

## Union Calendar No. 74

115TH CONGRESS  
1ST SESSION

# H. R. 2213

[Report No. 115–121]

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

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### 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

MAY 16, 2017

Additional sponsors: Mr. MESSER, Mr. GONZALEZ of Texas, and Mr. ARRINGTON

MAY 16, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 27, 2017]

# **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 Corruption*  
5 *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 striking*  
9 *subsection (b) and inserting the following new subsections:*

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

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

16 *“(A) has served as a law enforcement officer*  
17 *for not fewer than three years with no break in*  
18 *service;*

19 *“(B) is authorized by law to engage in or*  
20 *supervise the prevention, detection, investigation,*  
21 *or prosecution of, or the incarceration of any*  
22 *person for, any violation of law, and has statu-*  
23 *tory powers for arrest or apprehension;*

24 *“(C) is not currently under investigation,*  
25 *has not been found to have engaged in criminal*

1           *activity or serious misconduct, has not resigned*  
2           *from a law enforcement officer position under*  
3           *investigation or in lieu of termination, and has*  
4           *not been dismissed from a law enforcement offi-*  
5           *cer position; and*

6           *“(D) has, within the past ten years, success-*  
7           *fully completed a polygraph examination as a*  
8           *condition of employment with such officer’s cur-*  
9           *rent law enforcement agency.*

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

13                 *“(A) has served as a law enforcement officer*  
14                 *for not fewer than three years with no break in*  
15                 *service;*

16                 *“(B) has authority to make arrests, conduct*  
17                 *investigations, conduct searches, make seizures,*  
18                 *carry firearms, and serve orders, warrants, and*  
19                 *other processes;*

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

1           *not been dismissed from a law enforcement offi-*  
2           *cer position; and*

3           *“(D) holds a current Tier 4 background in-*  
4           *vestigation or current Tier 5 background inves-*  
5           *tigation.*

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

9           *“(A) has served in the Armed Forces for not*  
10          *fewer than three years;*

11          *“(B) holds, or has held within the past five*  
12          *years, a Secret, Top Secret, or Top Secret / Sen-*  
13          *sitive Compartmented Information clearance;*

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

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; and*

23          *“(E) was not granted any waivers to obtain*  
24          *the clearance referred to subparagraph (B).*

1           “(c) *TERMINATION OF WAIVER AUTHORITY.*—*The au-*  
2 *thority to issue a waiver under subsection (b) shall termi-*  
3 *nate on the date that is five years after the date of the enact-*  
4 *ment of the Anti-Border Corruption Reauthorization Act of*  
5 *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 (Public*  
10 *Law 111–376) is amended to read as follows:*

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

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

18           “(b) *BACKGROUND INVESTIGATIONS.*—*Any individual*  
19 *who receives a waiver under subsection (b) of section 3 who*  
20 *holds a current Tier 4 background investigation shall be*  
21 *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 deter-*  
5 *mination regarding suitability for employment or contin-*  
6 *ued 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 one year after the date of the enact-*  
12 *ment of this section and every year for the next four years*  
13 *thereafter, the Commissioner of U.S. Customs and Border*  
14 *Protection shall provide the Committee on Homeland Secu-*  
15 *rity of the House of Representatives and the Committee on*  
16 *Homeland Security and Governmental Affairs of the Senate*  
17 *information on the number, disaggregated with respect to*  
18 *each of paragraphs (1), (2), and (3) of subsection (b) of*  
19 *section 3, of waivers requested, granted, and denied, and*  
20 *the reasons for any such denial, and the final outcome of*  
21 *the application for employment at issue. Such information*  
22 *shall also include the number of instances a polygraph ex-*  
23 *amination was administered under the conditions described*  
24 *in subsection (c) of section 4, the result of such examination,*

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

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

6 **“SEC. 6. DEFINITIONS.**

7 *“In this Act:*

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

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

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

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

21 *“(B) a punitive discharge is, or would be,*  
22 *authorized for the same or a closely related of-*  
23 *fense under the Manual for Court-Martial, as*  
24 *pursuant to Army Regulation 635-200 chapter*  
25 *14-12.*



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

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