

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 901
OFFERED BY MR. CLARKE OF MICHIGAN**

Page 5, after line 9, insert the following (and redesignate the subsequent quoted sections accordingly):

1 **"SEC. 2103. SECURITY BACKGROUND CHECKS OF COVERED**
2 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
3 **TIES.**

4 **"(a) REGULATIONS ISSUED BY THE SECRETARY.—**

5 **"(1) IN GENERAL.—**

6 **"(A) REQUIREMENT.—**The Secretary shall
7 issue regulations to require covered chemical fa-
8 cilities to establish personnel surety for individ-
9 uals described in subparagraph (B) by con-
10 ducting appropriate security background checks
11 and ensuring appropriate credentials for
12 unescorted visitors and chemical facility per-
13 sonnel, including permanent and part-time per-
14 sonnel, temporary personnel, and contract per-
15 sonnel, including—

16 **"(i) measures designed to verify and**
17 **validate identity;**

1 “(ii) measures designed to check
2 criminal history;

3 “(iii) measures designed to verify and
4 validate legal authorization to work; and

5 “(iv) measures designed to identify
6 people with terrorist ties.

7 “(B) INDIVIDUALS DESCRIBED.—For pur-
8 poses of subparagraph (A), an individual de-
9 scribed in this subparagraph is—

10 “(i) a covered individual who has
11 unescorted access to restricted areas or
12 critical assets or who is provided with a
13 copy of a security vulnerability assessment
14 or site security plan;

15 “(ii) a person associated with a cov-
16 ered chemical facility, including any des-
17 ignated employee representative, who is
18 provided with a copy of a security vulner-
19 ability assessment or site security plan; or

20 “(iii) a person who is determined by
21 the Secretary to require a security back-
22 ground check based on chemical facility se-
23 curity performance standards.

24 “(2) REGULATIONS.—The regulations required
25 by paragraph (1) shall set forth—

1 “(A) the scope of the security background
2 checks, including the types of disqualifying of-
3 fenses and the time period covered for each per-
4 son subject to a security background check
5 under paragraph (1);

6 “(B) the processes to conduct the security
7 background checks;

8 “(C) the necessary biographical informa-
9 tion and other data required in order to con-
10 duct the security background checks;

11 “(D) a redress process for an adversely af-
12 fected person consistent with subsections (b)
13 and (c); and

14 “(E) a prohibition on an owner or operator
15 of a covered chemical facility misrepresenting to
16 an employee or other relevant person, including
17 an arbiter involved in a labor arbitration, the
18 scope, application, or meaning of any rules, reg-
19 ulations, directives, or guidance issued by the
20 Secretary related to security background check
21 requirements for covered individuals when con-
22 ducting a security background check.

23 “(b) MISREPRESENTATION OF ADVERSE EMPLOY-
24 MENT DECISIONS.—The regulations required by sub-
25 section (a)(1) shall set forth that it shall be a misrepresen-

1 tation under subsection (a)(2)(E) to attribute an adverse
2 employment decision, including removal or suspension of
3 the employee, to such regulations unless the owner or op-
4 erator finds, after opportunity for appropriate redress
5 under the processes provided under subsection (c)(1) and
6 (c)(2), that the person subject to such adverse employment
7 decision—

8 “(1) has been convicted of, has been found not
9 guilty of by reason of insanity, or is under want,
10 warrant, or indictment for, a permanent disquali-
11 fying criminal offense listed in part 1572 of title 49,
12 Code of Federal Regulations;

13 “(2) was convicted of, or found not guilty of by
14 reason of insanity, an interim disqualifying criminal
15 offense listed in part 1572 of title 49, Code of Fed-
16 eral Regulations, within 7 years of the date on which
17 the covered chemical facility performs the security
18 background check;

19 “(3) was incarcerated for an interim disquali-
20 fying criminal offense listed in part 1572 of title 49,
21 Code of Federal Regulations, and released from in-
22 carceration within 5 years of the date that the chem-
23 ical facility performs the security background check;

24 “(4) is determined by the Secretary to be on
25 the consolidated terrorist watchlist; or

1 “(5) is determined, as a result of the security
2 background check, not to be legally authorized to
3 work in the United States.

4 “(c) REDRESS PROCESSES.—Upon the issuance of
5 regulations under subsection (a), the Secretary shall—

6 “(1) require the owner or operator to provide
7 an adequate and prompt redress process for a per-
8 son subject to a security background check under
9 subsection (a)(1) who is subjected to an adverse em-
10 ployment decision, including removal or suspension
11 of the employee, due to such regulations that is con-
12 sistent with the appeals process established for em-
13 ployees subject to consumer reports under the Fair
14 Credit Reporting Act (15 U.S.C. 1681 et seq.), as
15 in force on the date of the enactment of this title;

16 “(2) provide an adequate and prompt redress
17 process for a person subject to a security back-
18 ground check under subsection (a)(1) who is sub-
19 jected to an adverse employment decision, including
20 removal or suspension of the employee, due to a de-
21 termination by the Secretary under subsection
22 (b)(4), that is consistent with the appeals process es-
23 tablished under section 70105(c) of title 46, United
24 States Code, including all rights to hearings before
25 an administrative law judge, scope of review, and a

1 review of an unclassified summary of classified evi-
2 dence equivalent to the summary provided in part
3 1515 of title 49, Code of Federal Regulations;

4 “(3) provide an adequate and prompt redress
5 process for a person subject to a security back-
6 ground check under subsection (a)(1) who is sub-
7 jected to an adverse employment decision, including
8 removal or suspension of the employee, due to a vio-
9 lation of subsection (a)(2)(E), which shall not pre-
10 clude the exercise of any other rights available under
11 collective bargaining agreements or applicable laws;

12 “(4) establish a reconsideration process de-
13 scribed in subsection (d) for a person subject to an
14 adverse employment decision that was attributed by
15 an owner or operator to the regulations required by
16 subsection (a)(1);

17 “(5) have the authority to order an appropriate
18 remedy, including reinstatement of the person sub-
19 ject to a security background check under subsection
20 (a)(1), if the Secretary determines that the adverse
21 employment decision was made in violation of the
22 regulations required under subsection (a)(1) or as a
23 result of an erroneous determination by the Sec-
24 retary under subsection (b)(4);

1 “(6) ensure that the redress processes required
2 under paragraphs (1), (2), or (3) afford to the per-
3 son a full disclosure of any public-record event cov-
4 ered by subsection (b) that provides the basis for an
5 adverse employment decision; and

6 “(7) ensure that the person subject to a secu-
7 rity background check under subsection (a)(1) re-
8 ceives the person’s full wages and benefits until all
9 redress processes under this subsection are ex-
10 hausted.

11 “(d) RECONSIDERATION PROCESS.—

12 “(1) IN GENERAL.—The reconsideration proc-
13 ess required under subsection (c)(4) shall—

14 “(A) require the Secretary to determine,
15 within 30 days after receiving a petition sub-
16 mitted by a person subject to an adverse em-
17 ployment decision that was attributed by an
18 owner or operator to the regulations required
19 by subsection (a)(1), whether such person poses
20 a security risk to the covered chemical facility;
21 and

22 “(B) include procedures consistent with
23 section 70105(c) of title 46, United States
24 Code, including all rights to hearings before an
25 administrative law judge, scope of review, and

1 a review of an unclassified summary of classi-
2 fied evidence equivalent to the summary pro-
3 vided in part 1515 of title 49, Code of Federal
4 Regulations.

5 “(2) DETERMINATION BY THE SECRETARY.—In
6 making a determination described under paragraph
7 (1)(A), the Secretary shall—

8 “(A) give consideration to the cir-
9 cumstance of any disqualifying act or offense,
10 restitution made by the person, Federal and
11 State mitigation remedies, and other factors
12 from which it may be concluded that the person
13 does not pose a security risk to the covered
14 chemical facility; and

15 “(B) provide his or her determination as to
16 whether such person poses a security risk to the
17 covered chemical facility to the petitioner and to
18 the owner or operator of the covered chemical
19 facility.

20 “(3) OWNER OR OPERATOR RECONSIDER-
21 ATION.—If the Secretary determines pursuant to
22 paragraph (1)(A) that the person does not pose a se-
23 curity risk to the covered chemical facility, it shall
24 thereafter constitute a prohibited misrepresentation
25 for the owner or operator of the covered chemical fa-

1 cility to continue to attribute the adverse employ-
2 ment decision to the regulations under subsection
3 (a)(1).

4 “(e) RESTRICTIONS ON USE AND MAINTENANCE OF
5 INFORMATION.—Information obtained under this section
6 by the Secretary or the owner or operator of a covered
7 chemical facility shall be handled as follows:

8 “(1) Such information may not be made avail-
9 able to the public.

10 “(2) Such information may not be accessed by
11 employees of the facility except for such employees
12 who are directly involved with collecting the informa-
13 tion or conducting or evaluating security background
14 checks.

15 “(3) Such information shall be maintained con-
16 fidentially by the facility and the Secretary and may
17 be used only for making determinations under this
18 section.

19 “(4) The Secretary may share such information
20 with other Federal, State, local, and tribal law en-
21 forcement agencies.

22 “(f) SAVINGS CLAUSE.—

23 “(1) RIGHTS AND RESPONSIBILITIES.—Nothing
24 in this section shall be construed to abridge any
25 right or responsibility of a person subject to a secu-

1 rity background check under subsection (a)(1) or an
2 owner or operator of a covered chemical facility
3 under any other Federal, State, local, or tribal law
4 or collective bargaining agreement.

5 “(2) EXISTING RIGHTS.—Nothing in this sec-
6 tion shall be construed as creating any new right or
7 modifying any existing right of an individual to ap-
8 peal a determination by the Secretary as a result of
9 a check against a terrorist watch list.

10 “(g) PREEMPTION.—Nothing in this section shall be
11 construed to preempt, alter, or affect a Federal, State,
12 local, or tribal law that requires criminal history back-
13 ground checks, checks on the authorization of an indi-
14 vidual to work in the United States, or other background
15 checks of persons subject to security background checks
16 under subsection (a)(1).

17 “(h) DEFINITION OF SECURITY BACKGROUND
18 CHECK.—The term ‘security background check’ means a
19 review at no cost to any person subject to a security back-
20 ground check under subsection (a)(1) of the following for
21 the purpose of identifying individuals who may pose a
22 threat to chemical facility security, to national security,
23 or of terrorism:

24 “(1) Relevant databases to verify and validate
25 identity.

1 “(2) Relevant criminal history databases.

2 “(3) In the case of an alien (as defined in sec-
3 tion 101 of the Immigration and Nationality Act (8
4 U.S.C. 1101(a)(3))), the relevant databases to deter-
5 mine the status of the alien under the immigration
6 laws of the United States.

7 “(4) The consolidated terrorist watchlist.

8 “(5) Other relevant information or databases,
9 as determined by the Secretary.

10 “(i) DEPARTMENT-CONDUCTED SECURITY BACK-
11 GROUND CHECK.—The regulations under subsection
12 (a)(1) shall set forth a process by which the Secretary,
13 on an ongoing basis, shall determine whether alternate se-
14 curity background checks conducted by the Secretary are
15 sufficient to meet the requirements of this section such
16 that no additional security background check under this
17 section is required for an individual for whom such a
18 qualifying alternate security background check was con-
19 ducted. The Secretary may require the owner or operator
20 of a covered chemical facility to which the individual will
21 have unescorted access to sensitive or restricted areas to
22 submit identifying information about the individual and
23 the alternate security background check conducted for
24 that individual to the Secretary in order to enable the Sec-
25 retary to verify the validity of the alternate security back-

1 ground check. Such regulations shall provide that no secu-
2 rity background check under this section is required for
3 an individual holding a transportation security card issued
4 under section 70105 of title 46, United States Code.

5 “(j) TERMINATION OF EMPLOYMENT.—If, as the re-
6 sult of a security background check, an owner or operator
7 of a covered chemical facility finds that a covered indi-
8 vidual is not legally authorized to work in the United
9 States, the owner or operator shall cease to employ the
10 covered individual, subject to the appropriate redress proc-
11 esses available to such individual under this section.

Page 7, after line 14, conform the quoted table of
contents.

