

115TH CONGRESS
1ST SESSION

H. R. 2213

To amend the Anti-Border Corruption Act of 2010 to authorize certain polygraph waiver authority, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2017

Ms. MCSALLY (for herself, Mr. McCAUL, Mr. HURD, Mr. CARTER of Texas, Mr. CUELLAR, Mr. ROE of Tennessee, and Mr. VELA) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To amend the Anti-Border Corruption Act of 2010 to authorize certain polygraph waiver authority, and for other purposes.

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 “Anti-Border Corrup-
5 tion Reauthorization Act of 2017”.

6 **SEC. 2. HIRING FLEXIBILITY.**

7 Section 3 of the Anti-Border Corruption Act of 2010
8 (Public Law 111–376; 6 U.S.C. 221) is amended by strik-
9 ing subsection (b) and inserting the following:

1 “(b) WAIVER AUTHORITY.—The Commissioner of
2 U.S. Customs and Border Protection may waive the appli-
3 cation of subsection (a)(1) in the following circumstances:

4 “(1) In the case of a current, full-time law en-
5 forcement officer employed by a State or local law
6 enforcement agency, if such officer—

7 “(A) has served as a law enforcement offi-
8 cer for not fewer than three years with no
9 break in service;

10 “(B) is authorized by law to engage in or
11 supervise the prevention, detection, investiga-
12 tion, or prosecution of, or the incarceration of
13 any person for, any violation of law, and has
14 statutory powers for arrest or apprehension;

15 “(C) is not currently under investigation,
16 has not been found to have engaged in criminal
17 activity or serious misconduct, has not resigned
18 from a law enforcement officer position under
19 investigation or in lieu of termination, and has
20 not been dismissed from a law enforcement offi-
21 cer position; and

22 “(D) has, within the past ten years, suc-
23 cessfully completed a polygraph examination as
24 a condition of employment with such officer’s
25 current law enforcement agency.

1 “(2) In the case of a current, full-time law en-
2 forcement officer employed by a Federal law enforce-
3 ment agency, if such officer—

4 “(A) has served as a law enforcement offi-
5 cer for not fewer than three years with no
6 break in service;

7 “(B) has authority to make arrests, con-
8 duct investigations, conduct searches, make sei-
9 zures, carry firearms, and serve orders, war-
10 rants, and other processes;

11 “(C) is not currently under investigation,
12 has not been found to have engaged in criminal
13 activity or serious misconduct, has not resigned
14 from a law enforcement officer position under
15 investigation or in lieu of termination, and has
16 not been dismissed from a law enforcement offi-
17 cer position; and

18 “(D) holds a current Tier 4 background
19 investigation or current Tier 5 background in-
20 vestigation.

21 “(3) In the case of an individual who is a mem-
22 ber of the Armed Forces (or a reserve component
23 thereof) or a veteran, if such individual—

24 “(A) has served in the Armed Forces for
25 not fewer than three years;

1 “(B) holds, or has held within the past five
2 years, a Secret, Top Secret, or Top Secret/Sen-
3 sitive Compartmented Information clearance;

4 “(C) holds, or has undergone within the
5 past five years, a current Tier 4 background in-
6 vestigation or current Tier 5 background inves-
7 tigation;

8 “(D) received, or is eligible to receive, an
9 honorable discharge from service in the Armed
10 Forces and has not engaged in criminal activity
11 or committed a serious military or civil offense
12 under the Uniform Code of Military Justice;
13 and

14 “(E) was not granted any waivers to ob-
15 tain the clearance referred to subparagraph
16 (B).

17 “(c) TERMINATION OF WAIVER AUTHORITY.—The
18 authority to issue a waiver under subsection (b) shall ter-
19 minate on the date that is five years after the date of the
20 enactment of the Anti-Border Corruption Reauthorization
21 Act of 2017.”.

1 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND**
2 **DEFINITIONS.**

3 (a) SUPPLEMENTAL COMMISSIONER AUTHORITY.—
4 Section 4 of the Anti-Border Corruption Act of 2010
5 (Public Law 111–376) is amended to read as follows:

6 **“SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.**

7 “(a) NONEXEMPTION.—An individual who receives a
8 waiver under subsection (b) of section 3 is not exempt
9 from other hiring requirements relating to suitability for
10 employment and eligibility to hold a national security des-
11 ignated position, as determined by the Commissioner of
12 U.S. Customs and Border Protection.

13 “(b) BACKGROUND INVESTIGATIONS.—Any indi-
14 vidual who receives a waiver under subsection (b) of sec-
15 tion 3 who holds a current Tier 4 background investiga-
16 tion shall be subject to a Tier 5 background investigation.

17 “(c) ADMINISTRATION OF POLYGRAPH EXAMINA-
18 TION.—The Commissioner of U.S. Customs and Border
19 Protection is authorized to administer a polygraph exam-
20 ination to an applicant or employee who is eligible for or
21 receives a waiver under subsection (b) of section 3 if infor-
22 mation is discovered prior to the completion of a back-
23 ground investigation that results in a determination that
24 a polygraph examination is necessary to make a final de-
25 termination regarding suitability for employment or con-
26 tinued employment, as the case may be.”.

1 (b) DEFINITIONS.—The Anti-Border Corruption Act
2 of 2010 is amended by adding at the end the following
3 new section:

4 **“SEC. 5. DEFINITIONS.**

5 “In this Act:

6 “(1) LAW ENFORCEMENT OFFICER.—The term
7 ‘law enforcement officer’ has the meaning given such
8 term in sections 8331(20) and 8401(17) of title 5,
9 United States Code.

10 “(2) VETERAN.—The term ‘veteran’ has the
11 meaning given such term in section 101(2) of title
12 38, United States Code.

13 “(3) SERIOUS MILITARY OR CIVIL OFFENSE.—
14 The term ‘serious military or civil offense’ means an
15 offense for which—

16 “(A) a member of the Armed Forces may
17 be discharged or separated from service in the
18 Armed Forces; and

19 “(B) a punitive discharge is, or would be,
20 authorized for the same or a closely related of-
21 fense under the Manual for Court-Martial, as
22 pursuant to Army Regulation 635–200 chapter
23 14–12.

24 “(4) TIER 4; TIER 5.—The terms ‘Tier 4’ and
25 ‘Tier 5’ with respect to background investigations

- 1 have the meaning given such terms under the 2012
- 2 Federal Investigative Standards.”.

