

117TH CONGRESS
2D SESSION

H. R. 9082

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 HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2022

Ms. STEFANIK introduced the following bill; which was referred to the
Committee on Education and Labor

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 program regarding the appro-
 4 priate use of employment tests and selection proce-
 5 dures, and

6 (2) to enable employers to proactively submit
 7 validation information to the Equal Employment
 8 Opportunity Commission for review to ensure use of
 9 such tests and procedures is job-related for the posi-
 10 tion in question and consistent with business neces-
 11 sity within the meaning of section 703(k)(1)(A)(i) of
 12 the 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, or prospective
 24 use, of competency-based assessments or other
 25 professionally developed selection procedures

1 that are used to make employment decisions,
2 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 such process, set forth the valid-
10 ity evidence that participating employers should sub-
11 mit, which may include—

12 (A) a criterion-related validity study,
13 (B) a content validity study,
14 (C) a construct validity study, or
15 (D) a transportability study that includes
16 the validity evidence from a study,
17 conducted by another entity, along with evidence
18 from the employer that shows job similarity, and

19 (3) allow employers to submit validity evidence
20 for review regardless of the existence of an adverse
21 impact from the use of the assessment or selection
22 procedure on protected groups, but require such sub-
23 mitted evidence to include any information available
24 on whether the use has resulted in adverse impact.

1 (b) REVIEW OF SUBMITTED EMPLOYER INFORMA-
2 TION.—Subject to the payment required by subsection (d),
3 the Commission shall review the information submitted
4 under subsection (a) and—

5 (1) determine that the use of the assessment or
6 selection procedure identified by the employer is job-
7 related and consistent with business necessity, or

8 (2) provide technical assistance to such em-
9 ployer that includes, at a minimum—

10 (A) an explanation of why the Commission
11 cannot make such a determination, and

12 (B) steps the employer could take, or
13 changes the employer could implement, that will
14 enable the Commission to make the determina-
15 tion in subsection (b)(1).

16 (c) SAFE HARBOR.—The determination from the
17 Commission under subsection (b)(1) that the employer's
18 use of an assessment is job-related and consistent with
19 business may be used by the employer to satisfy its burden
20 of proof under section 703(k)(1)(A)(i) of the Civil Rights
21 Act of 1964 (42 U.S.C. 2000e-2(k)(1)(A)(i)).

22 (d) FEE PAYABLE FOR REVIEW.—To obtain review
23 under subsection (b), an employer with more than 100 em-
24 ployees shall pay to the Commission a reasonable fee de-

1 terminated by the Commission to offset the cost incurred
2 by the Commission to provide such review.

3 (e) LIMITATION.—Any information submitted by the
4 employer under subsection (a) and any technical assist-
5 ance provided by the Commission under subsection (b)(2)
6 regarding the information submitted by the employer re-
7 lated thereto shall—

8 (1) not be used against such employer as a
9 basis for a future enforcement action, and

10 (2) shall be inadmissible in a Federal or State
11 court proceeding without the consent of such em-
12 ployer.

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

14 The Commission shall provide education and tech-
15 nical assistance on the use of employment tests or other
16 selection procedures, including education and technical as-
17 sistance on the methods of validation of an employment
18 test or selection procedure and on the opportunity to vol-
19 untarily submit validity evidence to the Commission to
20 seek a determination that use of an employment test or
21 selection procedure is job-related and consistent with busi-
22 ness necessity.

23 **SEC. 5. DEFINITION.**

24 For purposes of this Act, the term “competency-
25 based assessment” means an assessment or selection pro-

1 cedure that purports to measure the knowledge, skills,
2 abilities, or personal or behavior characteristics that are
3 necessary for, or shown to predict, successful job perform-
4 ance.

5 **SEC. 6. EFFECTIVE DATE.**

6 This Act shall take effect 90 days after the date of
7 the enactment of this Act.

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