

113TH CONGRESS
2D SESSION

H. R. 5423

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

SEPTEMBER 9, 2014

Mr. WALBERG (for himself, Mr. ROKITA, and Mr. HUDSON) 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 2014”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The Equal Employment Opportunity Com-
2 mission (EEOC) has, since 1965, been responsible
3 for enforcing Federal laws against employment dis-
4 crimination, 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) The EEOC may promulgate guidance under
9 the Civil Rights Act of 1964, but that guidance does
10 not have the force of law, and in some cases has
11 been rejected by the courts.

12 (3) In 2012, the EEOC promulgated enforce-
13 ment guidance regarding the use of criminal back-
14 ground checks that put employers in the position of
15 acting contrary to Federal, State, and local laws
16 that require employers to conduct criminal back-
17 ground checks for certain positions, such as public
18 safety officers, teachers, and daycare providers.

19 (4) In *EEOC v. Peplemark, Inc.*, a case chal-
20 lenging Peplemark's use of criminal background
21 checks in making employment decisions, the Court
22 of Appeals for the Sixth Circuit in October 2013 af-
23 firmed an award of \$751,942 against the EEOC for
24 prevailing defendant Peplemark's attorney's and ex-
25 pert fees.

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

12 **SEC. 3. AMENDMENT.**

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

16 “(o) Notwithstanding any other provision of this title,
17 it shall not be an unlawful employment practice for an
18 employer, labor organization, or employment agency, or
19 for a joint labor management committee controlling ap-
20 prenticeships or other training or retraining opportunities,
21 to engage in an employment practice that is required by
22 Federal, State, or local law, in an area such as, but not
23 limited to, health care, childcare, in-home services, polic-

1 ing, security, education, finance, employee benefits, and
2 fiduciary duties.”.

