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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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Certainty in Enforcement Act of 2017".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Equal Employment Opportunity Commission (EEOC) is one of several agencies responsible for enforcing Federal laws against employment discrimination, but there are growing concerns about the enforcement and policy approach adopted by the EEOC, raising questions about whether the best interests of workers and employers are being served.

(2) In 1964 Congress consciously denied the EEOC the power to issue regulations pursuant to title VII of the Civil Rights Act of 1964 and has refrained from granting it that power ever since. Nevertheless, like any other agency charged with enforcement, the EEOC may promulgate guidance under the statutes it enforces, but that guidance cannot require more than the statute it is enforcing requires and does not have the force of law. In some cases the EEOC's guidances have been rejected by the courts.

(3) In 2012 the EEOC promulgated enforcement guidance regarding the use of criminal background checks that put employers in the position of acting contrary to Federal, State, and local laws that require employers to conduct or act on criminal background checks for certain positions, such as

public safety officers, teachers, and daycare providers.

(4) In EEOC v. Peoplemark, Inc., a case challenging Peoplemark's use of criminal background checks in making employment decisions, the Court of Appeals for the Sixth Circuit in October 2013 affirmed an award of $751,942 against the EEOC for prevailing defendant Peoplemark's attorney's and expert fees.

(5) In EEOC v. Kaplan Higher Education Corporation, a case challenging Kaplan's use of credit reports in the hiring process, the Court of Appeals for the Sixth Circuit affirmed the district court's decision granting summary judgment in favor of Kaplan and stated that the EEOC brought a case on the basis of a ''homemade methodology, crafted by a witness with no particular expertise to craft it, administered by persons with no particular expertise to administer it, tested by no one, and accepted only by the witness himself''.

SEC. 3. AMENDMENT.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by adding at the end the following:

"(o) Notwithstanding any other provision of this title, the consideration or use of credit or criminal records or information, as mandated by Federal, State, or local law, by an employer, labor organization, employment agency, or joint labor management committee controlling apprenticeships or other training or retraining opportunities, shall be deemed to be job related and consistent with business necessity under subsection (k)(1)(A)(i) as a matter of law, and such use shall not be the basis of liability under any theory of disparate impact.".

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