COMMONWEALTH OF PENNSYLVANIA HOUSE OF REPRESENTATIVES
CONSUMER AFFAIRS PUBLIC HEARING
205 RYAN OFFICE BUILDING STATE CAPITOL HARRISBURG, PENNSYLVANIA
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WEDNESDAY, MAY 25, 2022 10:00 A.M.
BEFORE:
HONORABLE JIM MARSHALL, MAJORITY CHAIRMAN HONORABLE ROBERT F. MATZIE, MINORITY CHAIRMAN HONORABLE SHERYL M. DELOZIER HONORABLE THOMAS MCHAFFIE HONORABLE DONNA BULLOCK HONORABLE STEVEN MALAGARI HONORABLE NICK PISCIOTTANO HONORABLE PETER SCHWEYER HONORABLE PAM SNYDER HONORABLE ROB MERCURI
Pennsylvania House of Representatives Commonwealth of Pennsylvania

1 TESTIFIERS * * * 2 3 NAME PAGE RYAN HARKINS 4 SENIOR DIRECTOR OF PUBLIC POLICY, 5 CHRIS GILREIN 6 EXECUTIVE DIRECTOR FOR THE NORTHEAST, 7 8 JONATHAN GREER PRESIDENT, 9 INSURANCE FEDERATION OF PENNSYLVANIA.....16 10 SUBMITTED WRITTEN TESTIMONY 11 * * * 12 (See submitted written testimony and handouts 13 online.) 14 15 16 REQUEST FOR PRODUCTION OF INFORMATION 17 * * * 18 PAGE LINE PAGE LINE PAGE LINE 19 20 (NONE) 21 22 23 24 25

PROCEEDINGS 1 * * * 2 MAJORITY CHAIRMAN MARSHALL: 3 Good morning. 4 Welcome to the House Consumer Affairs 5 Committee public hearing on HB 2202, which deals 6 with data privacy. And its prime sponsor is here 7 with us today, Rob Mercuri. 8 I would like to remind everyone in the 9 audience that this meeting is being video and 10 audio taped. We're live streaming and ask that 11 you please silence your devices. 12 Chairman Matzie, do you have any opening 13 remarks? 14 MINORITY CHAIRMAN MATZIE: I do not. 15 Let's get on with the show. 16 MAJORITY CHAIRMAN MARSHALL: Sounds 17 18 great. 19 Let's go with Representative Rob Mercuri, prime sponsor. If you would please come up and 20 give us a brief description of your legislation. 21 REPRESENTATIVE MERCURI: Thank you, 22 Mr. Chairman. 23 And good morning esteemed members of the 24 Committee. I do truly appreciate everybody 25

1	coming together today on a very important topic,
2	to discuss our consumers' data privacy in
3	Pennsylvania. A few remarks about the goal of
4	the bill, HB 2202, and then also about today's
5	hearing and what you'll hear from our testifiers.
6	The laws that currently surround data
7	protection are designed for a pre-digital era.
8	In terms of our digital economy in Pennsylvania,
9	data privacy is still the wild west. It's
10	important that we take steps to give our
11	consumers the ability to determine their destiny
12	with their personal data. This legislation would
13	do that.
14	My bill, HB 2202, would require larger
15	companies and personal information aggregators
16	for example, big tech to share more
17	information with every Pennsylvanian about what
18	data of theirs is gathered, tracked, and sold.
19	When information, such as names, addresses,
20	geolocation, Social Security number, driver's
21	license, your biometric data, or e-mail address
22	is harvested, bought, and sold, I believe that we
23	have a right to understand that information and
24	to access it and control it as consumers.
25	This bill would also give residents the

ability to opt out of such collection and to do so without discrimination or consequences. My bill would ensure that these protections would also preserve the ability of companies to negotiate with consumers over the value of their information as they choose.

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Folks, our personal data about what we 7 buy, where we surf on the Internet, what we 8 9 click, where we drive, and our habits as humans is, in fact, the new oil in our economy. 10 It's being extracted for its value, and it's being 11 sold to advertisers at large benefit to big tech 12 companies. As Pennsylvania legislators, it's 13 important for us to recognize this fact and to 14 built appropriate quardrails for our citizens. 15

This bill does just that by giving 16 consumers three legal rights regarding their 17 data. First, the right to know what data of 18 19 theirs has been harvested. Secondly, the right to remove that data, to have companies delete it. 20 And thirdly, the right to opt out of any future 21 data collection. The goal of today's hearing is 22 to learn from our industry stakeholders, who are 23 with us today, about the impact of this data 24 privacy proposal so that we might enhance the 25

1	quality of the law and to right-size it so that
2	the business community and our other stakeholders
3	experience minimal impact from the law.
4	Let's be clear. Privacy and data privacy
5	is an inevitability in terms of where we need to
6	go. In knowing that, it's important that we
7	begin the path to move towards these protections
8	and passage of this law.
9	Thank you very much for this hearing,
10	Mr. Chairman. And I'll turn it back to you.
11	MAJORITY CHAIRMAN MARSHALL: Thank you,
12	Representative Mercuri. I appreciate your
13	comments and your interest in this important
14	issue.
15	The Committee members have written
16	testimony from the following individuals or
17	groups, PA Chamber, author Christina Avallone,
18	Coalition for Genetic Testing, Find Help, PA
19	Bankers Association, LexisNexis, Quest
20	Diagnostics, Consumer Data Industry Association,
21	and the PA Retailers Association.
22	And we will hear testimony today,
23	beginning with Ryan Harkins, the senior director
24	of public policy from Microsoft.
25	Representative, if you could give your

1	anat ta Mu Hauking wa will ba usadu ta sa
1	spot to Mr. Harkins, we will be ready to go.
2	MR. HARKINS: Good morning.
3	Mr. Chairman and members of the
4	Committee, my name is Ryan Harkins. I am senior
5	director of public policy with Microsoft. And
6	I'd like to thank you for the opportunity to be
7	here today.
8	We support HB 2202, and we applaud you
9	and Representative Mercuri for your leadership
10	and your efforts to pass a comprehensive privacy
11	law. We at Microsoft have been calling for a
12	Federal comprehensive privacy law since 2005.
13	And 17 years later, with no Federal law on the
14	books, and with much of the rest of the world
15	racing ahead of the United States to regulate
16	privacy, we're supporting efforts in the states
17	to step into that leadership void and pass
18	comprehensive privacy laws.
19	In our view, new robust privacy laws are
20	critical for the long-term health and interests
21	of the technology industry, of the public, and of
22	the online ecosystem. They are needed to address
23	real and serious privacy concerns, to empower the
24	consumer to control their personal data, to help
25	restore the public's trust in technology, and to

enable businesses to continue to innovate 1 responsibly with certainty and with confidence. 2 In our view, HB 2202 constitutes a 3 thoughtful and important step forward. It would 4 build upon the European Union's general data 5 protection regulation and our new privacy laws 6 that have passed in Colorado, Connecticut, 7 Virginia, and California. 8 9 Importantly, the definitions in the bill are strong, especially the definitions of 10 personal information and de-identified data. 11 They would ensure that the bill will apply to the 12 kinds of modern online datasets that are used to 13 track consumers on the Internet today. In other 14 words, they would ensure that the bill would 15 cover targeted advertising profiles or other 16 commercial datasets that are stored not directly 17 with a consumer's name, but with a cookie ID, an 18 19 IP address, a device identifier, or other persistent unique identifiers that are used to 20 track consumers online. 21 Unfortunately, we've seen efforts by 22 other industry players, most recently in the 23 state of Utah, to chip away at those definitions 24 or use concepts like pseudonymous data, a term 25

you may hear today. In an apparent effort to argue that modern online datasets, the kind of datasets that are used to track consumers online, would somehow not be subject to a privacy law's provisions.

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The bill would empower consumers with 6 important rights to control their data, rights of 7 8 access, deletion, and correction. It would 9 provide consumers with the right to opt out of the collection and use of their personal data for 10 targeted advertising, for data sales, among other 11 And hereto, the bill's language is 12 things. strong, and we would applaud you and the bill's 13 sponsor for its language and would encourage you 14 to avoid any efforts others may push to narrow 15 those important rights. 16

The bill would also impose affirmative 17 obligations on companies to be responsible 18 19 stewards of the data they collect, obligations to conduct risk assessments of your data processing 20 activities, as well as other obligations of 21 22 transparency, data minimization, limits on secondary use, and a duty to secure the data you 23 collect. 24

In conclusion, with complex legislation

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1	like privacy, you could always pick at a
2	provision here or a provision there. But at
3	bottom, we think HB 2202 is a thoughtful
4	approach. It would be a dramatic step forward
5	for consumer privacy, and we support the bill.
6	Thank you for the opportunity to be here,
7	and I'd be happy to try and answer any questions.
8	MAJORITY CHAIRMAN MARSHALL: Yes. Thank
9	you, Mr. Harkins.
10	We do have some questions from members,
11	and we will start with Representative
12	Pisciottano.
13	REPRESENTATIVE PISCIOTTANO: Thank you,
14	Mr. Chairman.
15	So Microsoft obviously could implement
16	these kinds of standards on their own, you know,
17	within their own company. Have you guys
18	approached these kinds of regulations or do you
19	feel it's an unfair advantage with your
20	competitors if you're applying these standards to
21	yourself but your competitors aren't held to the
22	same standard?
23	MR. HARKINS: We do apply these sorts of
24	standards to our data process and activities.
25	We, to my knowledge, are the only company that

has committed to provide the rights at the heart of the European Union's privacy law, the general data protection regulation, to consumers worldwide. We also, to my knowledge, are the only company to apply the rights in California's privacy law, the California Consumer Privacy Act, a law which was updated by a valid initiative in 2020 to consumers across the country.

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9 But efforts to self regulate by industry clearly have not worked in this space. 10 The industry has lost the trust of the public to a 11 large extent. And in our view, the only way to 12 start earning that trust back is to have credible 13 reform and new laws passed. And that's why we're 14 supporting this bill, as we've supported privacy 15 bills in other states. 16

MAJORITY CHAIRMAN MARSHALL: Thank you,
 Representative.

Representative Delozier.

20 REPRESENTATIVE DELOZIER: Thank you,
21 Mr. Chairman.

Just real quickly -- and I apologize if I missed this. You mentioned California. What other states have -- you had asked for Federal, obviously, for all 50 states.

Are there any states that you would say 1 are leading the way when it comes to this type of 2 privacy act? 3 And if you said that, I apologize. 4 Τ missed it. 5 No. Thank you for the 6 MR. HARKINS: question. 7 Colorado, and most recently, Connecticut, 8 as well as Virginia have all passed privacy laws 9 that, in our view, are credible pieces of reform. 10 And I would encourage the Committee to look 11 especially to the laws that have passed 12 especially in Colorado and Connecticut. 13 REPRESENTATIVE DELOZIER: Okav. Thank 14 you very much. I appreciate it 15 MAJORITY CHAIRMAN MARSHALL: 16 Thank you. We have no further questions at this 17 time. Thank you so much for your testimony. 18 19 MR. HARKINS: Thank you. MAJORITY CHAIRMAN MARSHALL: Next, we 20 have Chris Gilrein from -- the executive director 21 for the northeast for TechNet. 22 23 MR. GILREIN: Good morning. Thank you, Chairman Marshall and members 24 of the Committee. Appreciate this opportunity to 25

1	address the panel here today and just air some
2	of
3	(Inaudible comment without microphone.)
4	MR. GILREIN: Yes. Better?
5	Appreciate the opportunity to discuss
6	TechNet's interest in data private legislation.
7	TechNet is an industry association with over 95
8	member companies throughout the innovation
9	ecosystem. Some of you may have met some of our
10	members during our day on the hill yesterday,
11	arranged with help from the Pennsylvania Emerging
12	Technology Caucus. So very pleased to be here.
13	Just want to air some of our kind of
14	general policy principles as it relates to
15	consumer privacy. Because our members, whether
16	they build hardware or software, whether they're
17	search or marketplaces in a gig-ensuring economy
18	or building autonomous vehicles, they all have an
19	interest in protecting their consumers' data.
20	We do support a Federal privacy law that
21	would provide uniform coverage for all Americans,
22	and we are putting significant time and energy
23	behind that. However, we understand that in the
24	absence of Federal action, states are forging
25	ahead, and we want to be a partner in that

effort.

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So each new privacy act, regardless of 2 how well it's developed, in the absence of a 3 uniform Federal standard, does come with a cost. 4 There's a cost of compliance to the 5 Right. companies, to the state for implementing the 6 enforcements and educating the public. And each 7 new wrinkle or new concept that a state 8 implements increases that cost. So for that 9 reason, for the reasons of compliance and the 10 reasons of having clear and understandable rights 11 for consumers, we ask that interoperability with 12 existing state laws be the default when you're 13 considering privacy legislation. 14

For -- by way of kind of an example, you 15 know, the California act that was passed, the 16 initiative, and then changed, it's still an 17 iterative process. Having gone through years of 18 19 rulemaking proceedings, they're now embarking on new rulemakings under new enforcement authority. 20 In contrast, in Virginia, where the definitions 21 were clear and recognized the realities of how 22 data operates and how companies operate in the 23 real world, where the rights and responsibilities 24 for consumers and companies were clear and 25

explicit and operational in statute, they went through a brief rulemaking process and are ready to be in compliance for their effective date of January 2023.

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we're heartened to see that 5 Representative Mercuri's bill largely tracks the 6 Virginia model. It has strong and clear rights 7 and responsibilities. It includes recognition of 8 important data uses, like fraud protection --9 prevention and security protection and includes 10 clear Attorney General enforcement with a right 11 That right to cure helps companies come 12 to cure. into compliance when they've made, you know, an 13 unintentional violation. These things are 14 complex, and we think that a right to cure is 15 important as you consider these things. 16

Where the Committee -- where the bill does deviate in some ways from the Virginia model, we look forward to engaging on these specific issues. One small example, it does include a requirement that companies treat a browser extension like a global privacy signal, as an affirmative opt-out.

There are still some open questions as to the operational side of that. Both California

and Colorado are going through rulemaking 1 proceedings on how exactly that would be 2 implemented in a data privacy sense. So we just 3 look forward to those processes playing out, so 4 we get a little more information and we can bake 5 in some statutory guardrails that were included 6 in both Colorado and Connecticut in terms of how 7 that is used. 8 But those are some small examples of the 9 ways in which we'd like to engage further. I 10 look forward to providing some more detailed 11 written testimony in the future. 12 MAJORITY CHAIRMAN MARSHALL: Thank you 13 very much for your testimony. 14 Ouestions from members? 15 Seeing none, we may get back to you at a 16 later date. Appreciate your testimony. 17 MR. GILREIN: Thank you, Mr. Chair. 18 MAJORITY CHAIRMAN MARSHALL: Thank you, 19 Mr. Gilrein. 20 Next, we have Jonathan Greer, president 21 of the Insurance Federation of Pennsylvania. 22 Thank you for being here. 23 MR. GREER: Good morning. 2.4 Again, my name is Jonathan Greer. 25 I am

president of the Insurance Federation of
 Pennsylvania. For those of you who don't know,
 the Insurance Federation is a state trade
 association that represents insurers in all lines
 of insurance in Pennsylvania.

We're a very different diverse group of members. Some are very large. Some are very small. But what is a common bond that we share is that we collect very sensitive consumer data. And we do that to underwrite risk, to pay claims, and to otherwise service our policyholders.

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Each of us, irrespective of our size or 12 scope, are committed to protecting that data. 13 And we accept the responsibility that comes with 14 To that end, we support HB 2022 -- 2202 that. 15 and Representative Mercuri's objective of 16 protecting consumers and they were personal data 17 from aggregators, those businesses that harvest, 18 19 buy, or sell this data to third parties.

20 We think bringing in this unregulated 21 activity under the Attorney General's Office 22 makes sense. And again, it's something that we 23 support.

That brings us to our recommendation. Exempt entities that are already subject to this level of regulation and oversight under other laws and keep the focus where the problem is, and that is on unregulated data aggregators. With respect to our recommendation as it relates to insurance, insurance -- insurers are already subject to state laws and regulations covering consumer data privacy and should therefore be exempted here.

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9 We recommend this exemption not because we object to its requirements, but because we are 10 already subject to this level of oversight and 11 restrictions under Federal and state laws 12 controlling our use of non-public consumer data. 13 For example, we have on the federal end, HIPAA, 14 the Health Insurance Portability and 15 Accountability Act; we have the 16 Gramm-Leach-Bliley Act, the GLBA; the Federal 17 Reporting Requirement Act; and the Driver Privacy 18 19 Protections Act.

20 On the state level, Pennsylvania 21 promulgated an insurance-specific regulation on 22 this in 2001, Chapter 146A of Title 31 of the 23 Pennsylvania Code. And it adopted this model of 24 regulation based upon a model that was 25 established by the National Association of

Insurance Commissioners that was established in 1 the wake of and enactment of GLBA, which brought 2 that enforcement to the states if they chose to 3 enforce it, which Pennsylvania did. 4 These laws and regulations govern and 5 restrict how insurers use non-public consumer 6 7 information. And they include notice to 8 consumers of their protections by these laws as 9 well as the rights given to consumers under them. To that end, they are already providing to our 10 policy holders the protections under this bill 11 that would be established for other consumers. 12 we would therefore ask for an amendment 13 to HB 2202 to mirror the Virginia law by 14 providing an entity level exemption for entities 15 subject to GLBA and HIPAA, including 16 Pennsylvania's regulations, and to entities 17 covered by the Federal Credit Reporting Act and 18 19 the Drivers Protection Act. That would keep the focus on the problem the bill intends to address, 20 that of unregulated data aggregators and avoid 21 the confusion of dual and possibly inconsistent 22 regulation of our industry. 23 This is consistent with all but one of 24

the five states that have enacted legislation of

1	this type: Virginia, Utah, Colorado, and a few
2	weeks ago Connecticut.
3	California took a more limited approach
4	that does not totally exempt entities subject to
5	these laws.
6	We have one additional observation. And
7	it's a question that has come up in other states,
8	is how do you handle non-profits?
9	And for us, that is an issue with respect
10	to the NICB, which is the National Insurance
11	Crime Bureau. The NICB is an associate member of
12	the Insurance Federation, and it is an entity
13	that has been established to fight crime
14	nationally and internationally through the
15	coordination of law enforcement and insurers.
16	Five the five States that have enacted
17	legislation in this area have handled this issue
18	differently. California and Utah exempt all
19	non-profits. Colorado doesn't exempt any.
20	Connecticut exempts 501(c)4s, which is what the
21	NICB is. And Virginia's law was subsequently
22	amended to exempt the NICB.
23	While the issue of applying an exemption
24	to non-profits has been a debate, we don't think
25	it should be, at least with respect to the NICB.

The NICB is already a forwarded civil immunity 1 under Pennsylvania statute. Insurance fraud 2 investigations involved the sharing of personal 3 information between insurers, law enforcement, 4 and organizations such as the NICB. 5 And absent an exemption, we're worried 6 that this process could be impeded. And most 7 8 importantly -- and this is true for our members, 9 as well -- we're not selling and commoditizing personal information. That's not what we do. 10 That's not our intent. We don't ever intend for 11 12 that to change. So that concludes my remarks, but I would 13 be happy to field any questions. And we're -- we 14 look forward to working with the Committee and 15 Representative Mercuri as this bill progresses. 16 Thank you. 17 MAJORITY CHAIRMAN MARSHALL: Thank you 18 19 very much. We do have some questions from members. 20 21 we'll begin with Chairman Matzie. MINORITY CHAIRMAN MATZIE: 22 Thank you, Mr. Chairman. 23 Jonathan, thank you for your testimony. 24 Talk about HIPAA again. Because that was the 25

question I was going to ask, and then you did 1 broach the subject relative to -- to the 2 particular language we have before us. 3 Has it been handled in those other 4 states, the HIPAA --5 MR. GREER: The HIPAA exemption has been 6 addressed in other states, yes. 7 MINORITY CHAIRMAN MATZIE: So it has 8 9 been. 10 MR. GREER: Yeah. MINORITY CHAIRMAN MATZIE: I think the 11 one thing that stands out for me more than 12 anything -- and there were a few thing in the 13 bill that I'd like to get a little more clarity 14 on -- but the one thing I know you and I, we've 15 worked on in the past relative to selling of 16 personal information and really what that does. 17 Unfortunately, the Commonwealth is in that 18 19 business with driver information, which I am obviously against and have fought against over 20 21 the years, but it's nice to -- there is a provision in here relative to businesses selling 22 personal information to a third party or 23 processed as personal information for targeted 24 sale or processing in the manner in which a 25

consumer may exercise a consumer's right to opt 1 out of the sale or processing. 2 You know, just more commentary on my 3 part, I wish we had something similar here 4 relative to the Department of Transportation, but 5 that's an argument and a debate for another day. 6 MR. GREER: Sure. 7 MINORITY CHAIRMAN MATZIE: Thank you for 8 9 your testimony. 10 MAJORITY CHAIRMAN MARSHALL: Thank you. Another question, Representative 11 Delozier. 12 REPRESENTATIVE DELOZIER: 13 Thank you, Mr. Chairman. 14 Real quickly, two things. One is I 15 understand that there's overlap to -- that you're 16 already regulated. I understand that you're 17 targeted through the unregulated areas, and that 18 19 should be what we are looking at. If you are already complying with a lot 20 of other regulations, is it simply -- if you're 21 already complying with it, what's the problem 22 with being included? 23 MR. GREER: The problem is that the bill 24 as it's presently drafted doesn't exempt entities 25

1	subject to those other laws and regulations. So
2	therefore, we would be covered by two separate
3	areas of the law that may not be consistent with
4	each other.
5	REPRESENTATIVE DELOZIER: Okay. So it's
6	not exactly the same type of regulation. It's
7	just
8	MR. GREER: It is similar, but it's
9	REPRESENTATIVE DELOZIER: Different.
10	MR. GREER: Yes.
11	REPRESENTATIVE DELOZIER: Okay. So it
12	would just be another step, an overlay of if
13	you're already being regulated by one entity, you
14	don't need to be regulated by another one with
15	possibly different standards.
16	MR. GREER: Yes. And I think it bears
17	repeating, we support the bill's focus, but what
18	the bill intends to address is not something we
19	ever intend to do.
20	REPRESENTATIVE DELOZIER: Okay.
21	MR. GREER: We are not a data aggregator.
22	We're not selling and commoditizing
23	REPRESENTATIVE DELOZIER: Thank you.
24	MR. GREER: personal information for
25	targeted advertising or anything like that.

Insurers are accused of a lot of things. That's 1 not one of them. 2 REPRESENTATIVE DELOZIER: Okav. And the 3 other agent -- you had mentioned the other states 4 of Virginia, Utah, Colorado, Connecticut, and 5 then obviously California with different 6 7 variations. And each of those, if I read this correctly, have some form of exemption as well as 8 9 dealing with the other issue you brought up with the Crime Bureau? 10 MR. GREER: Yes. 11 REPRESENTATIVE DELOZIER: Okay. So we 12 can look to them. 13 MR. GREER: Yes. 14 REPRESENTATIVE DELOZIER: Okay. Thank 15 16 you very much. Appreciate it. MAJORITY CHAIRMAN MARSHALL: Thank you, 17 John. That's all the guestions we have 18 19 currently. Appreciate your testimony. MR. GREER: Thank you. 20 MAJORITY CHAIRMAN MARSHALL: I'd like to 21 thank everyone that sent written testimony or 22 were able to be here in person to offer testimony 23 on this important issue. 24 Chairman Matzie, any closing remarks? 25

1	MINORITY CHAIRMAN MATZIE: No. I thank
2	you just for the hearing, and as you said,
3	getting this information before us.
	This is a topic I've been interested in
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5	for quite some time relative to how it affects
6	the consumer. And I think that as we move
7	forward, if we are able to advance any
8	legislation, whether it's its current form or
9	look at it line by line a little further, I look
10	forward to having that opportunity and to really
11	get into the meat of what the bill actually does
12	and how it does affect and protect consumers.
13	So appreciate the opportunity. Thank
14	you.
15	MAJORITY CHAIRMAN MARSHALL: Thank you,
16	Mr. Chairman.
17	I'd like to thank the members of the
18	Committee that were able to join us today. I
19	know there were a lot of pressing issues. Other
20	members couldn't make it, but I appreciate those
21	in attendance, and ask that every member of the
22	Committee commit the time to learn more about
23	this issue and work with Representative Mercuri.
24	Representative Mercuri, thank you for
25	your hard work on this legislation. And we will

1	take the time to digest the information we had
2	today and. I'd like to say that this meeting is
3	now adjourned.
4	(Whereupon, the hearing adjourned
5	at 10:27 p.m.)
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1	CERTIFICATE
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3	I hereby certify that the proceedings are
4	contained fully and accurately in the notes taken
5	by me on the within proceedings and that this is
6	a correct transcript of the same.
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10	Tracy L. Powell
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