

116TH CONGRESS
1ST SESSION

S. 731

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 introduced the following bill; which was read twice and referred
to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Anti-Border Corruption Act of 2010 to author-
ize 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 (a) IN GENERAL.—Section 3(b) of the Anti-Border
8 Corruption Act of 2010 (6 U.S.C. 221) is amended to read
9 as follows:

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

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

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

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

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) has, during the most recent 10-year
22 period, successfully completed a polygraph ex-
23 amination that satisfies requirements estab-
24 lished by the Secretary of Homeland Security,
25 in consultation with the Director of National

1 Intelligence, as a condition of employment with
2 such officer's current law enforcement agency;

3 "(2) with respect to any current, full-time, law
4 enforcement officer employed by a Federal law en-
5 forcement agency who—

6 "(A) has served as a law enforcement offi-
7 cer for at least 3 years with no break in service;

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

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

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

23 "(3) with respect to any individual who is a
24 member of the Armed Forces (or a reserve compo-
25 nent thereof) or a veteran who—

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

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

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

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

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

20 (b) TERMINATION OF WAIVER AUTHORITY.—Section
21 3(b) of the Anti-Border Corruption Act of 2010, as
22 amended by subsection (a), shall be repealed on the date
23 that is 5 years after the date of the enactment of this
24 Act.

1 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY; RE-**
2 **PORTING; DEFINITIONS.**

3 (a) SUPPLEMENTAL COMMISSIONER AUTHORITY.—
4 The Anti-Border Corruption Act of 2010 (Public Law
5 111–376) is amended by striking section 4 and inserting
6 the following:

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

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

14 “(b) BACKGROUND INVESTIGATIONS.—Any indi-
15 vidual who receives a waiver under section 3(b) and holds
16 a current background investigation may be subject to fur-
17 ther background investigation to the level required for
18 service as a law enforcement officer with U.S. Customs
19 and Border Protection.

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

25 “(d) ADMINISTRATION OF POLYGRAPH EXAMINA-
26 TION.—The Commissioner of U.S. Customs and Border

1 Protection is authorized to administer a polygraph exam-
2 ination to an applicant or employee who is eligible for or
3 receives a waiver under section 3(b) if information is dis-
4 covered before the completion of a background investiga-
5 tion that results in a determination that a polygraph ex-
6 amination is necessary to make a final determination re-
7 garding suitability for employment or continued employ-
8 ment.

9 **“SEC. 5. REPORTING.**

10 “Not later than 1 year after the date of the enact-
11 ment of the Anti-Border Corruption Improvement Act and
12 annually thereafter for the following 4 years, the Commis-
13 sioner of U.S. Customs and Border Protection shall sub-
14 mit a report to the Committee on Homeland Security and
15 Governmental Affairs of the Senate and the Committee
16 on Homeland Security of the House of Representatives
17 that identifies—

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

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

23 “(C) the final outcome of the application for
24 employment at issue; and

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

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

6 “(C) the final outcome of the application for
7 employment at issue.

8 **“SEC. 6. DEFINITIONS.**

9 “In this Act:

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

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

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

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

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

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

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

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