

115TH CONGRESS
1ST SESSION

H. R. 2213

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2017

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Anti-Border Corrup-
3 tion Reauthorization Act of 2017”.

4 **SEC. 2. HIRING FLEXIBILITY.**

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

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

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

15 “(A) has served as a law enforcement offi-
16 cer for not fewer than 3 years with no break in
17 service;

18 “(B) is authorized by law to engage in or
19 supervise the prevention, detection, investiga-
20 tion, or prosecution of, or the incarceration of
21 any person for, any violation of law, and has
22 statutory powers for arrest or apprehension;

23 “(C) is not currently under investigation,
24 has not been found to have engaged in criminal
25 activity or serious misconduct, has not resigned
26 from a law enforcement officer position under

1 investigation or in lieu of termination, and has
2 not been dismissed from a law enforcement offi-
3 cer position; and

4 “(D) has, within the past 10 years, suc-
5 cessfully completed a polygraph examination as
6 a condition of employment with such officer’s
7 current law enforcement agency.

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

11 “(A) has served as a law enforcement offi-
12 cer for not fewer than 3 years with no break in
13 service;

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

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

1 “(D) holds a current Tier 4 background
2 investigation or current Tier 5 background in-
3 vestigation.

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

7 “(A) has served in the Armed Forces for
8 not fewer than 3 years;

9 “(B) holds, or has held within the past 5
10 years, a Secret, Top Secret, or Top Secret /
11 Sensitive Compartmented Information clear-
12 ance;

13 “(C) holds, or has undergone within the
14 past 5 years, a current Tier 4 background in-
15 vestigation or current Tier 5 background inves-
16 tigation;

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

23 “(E) was not granted any waivers to ob-
24 tain the clearance referred to subparagraph
25 (B).

1 “(c) **TERMINATION OF WAIVER AUTHORITY.**—The
2 authority to issue a waiver under subsection (b) shall ter-
3 minate on the date that is 5 years after the date of the
4 enactment of the Anti-Border Corruption Reauthorization
5 Act of 2017.”.

6 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND**
7 **DEFINITIONS.**

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

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

12 “(a) **NON-EXEMPTION.**—An individual who receives
13 a waiver under subsection (b) of section 3 is not exempt
14 from other hiring requirements relating to suitability for
15 employment and eligibility to hold a national security des-
16 igned position, as determined by the Commissioner of
17 U.S. Customs and Border Protection.

18 “(b) **BACKGROUND INVESTIGATIONS.**—Any indi-
19 vidual who receives a waiver under subsection (b) of sec-
20 tion 3 who holds a current Tier 4 background investiga-
21 tion shall be subject to a Tier 5 background investigation.

22 “(c) **ADMINISTRATION OF POLYGRAPH EXAMINA-**
23 **TION.**—The Commissioner of U.S. Customs and Border
24 Protection is authorized to administer a polygraph exam-
25 ination to an applicant or employee who is eligible for or

1 receives a waiver under subsection (b) of section 3 if infor-
2 mation is discovered prior to the completion of a back-
3 ground investigation that results in a determination that
4 a polygraph examination is necessary to make a final de-
5 termination regarding suitability for employment or con-
6 tinued employment, as the case may be.”.

7 (b) REPORT.—The Anti-Border Corruption Act of
8 2010 is amended by adding at the end the following new
9 section:

10 **“SEC. 5. REPORTING.**

11 “Not later than 1 year after the date of the enact-
12 ment of this section and every year for the next 4 years
13 thereafter, the Commissioner of U.S. Customs and Border
14 Protection shall provide the Committee on Homeland Se-
15 curity of the House of Representatives and the Committee
16 on Homeland Security and Governmental Affairs of the
17 Senate information on the number, disaggregated with re-
18 spect to each of paragraphs (1), (2), and (3) of subsection
19 (b) of section 3, of waivers requested, granted, and denied,
20 and the reasons for any such denial, and the final outcome
21 of the application for employment at issue. Such informa-
22 tion shall also include the number of instances a polygraph
23 examination was administered under the conditions de-
24 scribed in subsection (c) of section 4, the result of such

1 examination, and the final outcome of the application for
2 employment at issue.”.

3 (c) DEFINITIONS.—The Anti-Border Corruption Act
4 of 2010, as amended by subsection (b) of this section, is
5 further amended by adding at the end the following new
6 section:

7 **“SEC. 6. DEFINITIONS.**

8 “In this Act:

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

13 “(2) VETERAN.—The term ‘veteran’ has the
14 meaning given such term in section 101(2) of title
15 38, United States Code.

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

19 “(A) a member of the Armed Forces may
20 be discharged or separated from service in the
21 Armed Forces; and

22 “(B) a punitive discharge is, or would be,
23 authorized for the same or a closely related of-
24 fense under the Manual for Court-Martial, as

1 pursuant to Army Regulation 635–200 chapter
2 14–12.

3 “(4) TIER 4; TIER 5.—The terms ‘Tier 4’ and
4 ‘Tier 5’ with respect to background investigations
5 have the meaning given such terms under the 2012
6 Federal Investigative Standards.”.

Passed the House of Representatives June 7, 2017.

Attest:

KAREN L. HAAS,

Clerk.