

Calendar No. 202

116TH CONGRESS
1ST SESSION

S. 731

[Report No. 116-99]

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

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2019

Ms. MCSALLY (for herself and Mr. BRAUN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

SEPTEMBER 10, 2019

Reported by Mr. JOHNSON, with an amendment

[Omit the part struck through and insert the part printed in *italie*]

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 Improvement Act”.

1 **SEC. 2. HIRING FLEXIBILITY.**

2 (a) IN GENERAL.—Section 3(b) of the Anti-Border
3 Corruption Act of 2010 (6 U.S.C. 221) is amended to read
4 as follows:

5 “(b) WAIVER AUTHORITY.—The Commissioner of
6 U.S. Customs and Border Protection may waive the appli-
7 cation of subsection (a)(1)—

8 “(1) with respect to any current, full-time, law
9 enforcement officer employed by a State or local law
10 enforcement agency who—

11 “(A) has served as a law enforcement offi-
12 cer for at least 3 years with no break in service;

13 “(B) is authorized by law to engage in, or
14 supervise, the prevention, detection, investiga-
15 tion, prosecution, or incarceration of any person
16 for any violation of law, and has statutory pow-
17 ers for arrest or apprehension;

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

25 “(D) has, during the most recent 10-year
26 period, successfully completed a polygraph ex-

1 amination that satisfies requirements estab-
2 lished by the Secretary of Homeland Security,
3 in consultation with the Director of National
4 Intelligence, as a condition of employment with
5 such officer’s current law enforcement agency;

6 “(2) with respect to any current, full-time, law
7 enforcement officer employed by a Federal law en-
8 forcement agency who—

9 “(A) has served as a law enforcement offi-
10 cer for at least 3 years with no break in service;

11 “(B) has authority to make arrests, con-
12 duct investigations, conduct searches, make sei-
13 zures, carry firearms, and serve orders, war-
14 rants, and other processes;

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) holds a current background investiga-
23 tion to the level required for service as a law
24 enforcement officer with U.S. Customs and
25 Border Protection; and

1 “(3) with respect to any individual who is a
2 member of the Armed Forces (or a reserve compo-
3 nent thereof) or a veteran who—

4 “(A) has served in the Armed Forces for
5 at least 3 years;

6 “(B) holds, or has held during the most re-
7 cent 5-year period, a Secret, Top Secret, or Top
8 Secret/Sensitive Compartmented Information
9 clearance;

10 ~~“(C) holds or has undergone and passed a~~
11 ~~background investigation to the level required~~
12 ~~for service as a law enforcement officer with~~
13 ~~U.S. Customs and Border Protection;~~

14 *“(C) holds a current, in-scope background*
15 *investigation to the level required for services as*
16 *a law enforcement officer with U.S. Customs and*
17 *Border Protection;*

18 “(D) received, or is eligible to receive, an
19 honorable discharge from service in the Armed
20 Forces and has not engaged in criminal activity
21 or committed a serious military or civil offense
22 under the Uniform Code of Military Justice;
23 and

1 “(E) was not granted any waivers to ob-
2 tain the clearance referred to subparagraph
3 (B).”.

4 (b) **TERMINATION OF WAIVER AUTHORITY.**—Section
5 3(b) of the Anti-Border Corruption Act of 2010, as
6 amended by subsection (a), shall be repealed on the date
7 that is 5 years after the date of the enactment of this
8 Act.

9 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY; RE-**
10 **PORTING; DEFINITIONS.**

11 (a) **SUPPLEMENTAL COMMISSIONER AUTHORITY.**—
12 The Anti-Border Corruption Act of 2010 (Public Law
13 111–376) is amended by striking section 4 and inserting
14 the following:

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

16 “(a) **NONEXEMPTION.**—An individual who receives a
17 waiver under section 3(b) shall not be exempt from other
18 hiring requirements relating to suitability for employment
19 and eligibility to hold a national security designated posi-
20 tion, as determined by the Commissioner of U.S. Customs
21 and Border Protection.

22 “(b) **BACKGROUND INVESTIGATIONS.**—Any indi-
23 vidual who receives a waiver under section 3(b) and holds
24 a current background investigation may be subject to fur-
25 ther background investigation to the level required for

1 service as a law enforcement officer with U.S. Customs
2 and Border Protection.

3 “(c) CONTINUOUS EVALUATION.—Any individual
4 who receives a waiver under section 3(b) shall not be ex-
5 empt from any requirement relating to continuous evalua-
6 tion established by the Commissioner of U.S. Customs and
7 Border Protection.

8 “(d) ADMINISTRATION OF POLYGRAPH EXAMINA-
9 TION.—The Commissioner of U.S. Customs and Border
10 Protection is authorized to administer a polygraph exam-
11 ination to an applicant or employee who is eligible for or
12 receives a waiver under section 3(b) if information is dis-
13 covered before the completion of a background investiga-
14 tion that results in a determination that a polygraph ex-
15 amination is necessary to make a final determination re-
16 garding suitability for employment or continued employ-
17 ment.

18 **“SEC. 5. REPORTING.**

19 “Not later than 1 year after the date of the enact-
20 ment of the Anti-Border Corruption Improvement Act and
21 annually thereafter for the following 4 years, the Commis-
22 sioner of U.S. Customs and Border Protection shall sub-
23 mit a report to the Committee on Homeland Security and
24 Governmental Affairs of the Senate and the Committee

1 on Homeland Security of the House of Representatives
2 that identifies—

3 “(1)(A) the number of waivers requested,
4 granted, or denied, disaggregated with respect to
5 each of paragraphs (1), (2), and (3) of section 3(b);

6 “(B) the reasons for any denial referred to in
7 subparagraph (A); and

8 “(C) the final outcome of the application for
9 employment at issue; and

10 “(2)(A) the number of instances a polygraph
11 examination was administered under the conditions
12 described in section 4(d);

13 “(B) the result of each examination referred to
14 in subparagraph (A); and

15 “(C) the final outcome of the application for
16 employment at issue.

17 **“SEC. 6. DEFINITIONS.**

18 “In this Act:

19 “(1) **LAW ENFORCEMENT OFFICER.**—The term
20 ‘law enforcement officer’ means any law enforcement
21 officer described in section 8331(20) or 8401(17) of
22 title 5, United States Code.

23 “(2) **SERIOUS MILITARY OR CIVIL OFFENSE.**—
24 The term ‘serious military or civil offense’ means an
25 offense for which—

1 “(A) a member of the Armed Forces may
2 be discharged or separated from service in the
3 Armed Forces; and

4 “(B) a punitive discharge is, or would be,
5 authorized for the same or a closely related of-
6 fense under the Manual for Courts-Martial,
7 pursuant to chapter 14–12 of Army Regulation
8 635–200.

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

12 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENT.**

13 Section 411(c)(15) of the Homeland Security Act of
14 2002 (6 U.S.C. 211(e)(15)) is amended by striking “sec-
15 tion 3(1) of”.

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