



Eastern Region Office
PO Box 40008
Philadelphia, PA 19106
215-592-1513 T
215-592-1343 F

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Western Region Office
313 Atwood St.
Pittsburgh, PA 15213
412-681-7736 T
412-681-8707 F

**TESTIMONY SUBMITTED BY
ANDY HOOVER, LEGISLATIVE DIRECTOR
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
TO
SENATE COMMUNICATIONS AND TECHNOLOGY COMMITTEE
RE: SENATE BILLS 354, 355, 356
STATE CAPITOL, HARRISBURG
MAY 11, 2011**

Chairman Folmer, Chairman Farnese, and members of the committee, thank you for the opportunity to present testimony today on Senate Bills 354, 355, and 356. My name is Andy Hoover, and I am the legislative director of the American Civil Liberties Union of Pennsylvania. Founded in 1920, the ACLU is one of the nation's oldest civil rights organizations, and ACLU activity in Pennsylvania first started in the 1930s. I am here today on behalf of the 17,000 members of the ACLU of Pennsylvania, which is one of 53 affiliates of our national organization.

As technology evolves, there is greater temptation to capture an increasing amount of data from citizens and residents of the United States. SB 345, SB 355, and SB 356 are important steps forward in placing boundaries on what information can be held by government entities and businesses and how it is shared. The ACLU of Pennsylvania supports all three bills, and we encourage members of this committee and the Senate to support them, as well.

As you know, Senate Bill 354 would bar Pennsylvania's participation in Real ID. The ACLU has been involved in the struggle against Real ID since it was introduced in 2005. Congress passed the Real ID Act in May, 2005, as an amendment to a funding bill for American troops overseas and for victims of the 2004 tsunami in South Asia. The Real ID Act is a sweeping law that alters how states distribute drivers' licenses and that invades Americans' privacy in new and unprecedented ways.

Real ID will turn our drivers' licenses into de facto national identification cards. The licenses will still have the seal and name of the commonwealth, but the new requirements under Real ID will connect departments of motor vehicles (DMV) and drivers in a national system.

The Real ID Act mandates that all DMVs in the 56 licensing jurisdictions (50 states and six territories) connect their databases of license holders. This will create a new, national database of drivers that will be accessible from anywhere in the country. This national database will be extremely attractive to identity thieves with a massive quantity of data available in one place.

Under the current system, Pennsylvanians are only vulnerable when a security breach occurs at a PennDOT center, which happened in Wilkes Barre in 2006 when a PennDOT office was burglarized. Elsewhere in the country, corrupt DMV officials have exposed license holders' personal information. With the national database mandated by Real ID, a security breach anywhere in the country could compromise the personal data of Pennsylvanians.

Real ID also exposes the personal information of drivers license holders by mandating PennDOT to store personal documents. Real ID requires a list of identifying documentation from license applicants. PennDOT currently requires applicants to produce a Social Security card plus a birth certificate or immigration authorization and two proofs of residency, such as a utility bill or tax records. Real ID goes further, though, by mandating DMVs to store electronic and hard copies of those documents on site. This mandate will be expensive for PennDOT to implement and will further increase the potential for Pennsylvanians' personal data to be exposed to identity thieves.

And there is nothing in Real ID that prohibits a DMV from storing the electronic copies of the documents on its database, thus making it available nationwide.

Security experts do not believe that Real ID will make our licenses more secure and fraud less likely. Privacy Rights Clearinghouse, the nation's leading group on identity theft, said in a February 2007 statement ¹ that Real ID will not only make current methods of identity theft easier for criminals, but "will also create new opportunities for ID thieves to commit their crime." Renowned cryptographer and security expert Bruce Schneier has said "...There are security benefits in having a variety of different ID documents. A single national ID is an exceedingly valuable document, and accordingly there's greater incentive to forge it... when someone asks me to rate the security of a national ID card on a scale of one to 10, I can't give an answer. It doesn't even belong on a scale." The Department of Homeland Security's (DHS) own Data Privacy and Integrity Committee refused to endorse the Department's regulations for implementation of the Real ID Act.

Real ID raises numerous constitutional concerns. For example, the photo requirement puts people of several faiths in an awkward position. People of the Amish faith who object to having their picture taken and Sikh men and Muslim women who wear head coverings will be forced to make the unenviable decision between upholding their religious tenets or obtaining a Real ID-compliant card in order to access federal buildings and participate in other federal business. At risk in this choice are basic rights to freedom of religious expression and the right to due process and equal protection. In its final regulations, DHS ignored this problem.

¹ Givens, B. (2007) *Real ID Act will increase exposure to ID theft*. Available at http://www.privacyrights.org/ar/real_id_act.htm.

At a time of fiscal crisis, the price tag on Real ID is significant. The mandates of Real ID could cost Pennsylvania hundreds of millions of dollars and is expected to double or possibly triple the cost of a driver's license. PennDOT has estimated that implementing Real ID will cost more than \$100 million and will cost \$40-\$50 million annually to maintain. President Obama, meanwhile, has zeroed out funding for Real ID in his proposed 2012 budget. It is not clear if he has done so because the administration plans to let Real ID die a quiet death or if his intention is to force the states to bear the fiscal burdens on their own.

The Department of Homeland Security recently extended again the deadline for states to comply with Real ID to January, 2013. A diverse group of 15 states have passed statutes like SB 354, including Alaska, Oregon, Montana, Arizona, Virginia, and Maine. Without state participation, Real ID cannot function the way it is intended. Both chambers of the General Assembly have passed legislation to bar Pennsylvania's participation in Real ID but have yet to do so in the same legislative session. By passing SB 354, Pennsylvania can help push Real ID to its demise.

Real ID includes a digital photo requirement and allows for the widespread use of photo recognition technology. Senate Bill 356 places an important check on the collection of biometric data by government entities. SB 356 ensures that Pennsylvanians can still access rights, benefits, and privileges without compromising their biometric data.

Under SB 356, biometric data includes fingerprints, palmprints, facial feature pattern characteristics, voice data, iris recognition data and retinal scans, keystroke dynamics, hand geometry, and DNA. The bill includes exceptions for law enforcement investigations.

SB 356 will allow Pennsylvanians to opt out of government programs that include the collection of biometric data without losing access to those programs. Of course, as you know, PennDOT is currently using facial recognition technology in issuing drivers' licenses. The ACLU of Pennsylvania agrees with Senator Kitchen and the co-sponsors of SB 356 that a facial pattern is biometric data and that the government must have reasonable boundaries for collecting such data. The potential use of this data can be far-reaching. Thus, Pennsylvania license holders should be given the opportunity to opt out of PennDOT's facial recognition program and still have access to a license.

SB 355 bars businesses from collecting personal data from drivers' licenses. The Pennsylvania driver's license includes a machine readable zone. This technology can be swiped to capture personal data that is contained on the license. Businesses like bars and hotels that check IDs can then use that information for marketing purposes. While the technology exists to encrypt that information, SB 355 prohibits businesses from

exploiting that data, in lieu of encryption of the machine readable zone. This is an important step forward for consumer protection.

Technology is evolving at a rapid pace, and there is little doubt that the legislature and advocates will be revisiting the boundaries of data collection as new technologies emerge. With the introduction of this package of bills, the General Assembly has an opportunity to go further in protecting the privacy of all Pennsylvanians. The ACLU of Pennsylvania urges the members of the committee to support Senate Bills 354, 355, and 356. Chairman Folmer, thank you for the opportunity to testify today. I am willing to take questions at this time.