

117TH CONGRESS
2D SESSION

S. 5333

To establish a voluntary compliance assistance initiative at the Equal Employment Opportunity Commission regarding the usage of employment tests and selection procedures by employers.

IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2022

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

A BILL

To establish a voluntary compliance assistance initiative at the Equal Employment Opportunity Commission regarding the usage of employment tests and selection procedures by employers.

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 “Advancing Skills-
5 Based Hiring Act of 2022”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act—

1 (1) to empower employers to adopt a skills-
 2 based approach to hiring through a voluntary com-
 3 pliance assistance initiative regarding the appro-
 4 priate use of employment tests and selection proce-
 5 dures; and

6 (2) to enable employers to proactively submit
 7 validity evidence to the Equal Employment Oppor-
 8 tunity Commission for review to ensure use of such
 9 tests and procedures is job related for the position
 10 in question and consistent with business necessity
 11 within the meaning of section 703(k)(1)(A)(i) of the
 12 Civil Rights Act of 1964 (42 U.S.C. 2000e-
 13 2(k)(1)(A)(i)).

14 **SEC. 3. REVIEW BY EQUAL EMPLOYMENT OPPORTUNITY**
 15 **COMMISSION OF INFORMATION VOLUN-**
 16 **TARILY SUBMITTED BY EMPLOYERS.**

17 (a) VOLUNTARY SUBMISSION AND REVIEW OF EM-
 18 PLOYER INFORMATION.—The Equal Employment Oppor-
 19 tunity Commission (in this Act referred to as the “Com-
 20 mission”) shall—

21 (1) establish a process for employers—

22 (A) to voluntarily submit validity evidence
 23 to the Commission on the use (including pro-
 24 spective use) of competency-based assessments
 25 or other professionally developed selection pro-

1 cedures that are used to make employment de-
2 cisions; and

3 (B) to obtain a determination by the Com-
4 mission as to whether such use is job related
5 for the position in question and consistent with
6 business necessity within the meaning of section
7 703(k)(1)(A)(i) of the Civil Rights Act of 1964
8 (42 U.S.C. 2000e-2(k)(1)(A)(i));

9 (2) as part of establishing such process, set
10 forth the validity evidence that participating employ-
11 ers shall submit, which may include—

12 (A) the results of a criterion-related valid-
13 ity study;

14 (B) the results of a content validity study;

15 (C) the results of a construct validity
16 study; or

17 (D) the validity evidence from a study con-
18 ducted by an entity other than the employer,
19 along with evidence from the employer that
20 shows job similarity; and

21 (3) allow employers to submit validity evidence
22 for review regardless of the existence of an adverse
23 impact from the use of the assessment or selection
24 procedure involved on protected groups, but require
25 such submitted evidence to include any information

1 available on whether the use has resulted in such an
2 adverse impact.

3 (b) REVIEW OF SUBMITTED EMPLOYER INFORMA-
4 TION.—Subject to the payment required by subsection (d),
5 the Commission shall—

6 (1) review the information submitted under
7 subsection (a); and

8 (2)(A) determine that the use of the assessment
9 or selection procedure identified by the employer is
10 job related and consistent with business necessity as
11 described in subsection (a)(1)(B); or

12 (B) provide technical assistance to such em-
13 ployer that includes, at a minimum—

14 (i) an explanation of why the Commission
15 cannot make that determination; and

16 (ii) steps the employer could take, or
17 changes the employer could implement, that will
18 enable the Commission to make that determina-
19 tion.

20 (c) SAFE HARBOR.—The determination from the
21 Commission under subsection (b)(2)(A) that the employ-
22 er's use of an assessment or selection procedure is job re-
23 lated and consistent with business necessity may be used
24 by the employer to satisfy its burden of proof under sec-

1 tion 703(k)(1)(A)(i) of the Civil Rights Act of 1964 (42
2 U.S.C. 2000e-2(k)(1)(A)(i)).

3 (d) FEE PAYABLE FOR REVIEW.—

4 (1) IN GENERAL.—To obtain review under sub-
5 section (b), an employer with more than 100 employ-
6 ees shall pay to the Commission a reasonable fee to
7 offset the cost incurred by the Commission to pro-
8 vide such review.

9 (2) RELATIONSHIP TO EEOC EDUCATION, TECH-
10 NICAL ASSISTANCE, AND TRAINING REVOLVING
11 FUND.—Fees received under paragraph (1) shall be
12 deposited in the EEOC Education, Technical Assist-
13 ance, and Training Revolving Fund described in sec-
14 tion 705(k) of the Civil Rights Act of 1964 (42
15 U.S.C. 2000e-4(k)) by the Commission. The amount
16 of the fees shall be determined by the Commission
17 under paragraph (2) of that section 705(k), and the
18 review under subsection (b) shall be considered to be
19 technical assistance under that section 705(k).

20 (e) LIMITATION.—Any information submitted by the
21 employer under subsection (a) and any technical assist-
22 ance provided by the Commission under subsection
23 (b)(2)(B) regarding the assessment or selection pro-
24 ceeding involved—

1 (1) shall not be used against such employer as
 2 a basis for an enforcement action on or after the
 3 date of the submission; and

4 (2) shall be inadmissible in a Federal or State
 5 court proceeding without the consent of such em-
 6 ployer.

7 **SEC. 4. EDUCATION AND TECHNICAL ASSISTANCE.**

8 The Commission shall provide education and tech-
 9 nical assistance on the use of competency-based assess-
 10 ments or other selection procedures described in section
 11 3(a)(1)(A), including education and technical assistance
 12 on the methods of validation of such an assessment or se-
 13 lection procedure and on the opportunity to voluntarily
 14 submit validity evidence to the Commission to seek a de-
 15 termination described in section 3(b)(2)(A).

16 **SEC. 5. DEFINITIONS.**

17 For purposes of this Act:

18 (1) **COMPETENCY-BASED ASSESSMENT.**—The
 19 term “competency-based assessment” means an as-
 20 sessment or selection procedure that purports to
 21 measure the knowledge, skills, abilities, or personal
 22 or behavior characteristics that are necessary for, or
 23 shown to predict, successful job performance.

24 (2) **EMPLOYEE; EMPLOYER.**—The terms “em-
 25 ployee” and “employer” have the meanings given the

1 terms in section 701 of the Civil Rights Act of 1964
2 (42 U.S.C. 2000e).

3 **SEC. 6. EFFECTIVE DATE.**

4 This Act shall take effect 90 days after the date of
5 enactment of this Act.

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