

116TH CONGRESS
1ST SESSION

H. R. 1609

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2019

Mr. CRENSHAW (for himself, Mr. ROGERS of Alabama, and Mr. HIGGINS of Louisiana) 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 Improvement Act”.

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-

1 ing subsection (b) and inserting the following new sub-
2 sections:

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

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

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

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

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

24 “(D) has, within the past ten years, suc-
25 cessfully completed a polygraph examination,

1 described in subsection (c), as a condition of
2 employment with such officer's current law en-
3 forcement agency.

4 “(2) In the case of a current, full-time law en-
5 forcement officer employed by a Federal law enforce-
6 ment 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) has authority to make arrests, con-
11 duct investigations, conduct searches, make sei-
12 zures, carry firearms, and serve orders, war-
13 rants, and other processes;

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

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

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

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

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

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

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

19 “(E) was not granted any waivers to ob-
20 tain the clearance referred to subparagraph
21 (B).

22 “(c) CERTAIN POLYGRAPH EXAMINATION.—A poly-
23 graph examination described in this subsection is a poly-
24 graph examination that satisfies requirements established

1 by the Secretary of Homeland Security, in consultation
2 with the Director of National Intelligence.

3 “(d) **TERMINATION OF WAIVER AUTHORITY.**—The
4 authority to issue a waiver under subsection (b) shall ter-
5minate on the date that is five years after the date of the
6 enactment of the Anti-Border Corruption Reauthorization
7 Act of 2019.”.

8 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND**
9 **DEFINITIONS.**

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

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

14 “(a) **NON-EXEMPTION.**—An individual who receives
15 a waiver under subsection (b) of section 3 shall not be
16 exempt from other hiring requirements relating to suit-
17 ability for employment and eligibility to hold a national
18 security designated position, as determined by the Com-
19 missioner of U.S. Customs and Border Protection.

20 “(b) **BACKGROUND INVESTIGATIONS.**—Any indi-
21 vidual who receives a waiver under subsection (b) of sec-
22 tion 3 who holds a current background investigation may
23 be subject to further background investigation to the level
24 required for service as a law enforcement officer with U.S.
25 Customs and Border Protection.

1 “(c) CONTINUOUS EVALUATION.—Any individual
2 who receives a waiver under subsection (b) of section 3
3 shall not be exempt from any requirement relating to con-
4 tinuous evaluation established by the Commissioner of
5 U.S. Customs and Border Protection.

6 “(d) ADMINISTRATION OF POLYGRAPH EXAMINA-
7 TION.—The Commissioner of U.S. Customs and Border
8 Protection is authorized to administer a polygraph exam-
9 ination to an applicant or employee who is eligible for or
10 receives a waiver under subsection (b) of section 3 if infor-
11 mation is discovered prior to the completion of a back-
12 ground investigation that results in a determination that
13 a polygraph examination is necessary to make a final de-
14 termination regarding suitability for employment or con-
15 tinued employment, as the case may be.”.

16 (b) REPORT.—The Anti-Border Corruption Act of
17 2010 is amended by adding at the end the following new
18 section:

19 **“SEC. 5. REPORTING.**

20 “Not later than on year after the date of the enact-
21 ment of this section and every year for the next four years
22 thereafter, the Commissioner of U.S. Customs and Border
23 Protection shall provide the Committee on Homeland Se-
24 curity of the House of Representatives and the Committee
25 on Homeland Security and Governmental Affairs of the

1 Senate information on the number, disaggregated with re-
2 spect to each of paragraphs (1), (2), and (3) of subsection
3 (b) of section 3, of waivers requested, granted, and denied,
4 and the reasons for any such denial, and the final outcome
5 of the application for employment at issue. Such informa-
6 tion shall also include the number of instances a polygraph
7 examination was administered under the conditions de-
8 scribed in subsection (d) of section 4, the result of such
9 examination, and the final outcome of the application for
10 employment at issue.”.

11 (c) DEFINITIONS.—The Anti-Border Corruption Act
12 of 2010, as amended by subsection (b) of this section, is
13 further amended by adding at the end the following new
14 section:

15 **“SEC. 6. DEFINITIONS.**

16 “In this Act:

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

21 “(2) VETERAN.—The term ‘veteran’ has the
22 meaning given such term in section 101(2) of title
23 38, United States Code.

1 “(3) SERIOUS MILITARY OR CIVIL OFFENSE.—

2 The term ‘serious military or civil offense’ means an
3 offense for which—

4 “(A) a member of the Armed Forces may
5 be discharged or separated from service in the
6 Armed Forces; and

7 “(B) a punitive discharge is, or would be,
8 authorized for the same or a closely related of-
9 fense under the Manual for Court-Martial, as
10 pursuant to Army Regulation 635–200 chapter
11 14–12.”.

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

13 Paragraph (15) of section 411(c) of the Homeland
14 Security Act of 2002 (6 U.S.C. 211(c)) is amended by
15 striking “section 3(1)” and inserting “section 3”.

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