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NOTICE: In lieu of a star print, errata are printed to indicate corrections to the original report.

Calendar No. 208

111TH CONGRESS, *1st Session* | SENATE | REPORT 111–110

ERRATA

DECEMBER 17, 2009.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

MINORITY AND SUPPLEMENTAL VIEWS

[To accompany S. 1490]

CORRECTIONS

The report (111–110) failed to include the following Supplemental Views. They should follow the Minority Views in the report.

89–010

SUPPLEMENTAL VIEWS OF SENATORS SESSIONS, GRASSLEY, AND COBURN

PERSONAL DATA PRIVACY AND SECURITY ACT OF 2009

In addition to the concerns expressed by Senators Sessions and Kyl in the minority views of the report on the Personal Data Privacy and Security Act of 2009, we are concerned about Section 104, which amends the Bankruptcy Abuse Prevention and Consumer Protection Act (Bankruptcy Act). Section 104 was added by Senator Whitehouse during consideration of a substantially similar bill during the 110th Congress, and the provision remains in this version of the bill. This section adjusts the "means test" in the Bankruptcy Act to exempt debtors who are the victims of identity theft if they meet at least one of the following minimal requirements: the identity theft either results in at least $20,000 in debt in one year, 50 percent of the debtor's bankruptcy claims, or 25 percent of the debtor's gross income for a 12-month period. Contrary to the majority's assertions, the provision does not specify that a debtor will be exempted from the means test *only* if they are in bankruptcy due to identity theft. In fact, a debtor with significant resources could satisfy one of these three requirements, exempting them from the means test unnecessarily. In addition, the language of the section states that a debtor may be exempt from the means test if they merely assert that a fraud was "attempted" against them; the provision requires no proof of this attempt beyond mere testimony. Consequently, any debtor could claim identity theft has occurred and escape the means test. This provision is also unnecessary because debtors already have a defense against claims arising from identity theft, namely that they did not incur the debt. Finally, this provision is nongermane to data security and notification and is structurally unnecessary. Senator Grassley, the lead sponsor of the Bankruptcy Act, noted during the markup of this bill in the 110th Congress that the "special circumstances" language already contained in the Bankruptcy Act contemplates just this kind of situation, obviating the need for this language.

For these reasons, during the markup, Senator Coburn offered an amendment to S. 1490 that would have stripped this provision from the bill. In response, Senator Whitehouse offered to work with Senator Coburn on the language of this provision, and based on those assurances, Senator Coburn withdrew his amendment. We intend to continue working with Senator Whitehouse to alleviate our concerns with this provision prior to consideration by the full Senate.

CHUCK GRASSLEY.
TOM COBURN.
JEFF SESSIONS.