

115TH CONGRESS
1ST SESSION

H. R. 1646

To amend title VII of the Civil Rights Act of 1964 to exclude the application of such title to employment practices that are in compliance with Federal regulations, and State laws, in certain areas.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2017

Mr. WALBERG (for himself, Mr. BYRNE, Mr. HUDSON, and Mr. ROKITA) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend title VII of the Civil Rights Act of 1964 to exclude the application of such title to employment practices that are in compliance with Federal regulations, and State laws, in certain areas.

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 “Certainty in Enforce-
5 ment Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The Equal Employment Opportunity Com-
2 mission (EEOC) is one of several agencies respon-
3 sible for enforcing Federal laws against employment
4 discrimination, but there are growing concerns about
5 the enforcement and policy approach adopted by the
6 EEOC, raising questions about whether the best in-
7 terests of workers and employers are being served.

8 (2) In 1964 Congress consciously denied the
9 EEOC the power to issue regulations pursuant to
10 title VII of the Civil Rights Act of 1964 and has re-
11 frained from granting it that power ever since. Nev-
12 ertheless, like any other agency charged with en-
13 forcement, the EEOC may promulgate guidance
14 under the statutes it enforces, but that guidance
15 cannot require more than the statute it is enforcing
16 requires and does not have the force of law. In some
17 cases the EEOC's guidances have been rejected by
18 the courts.

19 (3) In 2012 the EEOC promulgated enforce-
20 ment guidance regarding the use of criminal back-
21 ground checks that put employers in the position of
22 acting contrary to Federal, State, and local laws
23 that require employers to conduct or act on criminal
24 background checks for certain positions, such as

1 public safety officers, teachers, and daycare pro-
2 viders.

3 (4) In EEOC v. Peplemark, Inc., a case chal-
4 lenging Peplemark’s use of criminal background
5 checks in making employment decisions, the Court
6 of Appeals for the Sixth Circuit in October 2013 af-
7 firmed an award of \$751,942 against the EEOC for
8 prevailing defendant Peplemark’s attorney’s and ex-
9 pert fees.

10 (5) In EEOC v. Kaplan Higher Education Cor-
11 poration, a case challenging Kaplan’s use of credit
12 reports in the hiring process, the Court of Appeals
13 for the Sixth Circuit affirmed the district court’s de-
14 cision granting summary judgment in favor of
15 Kaplan and stated that the EEOC brought a case
16 on the basis of a “homemade methodology, crafted
17 by a witness with no particular expertise to craft it,
18 administered by persons with no particular expertise
19 to administer it, tested by no one, and accepted only
20 by the witness himself”.

21 **SEC. 3. AMENDMENT.**

22 Section 703 of the Civil Rights Act of 1964 (42
23 U.S.C. 2000e–2) is amended by adding at the end the fol-
24 lowing:

1 “(o) Notwithstanding any other provision of this title,
2 the consideration or use of credit or criminal records or
3 information, as mandated by Federal, State, or local law,
4 by an employer, labor organization, employment agency,
5 or joint labor management committee controlling appren-
6 ticeships or other training or retraining opportunities,
7 shall be deemed to be job related and consistent with busi-
8 ness necessity under subsection (k)(1)(A)(i) as a matter
9 of law, and such use shall not be the basis of liability
10 under any theory of disparate impact.”.

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