

114TH CONGRESS  
1ST SESSION

# S. 1341

To amend section 444 of the General Education Provisions Act in order to improve the privacy protections available to students and their parents, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 14, 2015

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend section 444 of the General Education Provisions Act in order to improve the privacy protections available to students and their parents, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Privacy Pro-  
5 tection Act”.

6 **SEC. 2. DEFINING STUDENT DATA.**

7 (a) DEFINITION.—Section 444(a) of the General  
8 Education Provisions Act (commonly referred to as the

1 “Family Educational Rights and Privacy Act”) (20 U.S.C.  
2 1232g) is amended—

3 (1) by striking paragraph (4) and inserting the  
4 following:

5 “(4)(A) For the purposes of this section, the  
6 term ‘student data’ means information about a stu-  
7 dent collected and maintained by an educational  
8 agency or institution, by a person or third party col-  
9 lecting or maintaining such information through the  
10 active intervention, facilitation, or authorization of  
11 such agency or institution, or by a person or third  
12 party acting for such agency or institution.

13 “(B) The term ‘student data’ does not include—

14 “(i) records of instructional, supervisory, and  
15 administrative personnel and educational personnel  
16 ancillary thereto which are in the sole possession of  
17 the maker thereof and which are not accessible or  
18 revealed to any other person except a substitute;

19 “(ii) records maintained by a law enforcement  
20 unit of the educational agency or institution that  
21 were created by that law enforcement unit for the  
22 purpose of law enforcement;

23 “(iii) in the case of persons who are employed  
24 by an educational agency or institution but who are  
25 not in attendance at such agency or institution,

1 records made and maintained in the normal course  
2 of business which relate exclusively to such person in  
3 that person's capacity as an employee and are not  
4 available for use for any other purpose; or

5 “(iv) records on a student who is eighteen years  
6 of age or older, or is attending an institution of  
7 postsecondary education, which are made or main-  
8 tained by a physician, psychiatrist, psychologist, or  
9 other recognized professional or paraprofessional  
10 acting in his professional or paraprofessional capac-  
11 ity, or assisting in that capacity, and which are  
12 made, maintained, or used only in connection with  
13 the provision of treatment to the student, and are  
14 not available to anyone other than persons providing  
15 such treatment, except that such records can be per-  
16 sonally reviewed by a physician or other appropriate  
17 professional of the student's choice.”; and

18 (2) in paragraph (5)(A), by striking “includes  
19 the following” and inserting “consists of only the  
20 following”.

21 (b) CONFORMING AMENDMENTS.—Section 444 of  
22 such Act (20 U.S.C. 1232g), as amended by subsection  
23 (a), is further amended—

24 (1) in subsection (a)—

25 (A) in paragraph (1)—

1 (i) in subparagraph (A), by striking  
2 “educational records” and inserting “stu-  
3 dent data”; and

4 (ii) in subparagraph (C)(ii), by strik-  
5 ing “placed in the education records” and  
6 inserting “obtained”; and

7 (B) in paragraph (2)—

8 (i) by striking “the records” each  
9 place the term appears and inserting “the  
10 data”; and

11 (ii) by striking “such records” each  
12 place the term appears and inserting “such  
13 data”;

14 (2) in subsection (b)—

15 (A) in paragraph (1)—

16 (i) in subparagraph (B), by striking  
17 “the record” each place the term appears  
18 and inserting “the data”;

19 (ii) in subparagraph (E), by striking  
20 “whose records” each place the term ap-  
21 pears and inserting “whose student data”;  
22 and

23 (iii) in subparagraph (L), by striking  
24 “such records” and inserting “such data”;

1 (B) in paragraph (2)(A), by striking  
2 “records” each place the term appears and in-  
3 serting “student data”; and

4 (C) in paragraph (4)(A), by striking “such  
5 records” and inserting “such data”;

6 (3) in subsection (j)(1)(B), by striking “such  
7 records” and inserting “such student data”;

8 (4) by striking “education records” each place  
9 the term appears and inserting “student data”; and

10 (5) by striking “education record” each place  
11 the term appears and inserting “student data”.

12 **SEC. 3. RELEASE OF PERSONALLY IDENTIFIABLE INFOR-**  
13 **MATION.**

14 Section 444 of the General Education Provisions Act  
15 (commonly referred to as the “Family Educational Rights  
16 and Privacy Act”) (20 U.S.C. 1232g), as amended by sec-  
17 tion 2, is further amended—

18 (1) in subsection (b)—

19 (A) in paragraph (1)—

20 (i) in subparagraph (A), by striking  
21 “other school officials, including teachers”  
22 and inserting “employees and other school  
23 officials, including teachers, under the di-  
24 rect control of”;

1 (ii) in subparagraph (C), by striking  
2 “authorized representatives of” each place  
3 the term appears and inserting “authorized  
4 representatives under the direct control  
5 of”;

6 (iii) by striking subparagraph (F);  
7 and

8 (iv) by redesignating subparagraphs  
9 (G) through (K) as subparagraphs (F)  
10 through (J), respectively;

11 (B) in paragraph (2)—

12 (i) in the matter preceding subpara-  
13 graph (A), by striking “any personally  
14 identifiable information” through “direc-  
15 tory information,” and inserting “any stu-  
16 dent data, including personally identifiable  
17 information (other than directory informa-  
18 tion) that is not first aggregated,  
19 anonymized, and de-identified”;

20 (ii) by striking subparagraph (A) and  
21 inserting the following:

22 “(A) the educational agency or institution  
23 meets the requirements of paragraph (8) with  
24 respect to the student data, including providing  
25 notice and obtaining parental consent; or”; and

- 1 (iii) in subparagraph (B), by striking  
2 “(1)(J)” and inserting “(1)(I)”;  
3 (C) in paragraph (3)—
- 4 (i) by striking “authorized representa-  
5 tives of” and inserting “authorized rep-  
6 resentatives under the direct control of”;
- 7 (ii) by inserting “administered by  
8 State or local public educational agencies  
9 or institutions” after “Federally-supported  
10 education programs”; and
- 11 (iii) by inserting before the period at  
12 the end the following: “: *Provided further,*  
13 *That notice is provided, and consent is ob-*  
14 *tained, from the parents consistent with*  
15 *paragraph (8)”;*
- 16 (D) in paragraph (4)(B)—
- 17 (i) by inserting “and consistent with  
18 the requirements of paragraph (8)” after  
19 “student”;
- 20 (ii) by inserting “or paragraph (8)”  
21 after “paragraph (2)(A)”;
- 22 (iii) by inserting “(as in effect on the  
23 day before the date of enactment of the  
24 Student Privacy Protection Act)” after  
25 “paragraph (1)(F)”;

1 (E) in paragraph (5)—

2 (i) by inserting “administered by a  
3 State or local public educational agency or  
4 institution” after “supported education  
5 program”; and

6 (ii) by striking “the proviso” and in-  
7 serting “both provisos”; and

8 (F) by adding at the end the following:

9 “(7) NO APPENDING DATA.—

10 “(A) IN GENERAL.—No funds provided to  
11 the Department or under any applicable pro-  
12 gram may be provided to any educational agen-  
13 cy or institution that appends any student data  
14 with personally identifiable information ob-  
15 tained from Federal or State agencies through  
16 data matches.

17 “(B) FEDERAL PROHIBITION.—Notwith-  
18 standing any other provision of law, the Sec-  
19 retary shall not append any student data of a  
20 student with personally identifiable information  
21 obtained from Federal or State agencies  
22 through data matches.

23 “(8) LIMITATIONS ON THIRD PARTY USE.—

24 Notwithstanding paragraph (1) or any other provi-  
25 sion of this section (not including paragraph (6)), no



1 funds provided to the Department or under any ap-  
2 plicable program may be provided to an educational  
3 agency (including a State educational agency) or in-  
4 stitution that allows any third party (including any  
5 contractor or other person acting under direct con-  
6 trol of the agency or institution) to access student  
7 data of students, including personally identifiable in-  
8 formation and directory information, unless—

9 “(A) the agency or institution receives con-  
10 sent from the parents of the student for the  
11 student data to be made available to the third  
12 party;

13 “(B) prior to receiving the consent de-  
14 scribed in subparagraph (A), the agency or in-  
15 stitution provides the parents with notice, not  
16 less than 30 days before the records would be  
17 provided to such outside party if consent is ob-  
18 tained, that informs the parent—

19 “(i) of the student data that would be  
20 accessed;

21 “(ii) that the student data will only be  
22 made available if the parent consents;

23 “(iii) that the parent have the ability,  
24 under subsection (a), to access the student  
25 data of their students held by the agency

1 or institution or outside party, and a de-  
2 scription of the process to make correc-  
3 tions for inaccurate data; and

4 “(iv) that the agency or institution  
5 and the outside party are liable for any  
6 violation of this section and that the rem-  
7 edies described in subsection (k) are avail-  
8 able;

9 “(C) the agency or institution, and the  
10 third party, have in place methods sufficient to  
11 ensure that a reasonable person could not use  
12 any of the data provided to determine the iden-  
13 tity of the student, by itself or when combined  
14 with other publicly available information;

15 “(D) the agency or institution requires  
16 that all student data remain the property of the  
17 agency or institution and that any student data,  
18 including data made available through the  
19 Internet or data hosted by a third party service  
20 provider, is destroyed when the individual is no  
21 longer a student served by the agency or insti-  
22 tution; and

23 “(E) the third party agrees, as a condition  
24 of receiving such access, to be liable for any vio-

1           lation of this section, including civil liability  
2           under subsection (k).

3           “(9) NO TRACKING OF STUDENTS.—

4                 “(A) IN GENERAL.—No funds provided to  
5           the Department or to an applicable program  
6           may be used to track children or for career  
7           tracking.

8                 “(B) ONLY AGGREGATE DATA IN LONGITU-  
9           DINAL DATA SYSTEMS.—Student data shall not  
10          be used for or from State longitudinal data pro-  
11          grams, including prekindergarten through grade  
12          20 (‘P-20’) workforce programs, unless the stu-  
13          dent data is first aggregated, anonymized, and  
14          de-identified.

15                “(C) DEFINITIONS.—In this paragraph:

16                   “(i) TRACK.—The term ‘track’ shall  
17           mean to collect and maintain records of a  
18           student’s activities through the student’s  
19           educational career, beginning in preschool  
20           and including postsecondary education,  
21           and the student’s entrance into, and pro-  
22           gression through, the workforce or the  
23           military.

24                   “(ii) CAREER TRACKING.—The term  
25           ‘career tracking’ shall mean any effort to

1           obligate an elementary school or secondary  
2           school student to involuntarily select a ca-  
3           reer, career interest, employment goals, or  
4           related job training via any curriculum, in-  
5           struction, employment-related activity, sur-  
6           vey, test, assessment, or data collection.

7           “(10) RULES OF CONSTRUCTION.—

8                   “(A) APPLICABILITY TO FEDERAL GOV-  
9           ERNMENT.—Nothing in this section shall be  
10           construed to allow the Secretary, the Attorney  
11           General, or the head of any other Federal agen-  
12           cy to provide any outside party access to stu-  
13           dent data, or personally identifiable information  
14           in student data, that has not first been aggre-  
15           gated, anonymized, and de-identified.

16                   “(B) NO DATA COLLECTION.—Nothing in  
17           this section shall be construed to authorize the  
18           collection, storage, sharing, or use, in any man-  
19           ner, of student data, including personally iden-  
20           tifiable information of students, for the develop-  
21           ment or improvement of products or services,  
22           unless the student data has first been aggre-  
23           gated, anonymized, and de-identified.

24                   “(C) NO NATIONAL DATABASE.—Nothing  
25           in this section shall be construed to authorize

1 the collection, storage, sharing, or use, in any  
2 manner, of student data, including personally  
3 identifiable information, to support or inform a  
4 national or interstate database of student data  
5 or the linking of State longitudinal databases,  
6 unless the student data has been aggregated,  
7 anonymized, and de-identified.”.

8 **SEC. 4. REQUIRING PARENTAL CONSENT TO RELEASE**  
9 **RECORDS OF OTHER STUDENTS.**

10 Section 444(a) of the General Education Provisions  
11 Act (20 U.S.C. 1232g(a)), as amended by section 2, is  
12 further amended—

13 (1) in paragraph (1)—

14 (A) in subparagraph (A), by striking “stu-  
15 dents who are or have been in attendance at a  
16 school of such agency or at such institution, as  
17 the case may be,” and inserting “students for  
18 whom the agency or institution maintains stu-  
19 dent data”; and

20 (B) in subparagraph (B), by inserting “,  
21 or for whom the agency or institution maintains  
22 student data” before “that is subject”;

23 (2) in paragraph (2), by striking “who are or  
24 have been in attendance at a school of such agency

1 or at such institution” and inserting “for whom the  
2 agency or institution maintains student data”;

3 (3) in paragraph (5)(B), by striking “attending  
4 the institution or agency” and inserting “for whom  
5 the agency or institution maintains student data”;  
6 and

7 (4) in paragraph (6), by striking “, but does  
8 not include a person who has not been in attendance  
9 at such agency or institution”.

10 **SEC. 5. REMEDIES.**

11 Section 444 of the General Education Provisions Act  
12 (20 U.S.C. 1232g), as amended by sections 2, 3, and 4,  
13 is further amended by adding at the end the following:

14 “(k) CIVIL LIABILITY.—

15 “(1) IN GENERAL.—

16 “(A) AGENCIES, INSTITUTIONS, AND CON-  
17 TRACTORS.—As a condition of receiving any  
18 funds provided to the Department or under any  
19 applicable program, an educational agency or  
20 institution, and any third party that collects,  
21 maintains, or otherwise obtains access to stu-  
22 dent data through such agency or institution,  
23 that fails to comply with any requirement im-  
24 posed under this section with respect to any in-

1           dividual shall be liable to that person in the  
2           amount determined under paragraph (2).

3           “(B) FEDERAL GOVERNMENT LIABILITY.—  
4           Any Federal agency that fails to comply with  
5           any requirement imposed under this section  
6           with respect to any individual shall be liable to  
7           that person in the amount determined under  
8           paragraph (2).

9           “(2) AMOUNT OF AWARD.—

10           “(A) INDIVIDUAL ACTION.—In an indi-  
11           vidual action, the sum awarded for liability  
12           under paragraph (1) is equal to—

13                   “(i) in the case of a first violation, an  
14                   amount of not less than \$1,000;

15                   “(ii) in the case of a second violation  
16                   by the same person involving the student  
17                   data and privacy of the same student, an  
18                   amount of not less than than \$5,000; and

19                   “(iii) in the case of a third or any  
20                   subsequent violation by the same person  
21                   involving the student data and privacy of  
22                   the same student, an amount of not less  
23                   than \$10,000.

24           “(B) INDIVIDUAL VIOLATION.—For pur-  
25           poses of this subsection, each violation of this

1 section that involves different student data of  
 2 an individual, or a different student, shall be  
 3 considered a separate violation.

4 “(3) COSTS AND ATTORNEY FEES.—In the case  
 5 of any successful action to enforce liability under  
 6 paragraph (1), the defendant shall be liable for the  
 7 costs of the action and reasonable attorney fees as  
 8 determined by the court.”.

9 **SEC. 6. PROHIBITION ON PSYCHOLOGICAL TESTING.**

10 Section 445 of the General Education Provisions Act  
 11 (20 U.S.C. 1232h) is amended—

12 (1) by redesignating subsections (d) through (f)  
 13 as subsections (f) through (h), respectively;

14 (2) by inserting after subsection (c) the fol-  
 15 lowing:

16 “(d) PROHIBITION ON PSYCHOLOGICAL TESTING.—

17 “(1) DEFINITIONS.—In this section:

18 “(A) AFFECTIVE COMPUTING.—The term  
 19 ‘affective computing’ means systems and de-  
 20 vices that can or attempt to recognize, inter-  
 21 pret, process, or simulate aspects of human  
 22 feelings or emotions.

23 “(B) INTERPERSONAL RESOURCES OR  
 24 INTERPERSONAL SKILLS.—The term ‘inter-  
 25 personal resources’ or ‘interpersonal skills’



1 means non-cognitive emotional and psycho-  
2 logical characteristics and attributes and skills  
3 used to manage relationships and interactions  
4 between or among individuals.

5 “(C) INTRAPERSONAL RESOURCES OR  
6 INTRAPERSONAL SKILLS.—The term  
7 ‘intrapersonal resources’ or ‘intrapersonal skills’  
8 means non-cognitive emotional and psycho-  
9 logical characteristics and attributes used to  
10 manage emotions and attitudes within an indi-  
11 vidual.

12 “(D) PREDICTIVE MODELING.—The term  
13 ‘predictive modeling’ means the use of edu-  
14 cational data-mining methods to make pre-  
15 dictions about future behaviors or performance.

16 “(E) PROCESS.—The term ‘process’ or  
17 ‘processing’ means to use, access, manipulate,  
18 scan, modify, transform, disclose, store, trans-  
19 mit, transfer, retain, aggregate, or dispose of  
20 student or teacher data.

21 “(F) PSYCHOLOGICAL RESOURCES.—The  
22 term ‘psychological resources’ means non-cog-  
23 nitive, emotional characteristics, attributes, and  
24 skills, including mindsets, learning strategies,

1           and effortful control, used by an individual to  
2           address or manage various life situations.

3           “(2) IN GENERAL.—Notwithstanding any other  
4           provision of law, no funds provided to the Depart-  
5           ment or Federal funds provided under any applica-  
6           ble program shall be spent to support any survey or  
7           academic assessment allowing any of the following  
8           types of data collection via assessments or any other  
9           means, including digitally:

10                   “(A) Any data collected via affective com-  
11                   puting, including analysis of facial expressions,  
12                   EEG brain wave patterns, skin conductance,  
13                   galvanic skin response, heart-rate variability,  
14                   pulse, blood volume, posture, and eye-tracking.

15                   “(B) Any data (including any resulting  
16                   from national or State assessments) that meas-  
17                   ure psychological resources, mindsets, learning  
18                   strategies, effortful control, attributes, disposi-  
19                   tions, social skills, attitudes, intrapersonal re-  
20                   sources, or any other type of social, emotional,  
21                   or psychological parameter.

22                   “(C) Any data collected through predictive  
23                   modeling to be used to detect behaviors, beliefs,  
24                   or value systems, or for predicting or fore-  
25                   casting student outcomes.

1           “(D) Any type of psychological data, in-  
2           cluding assessment of non-cognitive skills or at-  
3           tributes, psychological resources, mindsets,  
4           learning strategies, effortful control, attitudes,  
5           dispositions, social skills, or other interpersonal  
6           or intrapersonal resources collected via any na-  
7           tional or State student assessment.

8           “(3) SPECIAL RULE.—Paragraph (2) shall not  
9           apply to an applicable program carried out or fund-  
10          ed under the Individuals with Disabilities Education  
11          Act if the data collection is required under such Act.

12          “(4) NO NATIONAL ASSESSMENT USING PSY-  
13          CHOLOGICAL DATA.—No funds provided to the De-  
14          partment or to an applicable program may be used  
15          to pilot test, field test, implement, administer, or  
16          distribute in any way any federally sponsored na-  
17          tional assessment collecting any psychological data  
18          or any federally sponsored research on social-emo-  
19          tional data in education.

20          “(e) VIDEO MONITORING AND COMPUTER SURVEIL-  
21          LANCE PROTECTIONS.—

22                 “(1) PROTECTIONS FOR VIDEO MONITORING.—

23                         “(A) ELEMENTARY SCHOOLS AND SEC-  
24                         ONDARY SCHOOLS.—No funds provided to the  
25                         Department or under any applicable program

1 shall be made available to any public elemen-  
2 tary school or secondary school served by an  
3 educational agency receiving funds under any  
4 eligible program that conducts video monitoring  
5 of classrooms in the school, for any purpose, in-  
6 cluding for teacher evaluation, without the ap-  
7 proval of the local educational agency after a  
8 public hearing and the written consent of the  
9 teacher and the parents of all students in the  
10 classroom.

11 “(B) OTHER AGENCIES AND INSTITU-  
12 TIONS.—No funds provided to the Department  
13 or under any applicable program shall be made  
14 available to any educational agency or institu-  
15 tion not covered under subparagraph (A) that  
16 conducts video monitoring of classrooms in a  
17 school or institution, for any purpose, including  
18 for teacher evaluation, without a public hearing  
19 and the written consent of the teacher, and of  
20 the parents of all students in the classroom.

21 “(2) PROTECTIONS FOR COMPUTER CAMERA  
22 SURVEILLANCE.—

23 “(A) ELEMENTARY SCHOOLS AND SEC-  
24 ONDARY SCHOOLS.—No funds provided to the  
25 Department under any applicable program shall

1 be made available to any public elementary  
2 school or secondary school that supplies,  
3 through the school to a teacher or student, a  
4 computing device on which remote camera sur-  
5 veillance software has been installed, without  
6 first obtaining the approval of the local edu-  
7 cational agency after a public hearing. Any  
8 such elementary school or secondary school that  
9 provides computing devices to teachers or stu-  
10 dents shall adopt a policy prohibiting the use of  
11 remote camera surveillance software on a school  
12 supplied computing device without the written  
13 consent of the teacher and the parent of each  
14 affected student.

15 “(B) OTHER AGENCIES AND INSTITU-  
16 TIONS.—No funds under any applicable pro-  
17 gram shall be made available to any educational  
18 agency or institution not covered under sub-  
19 paragraph (A) that supplies, through the school  
20 to a student or teacher, a computing device on  
21 which remote camera surveillance software has  
22 been installed without first providing a public  
23 hearing and adopting a policy prohibiting the  
24 use of remote camera surveillance software on  
25 an institution-supplied computing device with-

1 out the written consent of the teacher and the  
2 parent of each affected student.

3 “(3) PERMISSION AND CONSENT.—For the pur-  
4 poses of this subsection, whenever a student has at-  
5 tained eighteen years of age, or is attending an insti-  
6 tution of postsecondary education, the permission or  
7 consent required of and the rights accorded to the  
8 parents of the student shall thereafter only be re-  
9 quired of and accorded to the student.

10 “(4) DEFINITIONS.—In this subsection, the  
11 term ‘educational agency or institution’ has the  
12 meaning given the term in section 444.”

13 **SEC. 7. PROHIBITION ON COLLECTING CERTAIN PRIVATE**  
14 **INFORMATION.**

15 Section 445 of the General Education Provisions Act  
16 (20 U.S.C. 1232h) is amended—

17 (1) by striking subsection (b) and inserting the  
18 following:

19 “(b) Neither the Secretary nor any educational agen-  
20 cy or institution receiving assistance under any applicable  
21 program shall administer any student survey, assessment,  
22 analysis, evaluation, or similar instrument that solicits in-  
23 formation about the student or the student’s family con-  
24 cerning the following:

25 “(1) Political affiliations or beliefs.

1           “(2) Mental or psychological problems, psycho-  
2           logical resources, mindsets, learning strategies,  
3           effortful control, attributes, dispositions, social skills,  
4           attitudes, or intrapersonal resources (as defined in  
5           subsection (d)(1)).

6           “(3) Sexual behavior or attitudes.

7           “(4) Illegal, antisocial, self-incriminating, or de-  
8           meaning behavior.

9           “(5) Critical appraisals of another individual  
10          with whom a student has a close relationship.

11          “(6) Legally recognized privileged or analogous  
12          relationships, such as those with a lawyer, physician,  
13          or member of the clergy.

14          “(7) Religious practices, affiliations, or beliefs.

15          “(8) Personal or family gun ownership.

16          “(9) Income or other income-related informa-  
17          tion except that required by law to determine eligi-  
18          bility to participate in or receive financial assistance  
19          under a program.”; and

20          (2) in subsection(c)(1)—

21                 (A) by striking subparagraph (B);

22                 (B) by redesignating subparagraphs (C)  
23                 through (F) as subparagraphs (B) through (E),  
24                 respectively; and

1           (C) in subparagraph (E)(i), as redesign-  
2           nated by subparagraph (B), by striking “sub-  
3           paragraph (E)” and inserting “subparagraph  
4           (D)”.

5 **SEC. 8. SEVERABILITY.**

6           If any provision of this Act or an amendment made  
7 by this Act, or the application of the provision to any per-  
8 son or circumstance, is held to be unconstitutional, the  
9 remainder of this Act and the amendments made by this  
10 Act, and the application of the provisions of this Act and  
11 the amendments made by this Act to any other person  
12 or circumstance, shall not be affected thereby.

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