there is the safety of our people.

7 I mean, there is a scourge called drugs in
8 this country. It is killing us. It is killing our
9 kids, particularly in the inner cities, and we have
10 got to get a handle on it. And I just in my heart of
11 hearts kind of feel that there is more concern about
12 how is it going to impact our bottom line than how is
13 it going to protect the children, and I particularly
14 care about the children in our State that drug
15 dealers prey on, and they use these phones.

16 The other question I have is, and I do not
17 understand this and maybe you can tell me because you
18 represent the industry, why are these phones
19 manufactured to be anonymous?

20 I mean, we have the technology, so why --
21 and I am not an expert in this at all; I'm just a
22 legislator -- but why are these phones made to be not
23 traceable? We don't they have -- we have the
24 technology out there to make sure that they have the
25 chips in there that would be traceable. Can you

1 answer me, why is that?

2 MR. SNOWDEN: I guess I would respectfully
3 disagree that these phones are not designed to be as
4 you described. These phones are designed for what
5 consumers want. Consumers asked to not have phones
6 that do not require contracts. That is exactly what
7 we have--- Let me finish, sir. That is exactly what
8 we have provided for them.

9 REPRESENTATIVE MOYER: Yeah, but do you
10 understand what I'm saying? I mean, I'm saying in
11 the manufacture of that phone, that chip, or whatever
12 you call it---

13 MR. SNOWDEN: SIM card.

14 REPRESENTATIVE MOYER: ---makes that phone
15 not traceable, and that is the genesis of what we are
16 doing here. That is why this has been such a huge
17 problem, not just in Pennsylvania but nationwide or
18 worldwide, that the bad guys know that they can't use
19 the pay phones anymore because they could be traced
20 back, and the bad guys know the good guys can trace
21 their normal phones. The bad guys know they can use
22 these phones because they are not traceable.

23 So I guess my question again is, why isn't
24 -- this whole conversation would not be necessary, I
25 guess, if your industry were to make these phones

1 traceable. Can you tell me why? Because people want
2 anonymity? Is that it?

3 MR. SNOWDEN: Well, I guess I challenge the
4 premise of the question. We are not designing phones
5 to make them untraceable.

6 Law enforcement easily, as you have heard
7 both the Captain and the Detective earlier say, all
8 they have to do is contact us and they get the
9 information that they need when they have the
10 telephone number. So they are in fact traceable
11 without a problem.

12 REPRESENTATIVE MOYER: Yeah, and I don't
13 want to belabor the point; I'm going to pass the mike
14 on to my colleague, but that is the whole problem.
15 They do call the industry, law enforcement does, and
16 then the numbers come back not traceable, and that is
17 the problem. But thank you. I will pass the mike
18 on.

19 MR. SNOWDEN: May I address the question,
20 sir?

21 When you say "not traceable," do you mean
22 that it does not have an exact name and address for
23 someone?

24 REPRESENTATIVE MOYER: Correct.

25 MR. SNOWDEN: But it does have information

1 that law enforcement can use, and they have been
2 using it, as was cited by the Captain that just
3 spoke, and 80 percent of the situations that they
4 have done wiretapping, those are done through prepaid
5 phones. So somehow they are tracing something.

6 And I would also add that, you know, we do
7 have a serious issue with drugs in our country, we do
8 have a major issue with protecting against threats
9 against our homeland, and when you look at this,
10 certainly wireless devices have been used in some of
11 those nefarious situations, as have computers, as
12 have banks, as have credit cards, but we are not
13 going to outlaw them.

14 If you look at what the typical criminal is
15 going to do, if they are smart enough -- and I agree,
16 some of them are lazy, but they are at least smart
17 enough to know that they should use a wireless
18 prepaid device -- if they are seeking what you are
19 claiming they are, I think they are going to also say
20 that they are not going to go in there and register
21 their name or not going to give their exact name as
22 well.

23 REPRESENTATIVE MOYER: Of course not.

24 Thank you, sir.

25 MR. SNOWDEN: Thank you.

1 CHAIRMAN CALTAGIRONE: Go ahead, Ed.

2 REPRESENTATIVE PASHINSKI: Thank you,
3 Mr. Chairman.

4 Thank you, Mr. Snowden. I enjoyed the
5 conversation earlier today.

6 MR. SNOWDEN: I'm not sure if I should say
7 Representative Day or not, from your stage name.

8 REPRESENTATIVE PASHINSKI: It is your
9 choice, sir.

10 In our quest to try to, you know, help law
11 enforcement, let me just try to understand the part
12 that you mentioned about the low-income folks.

13 How would this work? Now, if I'm a
14 low-income folk and I do not want a contract, that is
15 fine, or my grandfather, they do not want to have a
16 contract, or I want to get these for my children,
17 whatever, what does it have to do with the income
18 part, the low-income part?

19 MR. SNOWDEN: The users, the predominant
20 users of prepaid devices tend to be low-income
21 consumers because--- Let me go back for a second.

22 REPRESENTATIVE PASHINSKI: But how would
23 2371 affect that low-income person from purchasing
24 that noncontract phone?

25 MR. SNOWDEN: It does not necessarily affect

1 them from -- they can still purchase it, but what you
2 are doing, you are setting up a situation where if
3 you have good credit and you have good income, you
4 are going to go a different route. You don't have to
5 go through the background checks, more or less, that
6 you are setting up through this situation right here.

7 REPRESENTATIVE PASHINSKI: But this isn't a
8 background check. This is just a sales---

9 MR. SNOWDEN: I meant that not as a term of
10 art but in terms of, what you are doing, I think as
11 you had suggested on an earlier question, is that
12 perhaps we should put these behind the counter like
13 we do a pseudoephedrine.

14 That is setting up a different paradigm for
15 consumers who are already in a situation in our
16 society that they are treated differently than
17 everyone else, and I do not think that is a good way
18 to treat those consumers who are already hitting hard
19 times.

20 In addition, when you look at who uses these
21 services, they are traditionally low-income consumers
22 because they don't have contracts and they don't have
23 good credit.

24 REPRESENTATIVE PASHINSKI: And again, I
25 think that is good, you know, for whatever reason,

1 but I'm trying to see how 2371 plays in this.

2 So if I'm a low-income individual, right now
3 I go to a particular retail store, and how much will
4 it cost me for the phone?

5 MR. SNOWDEN: It would be \$25.

6 REPRESENTATIVE PASHINSKI: \$25. I pay \$25,
7 I get my phone, and I'm done.

8 MR. SNOWDEN: Right.

9 REPRESENTATIVE PASHINSKI: Okay. Now, 2371
10 is enacted. Now I go there. I don't have a credit
11 card; I don't have a checking account; I don't have a
12 debit card, so now I'm going to purchase it with
13 cash.

14 MR. SNOWDEN: Right.

15 REPRESENTATIVE PASHINSKI: Now, under 2371,
16 they would say, could I see your identification,
17 right?

18 MR. SNOWDEN: Correct.

19 REPRESENTATIVE PASHINSKI: Show your
20 identification, fill out the form, take your phone,
21 and you are gone.

22 MR. SNOWDEN: I would offer that they are
23 more susceptible now to identity theft as well.

24 REPRESENTATIVE PASHINSKI: They have
25 nothing.

1 MR. SNOWDEN: Well, they have something
2 since they actually had to show some kind of ID.

3 REPRESENTATIVE PASHINSKI: So what you are
4 saying then is the retailer has to protect that
5 information. Is that correct?

6 MR. SNOWDEN: Well, that information, the
7 chain of custody on the information has to be
8 protected throughout the line.

9 I mean, one of the requirements that the
10 wireless industry or all telephone or telephony
11 providers have is something called Customer
12 Proprietary Network Information, or CPNI, that by
13 Federal law we have to make sure we protect so that
14 people's identities aren't stolen, so that call
15 records are not inadvertently or mistakenly given to
16 someone that does not need that information or should
17 not have that information.

18 So there is Federal law on the books now to
19 make sure we protect that, and by adding another
20 element from the retailer, and this could be a person
21 at a Wawa or a 7-Eleven all the way through to
22 eventually getting to the State Police database,
23 there are some chances for some hanky-panky going on
24 there, for sure.

25 REPRESENTATIVE PASHINSKI: Are they selling

1 cigarettes in a Wawa?

2 MR. SNOWDEN: Are they selling--- Excuse
3 me?

4 REPRESENTATIVE PASHINSKI: Are they selling
5 cigarettes in a Wawa?

6 MR. SNOWDEN: I haven't been in a Wawa in a
7 little while and I don't smoke, but I believe they
8 probably do.

9 REPRESENTATIVE PASHINSKI: So again, there
10 are certain things that we have to do in order to
11 deal with the problem.

12 MR. SNOWDEN: But with cigarettes, sir, I
13 don't believe they make you fill out a form. I think
14 you just have to show that you are over 18?

15 REPRESENTATIVE PASHINSKI: Yeah. Well, you
16 got to prove it, right? You got to show something.

17 MR. SNOWDEN: But no one is retaining your
18 personal identification information, and I think
19 that's a big difference between buying a pack of
20 smokes and actually having to show two forms of ID
21 that is going to now be put into a database, where
22 consumers, for legitimate or not legitimate reasons,
23 are concerned about that.

24 And again, as I said in the beginning of my
25 opening statement, we understand completely what you

1 all are trying to do. We understand what law
2 enforcement is trying to do, and we have set up
3 mechanisms to assist in that effort.

4 We also hear what consumers want as well,
5 and I think the Detective mentioned that he wanted
6 some sense of accountability. We have to have
7 accountability in law enforcement, we have to have
8 accountability to policymakers, and we have to have
9 accountability to consumers as well as we go through
10 this process.

11 REPRESENTATIVE PASHINSKI: I agree with you
12 totally. You know, I think all of us should be
13 responsible and accountable.

14 Maybe then my question to you would be, how
15 would you solve it?

16 MR. SNOWDEN: The one challenge I think we
17 have in terms of trying to solve this is doing
18 anything on a State-by-State approach, for the
19 various reasons that we had described before.

20 I live in Washington, DC, so I border
21 Maryland and Virginia. And much like here, I do not
22 know all the different surrounding cities in
23 Pennsylvania, but I can easily go to Trenton, I know,
24 and I can easily go to Youngstown and I can easily go
25 to New York City.

1 I think, as Representative Moyer said,
2 something is better than nothing, and I hear you loud
3 and clear on that, sir. However, the something is
4 actually putting a bigger burden on the consumer, not
5 on the criminal, and that is the concern we have.

6 So if anything needs to be done -- it can't
7 be done, in my opinion, on a State-by-State approach,
8 because say you are the first State that tries to do
9 this and you are successful in doing it. The
10 assumption is that all other States are going to do
11 it exactly the way you are doing it, and if that is
12 the case, then we have a system that we can admit
13 across the board. But if not, which I highly doubt,
14 based on my work in State governments, States like to
15 put their own thumbprint on pieces of legislation.

16 So now we have Pennsylvania and the
17 Commonwealth doing it one way, New Jersey doing
18 another, New York doing another, and Ohio doing
19 another. Now we have a problem, because now we are
20 having to redo all these systems, and it sounds
21 simple, but it is not, to comply with the various
22 laws.

23 So I would encourage, one, I think you might
24 want to just study the issue a little bit more, and
25 two, look at this issue from a broader perspective,

1 that as proposed now, the criminals are not going to
2 sign up and give their right name. The only people
3 who are going to give their name are the law-abiding
4 citizens.

5 REPRESENTATIVE PASHINSKI: I agree with
6 almost everything until that last statement.

7 MR. SNOWDEN: Almost everything? I thought
8 I had you.

9 REPRESENTATIVE PASHINSKI: First of all, if
10 we could get a Federal law, that would be great.
11 That would be really wonderful. However, let us be
12 honest here. If we wanted to get a Federal law like
13 this, it has got to start somewhere, and the States
14 have been taking the lead because the Federal
15 government has not been doing much of that lately.

16 The law-abiding citizen, I don't think, is
17 going to be affected by this at all, because if I
18 want to buy my kids a phone, I'm going to use my
19 credit card. I don't have to deal with any of the
20 other stuff.

21 MR. SNOWDEN: If you have credit.

22 REPRESENTATIVE PASHINSKI: If I have credit.

23 MR. SNOWDEN: Not all consumers have
24 credit.

25 REPRESENTATIVE PASHINSKI: That is correct.

1 I personally think that there could be
2 safeguards here, and my challenge to you and the rest
3 of the people in the industry is, I think we pretty
4 much identified that the nefarious folks out there
5 are using this product.

6 Now, how can we work together in order to
7 help law enforcement eliminate this activity?

8 How can we do this in an efficient manner
9 that is not going to cause excess burden to the
10 retailers or to the telephone companies?

11 What can we do to try to lower the costs of
12 law enforcement when they have to deal with this,
13 especially when the statistics are alarming?

14 And my statistics are 90 to 95 percent of
15 all of these crimes are taking place with this phone
16 because of the fact that they need to communicate
17 between the distributor, the buyer, the seller,
18 et cetera.

19 We have a major problem here, and I
20 personally want to, first of all, say thank you very
21 much to the Chairman and to this committee for
22 allowing this to be vetted and aired.

23 I want to thank all of you that are here
24 today who have honestly and forthrightly brought
25 forth your positions. But I don't want us to leave

1 here today thinking we can't do anything about it,
2 because if we leave here under those circumstances,
3 we have not done our job. I have not done my job as
4 a legislator to try to help the folks in Pennsylvania
5 or law enforcement; I have not done my job at all,
6 and it is incumbent upon us to do this.

7 What Representative Moyer said about the
8 bottom line is something that we have talked about
9 and we are talking more about. The bottom line, of
10 course, is important, but sometimes we have to invest
11 a little bit, lose a little bit of that bottom line
12 to correct the problem. In the long run, it will
13 save all of us a heck of a lot.

14 So that is my few seconds on the soapbox. I
15 want to thank everybody for being here today, and I
16 refer back to the Chairman.

17 CHAIRMAN CALTAGIRONE: Thank you, Eddie.

18 I do want, for the record, to also submit
19 testimony from Andy Hoover, the Community
20 Organizer/Legislative Assistant for the American
21 Civil Liberties Union of Pennsylvania, and also
22 Nicole A. Lindemyer, Esq., Policy and Special
23 Projects Manager for the Pennsylvania Coalition
24 Against Domestic Violence. So I would like to have
25 that submitted officially for the record.

1 Dear sir, thank you for your testimony.

2 MR. SNOWDEN: Thank you.

3 CHAIRMAN CALTAGIRONE: We appreciate it.

4 I want to thank everybody that participated
5 here today. I thought it was a very, very good
6 hearing. We gathered a lot of good information.

7 And as you had said, I think if we can try
8 to come to some understanding or agreement, you know,
9 I would be more than willing to listen to both sides
10 to see if we can work something out to help law
11 enforcement, because I think the ultimate goal is, we
12 are trying to control these drug dealers and drive
13 them out of our cities and our State. And, you know,
14 I understand where you all are coming from, and
15 hopefully we can come up with a solution to this
16 problem.

17 Jay.

18 REPRESENTATIVE MOYER: Yes.

19 Well, I, too, Mr. Chairman, want to thank
20 you for allowing Representative Pashinski and I to
21 have this hearing this morning. It is something that
22 has been near and dear to our hearts. We have been
23 working on this since February, after we were
24 elected.

25 We are very proud of the fact that we are

1 two freshmen, one Republican and one Democrat,
2 working on a piece of legislation that we think is
3 good for all Pennsylvanians.

4 I am reminded of something I read when I was
5 in Syracuse, New York, at Syracuse University. I
6 think it was John Milton who wrote, what we want to
7 do is do the greatest good for the greatest number of
8 people, and that has been the guiding principle that
9 I try to do every time I vote for legislation,
10 responsible legislation. And I think, Mr. Chairman,
11 if we could consider this legislation, that it would
12 be doing the greatest good for the greatest number of
13 people.

14 We obviously do not want to hurt those
15 law-abiding citizens that we have, those who have
16 credit challenges. We just want to make sure that
17 those bad guys do not sell drugs to our kids in our
18 cities, in our boroughs, our towns, our communities,
19 and to give terrorists another tool.

20 So thank you, Mr. Chairman.

21 CHAIRMAN CALTAGIRONE: Certainly.

22 This meeting is now adjourned. Thank you
23 all.

24

25 (The hearing concluded at 12:37 p.m.)

1 respect the boundaries of civil rights and
2 constitutional protections. We know from our
3 country's history that this can be done while
4 simultaneously pursuing and prosecuting those who
5 break the law.

6 Unfortunately, under HBs 1371 and 2371,
7 those who purchase prepaid cell phones are presumed
8 guilty, and their personal information will be held
9 in yet another government database, in this case at
10 the Pennsylvania State Police. The purchase of a
11 prepaid cell phone becomes an indication that a
12 person may commit a crime at an undetermined, future
13 time.

14 In fact, most people who use prepaid cell
15 phones are law-abiding citizens who purchase these
16 types of phones for various innocent reasons. For
17 low-income residents, budget considerations lead them
18 to purchase these phones. Domestic violence victims
19 use prepaid wireless service for the anonymity it
20 provides. Parents purchase prepaid cell phones for
21 teenagers in order to limit their children's phone
22 usage. Persons with poor credit can buy these phones
23 without a credit check.

24 There is no right to buy a phone, but
25 Americans hold dear their right to privacy. The

1 right to privacy is "the most comprehensive of rights
2 and the right most valued...." *Olmstead v. U.S.*, 277
3 U.S. 438, 478 (1928) (Brandeis, J., dissenting).
4 While the right to privacy in one's address is not as
5 strong as the right to privacy in one's medical
6 information, financial information or sexual
7 orientation, for example, (*Fraternal Order of Police*
8 *v. City of Philadelphia*, 812 F.2d 105, (3d. Cir.
9 1987)), the courts have clearly recognized the right
10 to privacy in one's address (*Paul P. v. Verniero*, 170
11 F.3d 396, 404 (3d. Cir. 1999)). In order for the
12 government to do away with privacy rights for a
13 certain class of people -- here disposable cell phone
14 purchasers -- it must have a justification that
15 outweighs the privacy interest.

16 Cell phone purchasers who are, for example,
17 victims of domestic violence, LGBT teens or people
18 living together out of wedlock, have an increased
19 interest in keeping their addresses private. To
20 withstand constitutional scrutiny, the government
21 must articulate the purpose of this legislation and
22 how it will protect people, and it must outweigh the
23 privacy interests. See, e.g., *Sterling v. Borough of*
24 *Minersville*, 232 F.3d 190, 195 (3d. Cir. 2000).

25 The legislation's limit on the use of the

1 registration information to law enforcement fails to
2 eliminate the fact that sellers maintain the
3 information and could misuse it. The legislation
4 sets forth no consequences for the seller improperly
5 revealing the information. In fact, it explicitly
6 protects them from this.

7 Security and wireless experts are skeptical
8 about this type of legislation. Bruce Schneier,
9 founder of Counterpane Internet Security and a former
10 cryptographer for the U.S. military, told *The*
11 *Arkansas Democrat Gazette* in 2006, "It's like these
12 people have never heard of pay phones. If al-Qaida
13 has this great plan to use a cell phone to call
14 something in and somehow the cell phones are banned,
15 the terrorists are not going to go home and get real
16 jobs. They'll go to a pay phone. They can do
17 something else. It's nutty."

18 Roger Entner, vice president of the
19 communications sector for Nielsen IAG, wrote on his
20 blog last year, "The sponsors of these bills have
21 claimed that the arrests of people associated with
22 purchasing dozens of phones in connection with
23 terrorism would justify these bills. The problem is
24 that none of the people that purchased these phones
25 have anything to do with terrorism as law enforcement

1 had to admit after the first sensationalized reports.
2 This type of fall out from misinformation and
3 hysteria is, to word it politely, very unfortunate."

4 Persons who break the law use numerous tools
5 for committing crime. Knives, box cutters,
6 computers, rope, and duct tape are all used in
7 carrying out criminal activity. One can only
8 conclude that the path we would head down with
9 proposals like HBs 1371 and 2371 only ends when even
10 purchasing duct tape requires our personal
11 information to be sent to the state police.

12 To conclude this testimony, I'd like to
13 share a personal story. Last summer the ACLU and
14 more than a dozen other organizations organized a
15 Day of Action to Restore Law and Justice in
16 Washington, D.C. The day included a rally outside
17 the capitol and lobby visits with our Congressional
18 delegation, and the ACLU of Pennsylvania organized
19 three buses of supporters to attend. In order to
20 have instant and affordable communication, three
21 staffers from ACLU-PA, including myself, purchased
22 prepaid cell phones. If HB 1371 or 2371 had been law
23 at the time, the personal information of my two
24 colleagues and me would now be sitting in a database
25 at the Pennsylvania State Police, and the reason it

1 would be there is because prepaid cell phones were a
2 convenient tool as we exercised our First Amendment
3 rights to free speech and to petition the
4 government.

5 Thank you again for the opportunity to
6 submit this testimony. Please oppose House Bills
7 1371 and 2371.

8 * * *

9 NICOLE A. LINDEMYER, ESQ., Policy and
10 Special Projects Manager, Pennsylvania Coalition
11 Against Domestic Violence, submitted the following
12 written testimony:

13 Dear Chairman Caltagirone:

14 On behalf of the Pennsylvania Coalition
15 Against Domestic Violence (PCADV), our 61 domestic
16 violence programs throughout the Commonwealth, and
17 the thousands of domestic violence victims we serve
18 each year, we thank you for the opportunity to submit
19 written testimony for the House Judiciary Committee's
20 hearing on House Bills 1371 and 2371. These bills
21 would require purchasers of prepaid cell phones to
22 show government-issued photo identification and other
23 forms of ID to sellers of the phones, and would
24 require sellers to maintain a registry of this
25 personally identifying information, and to remit it

1 to the State Police on a quarterly basis.

2 While we applaud the bills' intent to assist
3 law enforcement officers in the prosecution of
4 perpetrators who may use prepaid cell phones in the
5 course of their criminal acts, we have great concern
6 about the unintended consequences of these bills on
7 crime victims, specifically victims of domestic
8 violence. **For domestic violence victims, we believe**
9 **the value of maintaining the degree of anonymity**
10 **offered by prepaid cell phones, as used to prevent**
11 **abusers from tracking and further harming victims,**
12 **outweighs the potential benefits of this**
13 **legislation.**

14 Our concerns are primarily three: 1) for
15 many domestic violence victims, prepaid cell phones
16 are one of the safest ways to use a phone after
17 fleeing abusers; 2) collecting identifying
18 information and storing it in a database poses a
19 danger to victims because of the risk of disclosure
20 to those trying to track and harm them; 3) requiring
21 government-issued and other identification will
22 inevitably exclude many victims who were forced to
23 flee abuse without an opportunity to take such
24 important documents -- or even a purse -- with them
25 before they fled.

1 **Prepaid Cell Phones Offer Safety to Victims Whose**
2 **Abusers Try to Hunt Them Down**

3 While prepaid cell phones may present
4 difficulties to law enforcement, they are also an
5 important asset to domestic violence victims fleeing
6 abusers who go to great lengths to track them down
7 and harm them. Indeed, the issue of pretexting, data
8 mining, and other misuses of technology and
9 electronic records is a major concern to advocates
10 for domestic violence victims.

11 Prepaid cell phones are the focus of this
12 hearing. However, this issue is part of a larger
13 problem that victims of abuse face -- the prevalence
14 of information regarding their activities and
15 location and the ease with which that information can
16 be purchased by their perpetrators. Victims are
17 increasingly being tracked and killed through the
18 abuse of data and technology, pretexting, and
19 information brokers. Prepaid cell phones offer a
20 safer alternative for victims most at risk. This
21 legislation would eliminate that option, and for that
22 reason we must oppose it.

23 There is a staggering amount of data
24 generated and maintained about individuals in our
25 society every day -- far beyond cell phone records.

1 Personally identifying information like dates of
2 birth, Social Security numbers, frequently visited
3 websites, and even grocery shopping preferences, are
4 now being tracked as never before. We now know that
5 every database, without exception, is breachable.
6 Data breaches resulting in disclosure of sensitive
7 personal information are only increasing as more and
8 more systems and sectors maintain electronic
9 databases of such revealing information. In its
10 running toll of reported security breaches revealing
11 sensitive personal information, the Privacy Rights
12 Clearinghouse reports a total of 230,575,326 breaches
13 since January 2005.

14 Likewise, information broking is a growing
15 industry. A quick search of the Internet reveals
16 hundreds of businesses that, for a relatively nominal
17 cost, will provide information including the address
18 of record associated with a post office box; AOL
19 screen names and e-mail addresses; unlisted phone
20 numbers; Social Security numbers; and even photos and
21 floor plans of people's homes.

22 Pretexters (those who claim to be someone
23 else for the purpose of accessing private
24 information) and information brokers are not just
25 stealing someone's data, they may be endangering

1 someone's life. Fifty-nine percent of female
2 stalking victims are stalked by current or former
3 intimate partners, and 76% of women killed by their
4 abusers had been stalked prior to their murder.
5 Stalkers are often in a prime position to obtain cell
6 phone and other personal records through pretexting
7 or through information brokers who have used this
8 tactic and then sold the stolen data. Since abusers
9 often know private information about their victims
10 (such as date of birth, mother's maiden name, or
11 commonly chosen computer passwords), they can easily
12 pose as their victims and illegally access their
13 credit, utility, bank, phone, and other accounts as a
14 means of getting information after their victims have
15 fled.

16 Phone records are a particularly rich source
17 of information for the determined stalker. Through
18 pretexting, a stalker can access records that include
19 whom was called, when the call was made, how long the
20 call lasted, and the location of the calls. By
21 illegally obtaining this information, a stalker can
22 locate his victim without the victim even knowing
23 that she is being tracked until it is too late.

24 The theft of private information can be
25 devastating for the average individual who may have

1 her identity stolen and her credit destroyed. For a
2 victim of domestic violence or stalking, however,
3 that theft of private information is not just
4 financially or personally devastating -- it can be
5 fatal.

- 6 • In January 2003, Peggy Klinke was brutally
7 killed by a former boyfriend, Patrick
8 Kennedy, after he hunted her down with the
9 help of a private investigator. Peggy had
10 worked closely with the Albuquerque police
11 department, obtained a restraining order,
12 and after Patrick burned down her home in
13 New Mexico, she fled to California to try
14 to remain safe until the pending criminal
15 court hearing. Patrick hired a private
16 investigator, located her, flew to
17 San Jose, rented a car, drove to her
18 neighborhood, posed as a private
19 investigator to find her exact apartment
20 location, and chased her around the
21 apartment complex before shooting her and
22 eventually shooting himself.
- 23 • In 1999 Amy Boyer, a young woman in
24 New Hampshire, was tracked down and
25 murdered by a former classmate who had been

1 stalking her for years. The perpetrator,
2 Liam Youens, paid Docusearch, an
3 information broker that collects personal
4 information via an array of electronic
5 databases, to obtain Amy's work address.
6 Docusearch contracted with a pretexter to
7 illegally obtain her work address by
8 pretending to need it for insurance
9 purposes.

- 10 • In another case, a woman in rural Virginia
11 was stalked by her ex-husband. She
12 couldn't figure out how he kept showing up
13 wherever she was. She had changed her
14 email address, moved, and found a new job.
15 Eventually, a savvy advocate asked her
16 about other "records" such as where she got
17 her car fixed, rented videos, etc. Several
18 businesses she used, including the video
19 store and the local auto repair shop, used
20 her 7-digit cell phone number as her
21 customer identifier. Her ex-husband asked
22 someone he knew to look up her name in one
23 system, which made tracking her movements
24 simple. He discovered that she had rented
25 a video on Monday and that it was due back

1 on Wednesday. He was lying in wait when
2 she came to return the video.

3 • In yet another, a woman in Hawaii was
4 getting ready to flee to a shelter and was
5 nervous about her abuser recognizing her
6 car in front of the shelter building. She
7 parked her own car elsewhere and rented a
8 car to use. Since there are only a few
9 rental places on the island, it was not
10 long before the abuser found the car rental
11 office she used, told the staff his "wife
12 was diabetic and forgot her insulin" but
13 thought she might have rented a car while
14 hers was getting fixed. She had used her
15 sister's identity and paid cash, but had
16 given her own phone number because her
17 sister did not have a phone and the rental
18 agency had insisted on entering a number
19 into the system. After a reverse lookup
20 using the phone number, staff provided him
21 with the make, model, and license plate
22 number of the rented car. The victim was
23 found by the abuser later that day and
24 badly beaten in a parking lot behind the
25 store.

1 Domestic violence, sexual assault, and
2 stalking are the most personal of crimes, and the
3 more personal information the perpetrator has about
4 his victim, the more dangerous and damaging the
5 perpetrator can be. Sadly, domestic violence is
6 quite prevalent, and women continue to be the vast
7 majority of victims. The National Institute of
8 Justice reported that 4.9 million intimate partner
9 rapes and physical assaults are perpetrated against
10 U.S. women annually. Here in Pennsylvania, according
11 to a national survey, on a single day, domestic
12 violence programs served 2,535 victims, including
13 emergency shelter, legal advocacy, individual
14 counseling, and children's services.

15 Leaving the relationship does not stop the
16 violence. In fact, the most dangerous time for a
17 victim of domestic violence is when she takes steps
18 to leave the relationship. Many victims are stalked
19 relentlessly for years after having escaped from
20 their partners. These batterers who stalk their
21 former partners, determined to hunt them down, are
22 the most dangerous and pose the highest lethality
23 risk.

24 In recent years, there have been concerted
25 efforts at both state and federal levels to create

1 privacy and confidentiality protections that help
2 shield victims of domestic violence from being found
3 by their perpetrators and from having to reveal
4 private information about their victimizations.

- 5 • At least 17 states, including
6 Pennsylvania, now offer Address
7 Confidentiality Programs, which provide a
8 secure system for receiving mail without
9 revealing a victim's address;
- 10 • Twenty-two states provide that voter
11 registration data, including address and
12 other identifying data, can be kept
13 confidential by victims of domestic
14 violence;
- 15 • The great majority of states (39) provide
16 for confidentiality of domestic violence or
17 sexual assault program records and
18 communication, including the time,
19 location, and manner by which a victim may
20 have consulted a program for help in
21 escaping the abuse;
- 22 • Some states, including Pennsylvania, have
23 provisions that allow an individual to
24 change her name without publishing that
25 name change in the newspaper, as a way

1 of protecting the identity and location
2 of victims of stalking and domestic
3 violence.

4 • The Social Security Administration
5 allows domestic violence victims to change
6 their Social Security numbers to help them
7 seek protection.

8 Despite all of these extraordinary,
9 difficult, and sometimes costly steps that domestic
10 violence victims take to shield their location and
11 identity, and that domestic violence programs take
12 on behalf of victims, there remain instances in which
13 victims' safest option is to avoid leaving any trace,
14 any record through which an abuser can track them.
15 Determined abusers continue to track their victims
16 through phone records and other means, often
17 obtaining their information by pretexting. In these
18 situations, use of prepaid cell phones is a critical
19 means of allowing victims to have telephones without
20 the fear of leaving records that may be used by
21 abusers to track them.

22 Notably, it is not just the victims of
23 domestic violence who are at risk if her personal
24 information and location is revealed, but also the
25 individuals and programs that help them. Shelter

1 programs and their employees and volunteers are also
2 vulnerable to being located through pretexting.
3 Shelters try to protect their location in the same
4 way that individual victims do, by using post office
5 boxes and unlisted phone numbers and addresses for
6 both the shelter and for staff and volunteers.
7 However, many shelters' emergency response teams use
8 cell phones and pagers for on-call staff, which puts
9 those individual staff and volunteers at risk from
10 abusers who are trying to gain access to the shelter
11 to find their partners. Whether the phone records
12 obtained are those of the domestic violence or sexual
13 assault program or are those of an individual who
14 contacted the program, the harm can be devastating.

15 In sum, victims of domestic violence,
16 acquaintance rape, and stalking are particularly
17 vulnerable because perpetrators know so much about
18 their victims that they can often predict where their
19 victims may flee, and to whom they may turn for help.
20 For many victims, prepaid cell phones are one of the
21 safest ways to use a phone after fleeing abusers.
22 The relative anonymity afforded by prepaid cell
23 phones allows victims to have a personal telephone
24 but without a record of their location that can be
25 used by abusers to find them and renew their abuse.

1 This legislation will have a chilling effect on
2 victims: if required to show identification, knowing
3 that information may then be used to track them,
4 victims will be deterred from even using prepaid cell
5 phones, thereby losing a critical safety tool.

6

7 **Government-Issued Identification Requirement**

8 In addition to the safety issues involved,
9 requiring government-issued identification will also
10 prevent domestic violence victims from using prepaid
11 cell phones to keep their abusers from tracking them
12 down. When fleeing abuse -- indeed, many victims
13 come to shelters after an acutely violent assault --
14 it is extremely rare for victims to have the
15 opportunity to pack belongings. Additionally, the
16 process of obtaining the replacement documents
17 necessary to get a government-issued ID is tedious
18 and extremely lengthy. In Pennsylvania, in order to
19 get a driver's license or state-issued ID, one must
20 have a Social Security card, plus a raised-seal
21 official birth certificate or passport, plus
22 mortgage/lease/tax records, plus utility bills. For
23 the same reason that victims may not be able to take
24 their driver's licenses with them, they may also lack
25 the documents necessary to replace that

1 government-issued ID. It takes months, expensive
2 records fees, and a permanent address at which
3 victims can receive mail.

4 The situation of a battered woman who stayed
5 in a shelter in central Pennsylvania exemplifies the
6 difficulties victims face in re-establishing their
7 identities and rebuilding their lives. This woman
8 fled to Pennsylvania from another state -- in fact
9 had moved around several states because everywhere
10 she went, her abuser tracked her down and tried to
11 kill her. Even after relocating, she was still
12 forced to change both her name and her Social
13 Security number to keep him from finding her again.
14 Her ex-husband went to elaborate lengths to find her
15 again and again through constant surveillance,
16 monitoring records and accounts, and stalking and
17 threatening anyone he thought she would have contact
18 with -- their adult children, the victim's elderly
19 mother, other family and friends. The most recent
20 attack came after he tracked her down by her flight
21 information through an airline. After running for
22 her life multiple times, when she came to
23 Pennsylvania, she had absolutely nothing with her.
24 Because she had changed her name and Social Security
25 number, it took her more than four months to get just

1 her birth certificate; getting her Social Security
2 card took many months longer.

3 Cases like this demonstrate how difficult it
4 is for victims fleeing abuse to obtain replacement
5 documents necessary to obtain government-issued ID.
6 Battered women's advocates can share story after
7 story of victims fleeing in acute crisis with nothing
8 but the clothes they were wearing -- the victim who
9 jumped from a moving car and ran for her life to
10 escape, or who broke out the bathroom window and fled
11 as her batterer was kicking through the door, or who
12 had nothing and nowhere to go after being discharged
13 from the hospital after an assault. These victims
14 would have no means of providing the
15 government-issued ID and second form of proof of
16 identity that these bills would require.
17 Consequently, they would be prevented from
18 purchasing prepaid cell phones, which may be their
19 only available form of communication that will
20 prevent their abusers from tracking and finding
21 them.

22

23 **Law Enforcement Efforts Against Crimes Involving**

24 **Prepaid Cell Phones**

25 Again, we want to stress that we appreciate

1 the quandary law enforcement personnel face in
2 situations in which perpetrators use prepaid cell
3 phones to further their criminal conduct. Indeed,
4 abusers may also use prepaid cell phones to
5 perpetrate crimes against their victims, including
6 stalking, harassment, and violating protection
7 orders. However, give the risks to victims by
8 abusers who hunt them down through phone records and
9 other data sources, prepaid cell phones are a
10 critical safety tool used strategically by victims to
11 protect themselves and their children from being
12 found. **For domestic violence victims, we believe the**
13 **value of maintaining the degree of anonymity offered**
14 **by prepaid cell phones, as used to prevent abusers**
15 **from tracking and further harming victims, outweighs**
16 **the potential benefits this legislation may provide.**

17 Importantly, we know that prosecuting those
18 who use prepaid cell phones to facilitate crimes is
19 difficult -- difficult, yet possible. A case in
20 Centre County demonstrates the possibility of
21 successfully proving the identity of a perpetrator
22 who had used a prepaid cell phone to facilitate
23 criminal conduct. In this case, the perpetrator had,
24 among other acts, repeatedly harassed his victim for
25 months, calling her up to 80 times per day and

1 hanging up. Because he used a prepaid cell phone,
2 law enforcement had difficulty establishing that it
3 was in fact him making the calls. Through a subpoena
4 to the manufacturer of the prepaid cell phone, the
5 detective was able to obtain records of the date,
6 time, and location of purchase of the phone, and of
7 when the perpetrator brought additional use time to
8 "refill" the phone. Using those dates and times, the
9 detective secured video surveillance of the retail
10 store that sold the phone. The surveillance video
11 showed the perpetrator purchasing the phone, and that
12 evidence was sufficient to secure his conviction.

13 This strategy of using video surveillance to
14 establish the identity of the purchaser of prepaid
15 phones used in the commission of crimes is a routine
16 part of the specialized training provided to law
17 enforcement officers through domestic violence
18 programs such as PCADV. The use of video
19 surveillance and other effective law enforcement
20 techniques is becoming increasingly standardized.

21 In conclusion, PCADV urges the Committee to
22 seriously consider the unintended consequence to
23 domestic violence victims that this legislation will
24 bring. House Bills 1371 and 2371 will take away a
25 critical safety option for victims fleeing abuse.

1 Batterers who stalk their former partners, determined
2 to hunt them down, are the most dangerous and pose
3 the highest lethality risk. Their victims are
4 terrorized, forced to go to elaborate lengths to stay
5 safe, to constantly look over their shoulders, and to
6 be acutely aware of every record and transaction that
7 may be used to track them down. For those victims,
8 there are very few options. Prepaid cell phones are
9 one of the few. We urge you to consider their plight
10 and not support this legislation.

11 We thank you for your consideration of our
12 input, and we welcome any questions or requests for
13 further information.

14

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this is a correct transcript of the same.

5

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Debra B. Miller, Reporter

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