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115TH CONGRESS
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S. 595

[Report No. 115–133]

To provide U.S. Customs and Border Protection with additional flexibility to expedite the hiring process for applicants for law enforcement positions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2017

Mr. FLAKE (for himself, Mr. MCCAIN, Mr. JOHNSON, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JULY 24, 2017

Reported by Mr. JOHNSON, with an amendment

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

A BILL

To provide U.S. Customs and Border Protection with additional flexibility to expedite the hiring process for applicants for law enforcement positions, 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. EXPANDED AUTHORITY TO WAIVE POLYGRAPH EX-**
5 **AMINATIONS FOR CERTAIN APPLICANTS FOR**
6 **LAW ENFORCEMENT POSITIONS WITH U.S.**
7 **CUSTOMS AND BORDER PROTECTION.**

8 Section 3 of the Anti-Border Corruption Act of 2010
9 (6 U.S.C. 221) is amended by striking subsection (b) and
10 inserting the following:

11 “(b) **WAIVER.**—The Commissioner of U.S. Customs
12 and Border Protection may waive the polygraph examina-
13 tion requirement under subsection (a)(1) for any of the
14 following applicants:

15 “(1) An applicant who, at the time the appli-
16 cant applies for a law enforcement position with
17 U.S. Customs and Border Protection, is a State or
18 local law enforcement officer, if the officer—

19 “(A) has served as a State or local law en-
20 forcement officer for not less than 3 years with
21 no break in service;

22 “(B) is authorized by law to engage in or
23 supervise the prevention, detection, or investiga-
24 tion of any violation of law, or the apprehen-
25 sion, arrest, prosecution, or incarceration of any
26 individual for any violation of law;

1 “(C) is not under investigation, has not
2 been found to have engaged in criminal activity
3 or serious misconduct, has not resigned from a
4 position as a law enforcement officer under in-
5 vestigation or in lieu of termination, and has
6 not been dismissed from a position as a law en-
7 forcement officer; and

8 “(D) has successfully completed a poly-
9 graph examination as a condition of employ-
10 ment with the applicant’s law enforcement
11 agency.

12 “(2) An applicant who, at the time the appli-
13 cant applies for a law enforcement position with
14 U.S. Customs and Border Protection, is a Federal
15 law enforcement officer, if the officer—

16 “(A) has served as a Federal law enforce-
17 ment officer for not less than 3 years with no
18 break in service;

19 “(B) has authority to make arrests, con-
20 duct investigations, conduct searches, make sei-
21 zures, bear firearms, and serve orders, war-
22 rants, and other processes;

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

1 position as a law enforcement officer under in-
2 vestigation or in lieu of termination, and has
3 not been dismissed from a position as a law en-
4 forcement officer; and

5 “(D) has undergone an in-scope Tier 4
6 background investigation or a Tier 5 single
7 scope background investigation as a condition
8 of employment with the applicant’s law enforce-
9 ment agency.

10 “(3) An applicant who, at the time the appli-
11 cant applies for a law enforcement position with
12 U.S. Customs and Border Protection, is a
13 transitioning member of the Armed Forces, a vet-
14 eran, or a member of the National Guard, if such
15 individual—

16 “(A) has served in the Armed Forces for
17 not less than 4 years;

18 “(B) holds, or has held during the 5 years
19 preceding applying for the position, a Secret,
20 Top Secret, or Top Secret/Sensitive Compart-
21 mented Information clearance and was not
22 granted any waiver to obtain such clearance;

23 “(C) has undergone, during the 5 years
24 preceding applying for the position, an in-scope

1 Tier 4 background investigation or a Tier 5 sin-
 2 gle scope background investigation; and

3 “(D) was discharged or released, or is eli-
 4 gible to be discharged or released, from the
 5 Armed Forces under honorable conditions and
 6 has not engaged in criminal activity or serious
 7 misconduct under the Uniform Code of Military
 8 Justice under chapter 47 of title 10, United
 9 States Code.

10 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
 11 tion shall be construed to authorize the Commissioner to
 12 hire an individual for a law enforcement position under
 13 subsection (a) who is not suitable for employment and eli-
 14 gible for a position designated as relating to national secu-
 15 rity.

16 “(d) BACKGROUND INVESTIGATIONS.—An individual
 17 who receives a waiver under subsection (b) who holds a
 18 Tier 4 background investigation shall be subject to a Tier
 19 5 single scope background investigation.

20 “(e) AUTHORITY TO ADMINISTER POLYGRAPH EX-
 21 AMINATIONS AFTER WAIVER.—The Commissioner may
 22 administer a polygraph examination to an individual who
 23 applied for a law enforcement position with U.S. Customs
 24 and Border Protection and received a waiver under sub-
 25 section (b) if the Commissioner determines, based on in-

1 formation discovered before the completion of a back-
 2 ground investigation of the individual, that a polygraph
 3 examination is necessary for the Commissioner to make
 4 a final determination with respect to the suitability of the
 5 individual for the position.

6 “(f) DEFINITIONS.—In this section:

7 “(1) FEDERAL LAW ENFORCEMENT OFFICER.—

8 The term ‘Federal law enforcement officer’ means a
 9 ‘law enforcement officer’, as defined in section
 10 8331(20) or 8401(17) of title 5, United States Code.

11 “(2) TRANSITIONING MEMBER OF THE ARMED
 12 FORCES.—The term ‘transitioning member of the
 13 Armed Forces’ means a member of the Armed
 14 Forces serving on active duty on the date on which
 15 the member applies for a law enforcement position
 16 with U.S. Customs and Border Protection who ex-
 17 pects to be discharged or released from the Armed
 18 Forces and plans to take a position in the competi-
 19 tive service (as defined section 2102 of title 5,
 20 United States Code).

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

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Anti-Border Corruption*
 3 *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 striking*
 7 *subsection (b) and inserting the following new subsections:*

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

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

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

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

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

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

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

7 *“(2) In the case of a current, full-time Federal*
8 *law enforcement officer, if such officer—*

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

12 *“(B) has authority to make arrests, conduct*
13 *investigations, conduct searches, make seizures,*
14 *carry firearms, and serve orders, warrants, and*
15 *other processes;*

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

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

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 not*
 5 *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 within the*
 10 *past five years, a current Tier 4 background in-*
 11 *vestigation or current Tier 5 background inves-*
 12 *tigation;*

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; and*

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

20 “(c) *TERMINATION OF WAIVER AUTHORITY.—The au-*
 21 *thority to issue a waiver under subsection (b) shall termi-*
 22 *nate on the date that is four years after the date of the*
 23 *enactment of the Anti-Border Corruption Reauthorization*
 24 *Act of 2017.”.*

1 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND**
 2 **DEFINITIONS.**

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

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

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

13 “(b) *BACKGROUND INVESTIGATIONS.—Any individual*
 14 *who receives a waiver under subsection (b) of section 3 who*
 15 *holds a current Tier 4 background investigation shall be*
 16 *subject to a Tier 5 background investigation.*

17 “(c) *ADMINISTRATION OF POLYGRAPH EXAMINA-*
 18 *TION.—The Commissioner of U.S. Customs and Border*
 19 *Protection is authorized to administer a polygraph exam-*
 20 *ination to an applicant or employee who is eligible for or*
 21 *receives a waiver under subsection (b) of section 3 if infor-*
 22 *mation is discovered prior to the completion of a back-*
 23 *ground investigation that results in a determination that*
 24 *a polygraph examination is necessary to make a final deter-*
 25 *mination regarding suitability for employment or contin-*
 26 *ued employment, as the case may be.”.*

1 (b) *REPORT.—The Anti-Border Corruption Act of*
 2 *2010 is amended by adding at the end the following new*
 3 *section:*

4 **“SEC. 5. REPORTING REQUIREMENTS.**

5 “(a) *ANNUAL REPORT.—Not later than one year after*
 6 *the date of the enactment of the Anti-Border Corruption Re-*
 7 *authorization Act of 2017, and annually thereafter while*
 8 *the waiver authority under section 3(b) is in effect, the*
 9 *Commissioner of U.S. Customs and Border Protection shall*
 10 *submit a report to Congress that includes, with respect to*
 11 *the reporting period—*

12 “(1) *the number of waivers requested, granted,*
 13 *and denied under section 3(b);*

14 “(2) *the reasons for any denials of such waiver;*

15 “(3) *the percentage of applicants who were hired*
 16 *after receiving a waiver;*

17 “(4) *the number of instances that a polygraph*
 18 *was administered to an applicant who initially re-*
 19 *ceived a waiver and the results of such polygraph;*

20 “(5) *an assessment of the current impact of the*
 21 *polygraph waiver program on filling law enforcement*
 22 *positions at U.S. Customs and Border Protection; and*

23 “(6) *additional authorities needed by U.S. Cus-*
 24 *toms and Border Protection to better utilize the poly-*
 25 *graph waiver program for its intended goals.*

1 “(b) *ADDITIONAL INFORMATION.*—*The first report sub-*
 2 *mitted under subsection (a) shall include—*

3 “(1) *an analysis of other methods of employment*
 4 *suitability tests that detect deception and could be*
 5 *used in conjunction with traditional background in-*
 6 *vestigations to evaluate potential employees for suit-*
 7 *ability; and*

8 “(2) *a recommendation regarding whether a test*
 9 *referred to in paragraph (1) should be adopted by*
 10 *U.S. Customs and Border Protection when the poly-*
 11 *graph examination requirement is waived pursuant*
 12 *to section 3(b).”.*

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

16 **“SEC. 6. DEFINITIONS.**

17 *“In this Act:*

18 “(1) *FEDERAL LAW ENFORCEMENT OFFICER.*—
 19 *The term ‘Federal law enforcement officer’ means a*
 20 *‘law enforcement officer’, as defined in section*
 21 *8331(20) or 8401(17) of title 5, United States Code.*

22 “(2) *VETERAN.*—*The term ‘veteran’ has the*
 23 *meaning given such term in section 101(2) of title 38,*
 24 *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 be*
 5 *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 Courts-Martial, as*
 10 *pursuant to Army Regulation 635-200 chapter*
 11 *14-12.*

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

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