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INTERCOUNTRY ADOPTION ACT OF 2000

JUNE 22, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GILMAN, from the Committee on International Relations, submitted the following

R E P O R T

[To accompany H.R. 2909]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 2909) to provide for implementation by the United States of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Intercountry Adoption Act of 2000".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—UNITED STATES CENTRAL AUTHORITY

Sec. 101. Designation of central authority.
Sec. 102. Responsibilities of the Secretary of State.
Sec. 103. Responsibilities of the Attorney General.
Sec. 104. Annual report on intercountry adoptions.

TITLE II—PROVISIONS RELATING TO ACCREDITATION AND APPROVAL

Sec. 201. Accreditation or approval required in order to provide adoption services in cases subject to the Convention.
Sec. 202. Process for accreditation and approval; role of accrediting entities.
Sec. 203. Standards and procedures for providing accreditation or approval.
Sec. 204. Secretarial oversight of accreditation and approval.
Sec. 205. State plan requirement.

TITLE III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

Sec. 301. Adoptions of children immigrating to the United States.

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Sec. 302. Immigration and Nationality Act amendments relating to children adopted from Convention countries.
Sec. 303. Adoptions of children emigrating from the United States.

TITLE IV—ADMINISTRATION AND ENFORCEMENT

Sec. 401. Access to Convention records.
Sec. 402. Documents of other Convention countries.
Sec. 403. Authorization of appropriations; collection of fees.
Sec. 404. Enforcement.

TITLE V—GENERAL PROVISIONS

Sec. 501. Recognition of Convention adoptions.
Sec. 502. Special rules for certain cases.
Sec. 503. Relationship to other laws.
Sec. 504. No private right of action.
Sec. 505. Effective dates; transition rule.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress recognizes—

(1) the international character of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague on May 29, 1993), and

(2) the need for uniform interpretation and implementation of the Convention in the United States and abroad,

and therefore finds that enactment of a Federal law governing adoptions and prospective adoptions subject to the Convention involving United States residents is essential.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide for implementation by the United States of the Convention;

(2) to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children's best interests; and

(3) to improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) ACCREDITED AGENCY.—The term "accredited agency" means an agency accredited under title II to provide adoption services in the United States in cases subject to the Convention.

(2) ACCREDITING ENTITY.—The term "accrediting entity" means an entity designated under section 202(a) to accredit agencies and approve persons under title II.

(3) ADOPTION SERVICE.—The term "adoption service" means—

(A) identifying a child for adoption and arranging an adoption;

(B) securing necessary consent to termination of parental rights and to adoption;

(C) performing a background study on a child or a home study on a prospective adoptive parent, and reporting on such a study;

(D) making determinations of the best interests of a child and the appropriateness of adoptive placement for the child;

(E) post-placement monitoring of a case until final adoption; and

(F) where made necessary by disruption before final adoption, assuming custody and providing child care or any other social service pending an alternative placement.

The term "providing", with respect to an adoption service, includes facilitating the provision of the service.

(4) AGENCY.—The term "agency" means any person other than an individual.

(5) APPROVED PERSON.—The term "approved person" means a person approved under title II to provide adoption services in the United States in cases subject to the Convention.

(6) ATTORNEY GENERAL.—Except as used in section 404, the term "Attorney General" means the Attorney General, acting through the Commissioner of Immigration and Naturalization.

(7) CENTRAL AUTHORITY.—The term "central authority" means the entity designated as such by any Convention country under Article 6(1) of the Convention.

(8) CENTRAL AUTHORITY FUNCTION.—The term "central authority function" means any duty required to be carried out by a central authority under the Convention.

(9) CONVENTION.—The term "Convention" means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993.

(10) CONVENTION ADOPTION.—The term "Convention adoption" means an adoption of a child resident in a foreign country party to the Convention by a United States citizen, or an adoption of a child resident in the United States by an individual residing in another Convention country.

(11) CONVENTION RECORD.—The term "Convention record" means any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data, a photograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective Convention adoption (regardless of whether the adoption was made final) that has been preserved in accordance with section 401(a) by the Secretary of State or the Attorney General.

(12) CONVENTION COUNTRY.—The term "Convention country" means a country party to the Convention.

(13) OTHER CONVENTION COUNTRY.—The term "other Convention country" means a Convention country other than the United States.

(14) PERSON.—The term "person" shall have the meaning provided in section 1 of title 1, United States Code, and shall not include any agency of government or tribal government entity.

(15) PERSON WITH AN OWNERSHIP OR CONTROL INTEREST.—The term "person with an ownership or control interest" has the meaning given such term in section 1124(a)(3) of the Social Security Act (42 U.S.C. 1320a–3).

(16) SECRETARY.—The term "Secretary" means the Secretary of State.

(17) STATE.—The term "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

TITLE I—UNITED STATES CENTRAL AUTHORITY

SEC. 101. DESIGNATION OF CENTRAL AUTHORITY.

(a) IN GENERAL.—For purposes of the Convention and this Act—

(1) the Department of State shall serve as the central authority of the United States; and

(2) the Secretary shall serve as the head of the central authority of the United States.

(b) PERFORMANCE OF CENTRAL AUTHORITY FUNCTIONS.—

(1) Except as otherwise provided in this Act, the Secretary shall be responsible for the performance of all central authority functions for the United States under the Convention and this Act.

(2) All personnel of the Department of State performing core central authority functions in a professional capacity in the Office of Children's Issues shall have a strong background in consular affairs, personal experience in international adoptions, or professional experience in international adoptions or child services.

(c) AUTHORITY TO ISSUE REGULATIONS.—Except as otherwise provided in this Act, the Secretary may prescribe such regulations as may be necessary to carry out central authority functions on behalf of the United States.

SEC. 102. RESPONSIBILITIES OF THE SECRETARY OF STATE.

(a) LIAISON RESPONSIBILITIES.—The Secretary shall have responsibility for—

(1) liaison with the central authorities of other Convention countries; and

(2) the coordination of activities under the Convention by persons subject to the jurisdiction of the United States.

(b) INFORMATION EXCHANGE.—The Secretary shall be responsible for—

(1) providing the central authorities of other Convention countries with information concerning—

(A) agencies accredited and persons approved under title II, accredited agencies and approved persons whose accreditation or approval has been suspended or canceled, and accredited agencies and approved persons who have been temporarily or permanently debarred from accreditation or approval;

(B) Federal and State laws relevant to implementing the Convention; and

(C) any other matters necessary and appropriate for implementation of the Convention;

(2) providing Federal agencies, State courts, and accredited agencies and approved persons with an identification of Convention countries and persons authorized to perform functions under the Convention in each such country; and

(3) facilitating the transmittal of other appropriate information to, and among, central authorities, Federal and State agencies (including State courts), and accredited agencies and approved persons.

(c) ACCREDITATION AND APPROVAL RESPONSIBILITIES.—The Secretary shall carry out the functions prescribed by the Convention with respect to the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention as provided in title II. Such functions may not be delegated to any other Federal agency.

(d) ADDITIONAL RESPONSIBILITIES.—The Secretary—

(1) shall monitor individual Convention adoption cases involving United States citizens; and

(2) may facilitate interactions between such citizens and officials of other Convention countries on matters relating to the Convention in any case in which an accredited agency or approved person is unwilling or unable to provide such facilitation.

(e) ESTABLISHMENT OF REGISTRY.—The Secretary and the Attorney General shall jointly establish a case registry of all adoptions involving immigration of children into the United States and emigration of children from the United States, regardless of whether the adoption occurs under the Convention. Such registry shall permit tracking of pending cases and retrieval of information on both pending and closed cases.

(f) METHODS OF PERFORMING RESPONSIBILITIES.—The Secretary may—

(1) authorize public or private entities to perform appropriate central authority functions for which the Secretary is responsible, pursuant to regulations or under agreements published in the Federal Register; and

(2) carry out central authority functions through grants to, or contracts with, any individual or public or private entity, except as may be otherwise specifically provided in this Act.

SEC. 103. RESPONSIBILITIES OF THE ATTORNEY GENERAL.

In addition to such other responsibilities as are specifically conferred upon the Attorney General by this Act, the central authority functions specified in Article 14 of the Convention (relating to the filing of applications by prospective adoptive parents to the central authority of their country of residence) shall be performed by the Attorney General.

SEC. 104. ANNUAL REPORT ON INTERCOUNTRY ADOPTIONS.

(a) REPORTS REQUIRED.—Beginning one year after the date of the entry into force of the Convention for the United States and each year thereafter, the Secretary, in consultation with the Attorney General and other appropriate agencies, shall submit a report describing the activities of the central authority of the United States under this Act during the preceding year to the Committee on International Relations, the Committee on Ways and Means, and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations, the Committee on Finance, and the Committee on Judiciary of the Senate.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall set forth with respect to the year concerned, the following:

(1) The number of intercountry adoptions involving immigration to the United States, regardless of whether the adoption occurred under the Convention, including the country from which each child emigrated, the State to which each child immigrated, and the country in which the adoption was finalized.

(2) The number of intercountry adoptions involving emigration from the United States, regardless of whether the adoption occurred under the Convention, including the country to which each child immigrated and the State from which each child emigrated.

(3) The number of Convention placements for adoption that were disrupted, including the country from which the child emigrated, the age of the child, the date of the placement for adoption, the reasons for the disruption, the resolution of the disruption, the agencies that handled the placement for adoption, and the plans for the child, and in addition, any information regarding disruption or dissolution of adoptions of children from other countries received pursuant to section 422(b)(14) of the Social Security Act, as amended by section 205 of this Act.

(4) The average time required for completion of a Convention adoption, set forth by country from which the child emigrated.

(5) The current list of agencies accredited and persons approved under this Act to provide adoption services.

(6) The names of the accredited agencies and approved persons temporarily or permanently debarred from accreditation or approval under this Act, and the reasons for the debarment.

(7) The range of adoption fees charged in connection with Convention adoptions involving immigration to the United States and the median of such fees set forth by the country of origin.

(8) The range of fees charged for accreditation of agencies and the approval of persons in the United States engaged in providing adoption services under the Convention.

TITLE II—PROVISIONS RELATING TO ACCREDITATION AND APPROVAL

SEC. 201. ACCREDITATION OR APPROVAL REQUIRED IN ORDER TO PROVIDE ADOPTION SERVICES IN CASES SUBJECT TO THE CONVENTION.

(a) IN GENERAL.—Except as otherwise provided in this title, no person may offer or provide adoption services in connection with a Convention adoption in the United States unless that person—

(1) is accredited or approved by an accrediting entity in accordance with this title; or

(2) is providing such services through or under the supervision and responsibility of an accredited agency or approved person.

(b) EXCEPTIONS.—Subsection (a) shall not apply to the following:

(1) BACKGROUND STUDIES AND HOME STUDIES.—The performance of a background study on a child or a home study on a prospective adoptive parent, or any report on any such study by a social work professional or organization who is not providing any other adoption service in the case, if the background or home study is approved by an accredited agency.

(2) CHILD WELFARE SERVICES.—The provision of a child welfare service by a person who is not providing any other adoption service in the case.

(3) LEGAL SERVICES.—The provision of legal services by a person who is not providing any adoption service in the case.

(4) PROSPECTIVE ADOPTIVE PARENTS ACTING ON OWN BEHALF.—The conduct of a prospective adoptive parent on his or her own behalf in the case, to the extent not prohibited by the law of the State in which the prospective adoptive parent resides.

SEC. 202. PROCESS FOR ACCREDITATION AND APPROVAL; ROLE OF ACCREDITING ENTITIES.

(a) DESIGNATION OF ACCREDITING ENTITIES.—

(1) IN GENERAL.—The Secretary shall enter into agreements with one or more qualified entities under which such entities will perform the duties described in subsection (b) in accordance with the Convention, this title, and the regulations prescribed under section 203, and upon entry into each such agreement shall designate the qualified entity as an accrediting entity.

(2) QUALIFIED ENTITY.—In paragraph (1), the term "qualified entity" means a nonprofit private entity that has expertise in developing and administering standards for entities providing child welfare services and that meets such other criteria as the Secretary may by regulation establish.

(b) DUTIES OF ACCREDITING ENTITIES.—The duties described in this subsection are the following:

(1) ACCREDITATION AND APPROVAL.—Accreditation of agencies, and approval of persons, to provide adoption services in the United States in cases subject to the Convention.

(2) OVERSIGHT.—Ongoing monitoring of the compliance of accredited agencies and approved persons with applicable requirements, including review of complaints against such agencies and persons in accordance with procedures established by the accrediting entity and approved by the Secretary.

(3) ENFORCEMENT.—Taking of adverse actions (including requiring corrective action, imposing sanctions, and refusing to renew, suspending, or canceling accreditation or approval) for noncompliance with applicable requirements, and notifying the agency or person against whom adverse actions are taken of the deficiencies necessitating the adverse action.

(4) DATA, RECORDS, AND REPORTS.—Collection of data, maintenance of records, and reporting to the Secretary, the United States central authority, State courts, and other entities (including on persons and agencies granted or denied

approval or accreditation), to the extent and in the manner that the Secretary requires.

(c) REMEDIES FOR ADVERSE ACTION BY ACCREDITING ENTITY.—

(1) CORRECTION OF DEFICIENCY.—An agency or person who is the subject of an adverse action by an accrediting entity may re-apply for accreditation or approval (or petition for termination of the adverse action) on demonstrating to the satisfaction of the accrediting entity that the deficiencies necessitating the adverse action have been corrected.

(2) NO OTHER ADMINISTRATIVE REVIEW.—An adverse action by an accrediting entity shall not be subject to administrative review.

(3) JUDICIAL REVIEW.—An agency or person who is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action. The court shall review the adverse action in accordance with section 706 of title 5, United States Code, and for purposes of such review the accrediting entity shall be considered an agency within the meaning of section 701 of such title.

(d) FEES.—The amount of fees assessed by accrediting entities for the costs of accreditation shall be subject to approval by the Secretary. Such fees may not exceed the costs of accreditation. In reviewing the level of such fees, the Secretary shall consider the relative size of, the geographic location of, and the number of Convention adoption cases managed by the agencies or persons subject to accreditation or approval by the accrediting entity.

SEC. 203. STANDARDS AND PROCEDURES FOR PROVIDING ACCREDITATION OR APPROVAL.

(a) IN GENERAL.—

(1) PROMULGATION OF REGULATIONS.—The Secretary, shall, by regulation, prescribe the standards and procedures to be used by accrediting entities for the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention.

(2) CONSIDERATION OF VIEWS.—In developing such regulations, the Secretary shall consider any standards or procedures developed or proposed by, and the views of, individuals and entities with interest and expertise in international adoptions and family social services, including public and private entities with experience in licensing and accrediting adoption agencies.

(3) APPLICABILITY OF NOTICE AND COMMENT RULES.—Subsections (b), (c), and (d) of section 553 of title 5, United States Code, shall apply in the development and issuance of regulations under this section.

(b) MINIMUM REQUIREMENTS.—

(1) ACCREDITATION.—The standards prescribed under subsection (a) shall include the requirement that accreditation of an agency may not be provided or continued under this title unless the agency meets the following requirements:

(A) SPECIFIC REQUIREMENTS.—

(i) The agency provides prospective adoptive parents of a child in a prospective Convention adoption a copy of the medical records of the child on a date which is not later than the earlier of the date that is 2 weeks before (I) the adoption, or (II) the date on which the prospective parents travel to a foreign country to complete all procedures in such country relating to the adoption. To the fullest extent practicable, an English-language translation of such records is provided.

(ii) The agency provides prospective adoptive parents with a training program that includes counseling and guidance for the purpose of promoting a successful intercountry adoption before such parents travel to adopt the child or the child is placed with such parents for adoption.

(iii) The agency employs personnel providing intercountry adoption services on a fee for service basis rather than on a contingent fee basis.

(iv) The agency discloses fully its policies and practices, the disruption rates of its placements for intercountry adoption, and all fees charged by such agency for intercountry adoption.

(B) CAPACITY TO PROVIDE ADOPTION SERVICES.—The agency has, directly or through arrangements with other persons, a sufficient number of appropriately trained and qualified personnel, sufficient financial resources, appropriate organizational structure, and appropriate procedures to enable the agency to provide, in accordance with this Act, all adoption services in cases subject to the Convention.

(C) USE OF SOCIAL SERVICE PROFESSIONALS.—The agency has established procedures designed to ensure that social service functions requiring the application of clinical skills and judgment are performed only by professionals with appropriate qualifications and credentials.

(D) RECORDS, REPORTS, AND INFORMATION MATTERS.—The agency is capable of—

(i) maintaining such records and making such reports as may be required by the Secretary, the United States central authority, and the accrediting entity that accredits the agency;

(ii) cooperating with reviews, inspections, and audits;

(iii) safeguarding sensitive individual information; and

(iv) complying with other requirements concerning information management necessary to ensure compliance with the Convention, this Act, and any other applicable law.

(E) LIABILITY INSURANCE.—The agency agrees to have in force adequate liability insurance for professional negligence and any other insurance that the Secretary considers appropriate.

(F) COMPLIANCE WITH APPLICABLE RULES.—The agency has established adequate measures to comply (and to ensure compliance of their agents and clients) with the Convention, this Act, and any other applicable law.

(G) NONPROFIT ORGANIZATION WITH STATE LICENSE TO PROVIDE ADOPTION SERVICES.—The agency is a private nonprofit organization licensed to provide adoption services in at least one State.

(2) APPROVAL.—The standards prescribed under subsection (a) shall include the requirement that a person shall not be approved under this title unless the person is a private for-profit entity that meets the requirements of subparagraphs (A) through (F) of paragraph (1) of this subsection.

(3) RENEWAL OF ACCREDITATION OR APPROVAL.—The standards prescribed under subsection (a) shall provide that the accreditation of an agency or approval of a person under this title shall be for a period of not less than 3 years and not more than 5 years, and may be renewed on a showing that the agency or person meets the requirements applicable to original accreditation or approval under this title.

(c) TEMPORARY REGISTRATION OF SMALL COMMUNITY BASED AGENCIES.—For a 2-year period after the entry into force of the Convention and notwithstanding subsection (b), the Secretary may provide, in regulations issued pursuant to subsection (a), that an agency may register with the Secretary and be accredited to provide adoption services in the United States in cases subject to the Convention during such period if the agency—

(1) is licensed in the State in which it is located and is a non-profit agency;

(2) has been providing adoption services in connection with intercountry adoptions for at least 5 years;

(3) has provided adoption services in fewer than 20 intercountry adoptions in the preceding calendar year;

(4) has demonstrated that it will be able to provide the United States Government with all information related to the elements described in section 104(b) and provides such information;

(5) has initiated the process of becoming accredited under the provisions of this Act and is actively taking steps to become an accredited agency; and

(6) has not been found to be involved in any improper conduct relating to intercountry adoptions.

SEC. 204. SECRETARIAL OVERSIGHT OF ACCREDITATION AND APPROVAL.

(a) OVERSIGHT OF ACCREDITING ENTITIES.—The Secretary shall—

(1) monitor the performance by each accrediting entity of its duties under section 202 and its compliance with the requirements of the Convention, this Act, other applicable laws, and implementing regulations under this Act; and

(2) suspend or cancel the designation of an accrediting entity found to be substantially out of compliance with the Convention, this Act, other applicable laws, or implementing regulations under this Act.

(b) SUSPENSION OR CANCELLATION OF ACCREDITATION OR APPROVAL.—

(1) SECRETARY'S AUTHORITY.—The Secretary shall suspend or cancel the accreditation or approval granted by an accrediting entity to an agency or person pursuant to section 202 when the Secretary finds that—

(A) the agency or person is substantially out of compliance with applicable requirements; and

(B) the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate corrective action.

(2) CORRECTION OF DEFICIENCY.—At any time when the Secretary is satisfied that the deficiencies on the basis of which an adverse action is taken under paragraph (1) have been corrected, the Secretary shall—

(A) notify the accrediting entity that the decifiencies have been corrected; and

(B)(i) in the case of a suspension, terminate the suspension; or

(ii) in the case of a cancellation, notify the agency or person that the agency or person may re-apply to the accrediting entity for accreditation or approval.

(c) DEBARMENT.—

(1) SECRETARY'S AUTHORITY.—On the initiative of the Secretary, or on request of an accrediting entity, the Secretary may temporarily or permanently debar an agency from accreditation or a person from approval under this title, but only if—

(A) there is substantial evidence that the agency or person is out of compliance with applicable requirements; and

(B) there has been a pattern of serious, willful, or grossly negligent failures to comply or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned.

(2) PERIOD OF DEBARMENT.—The Secretary's debarment order shall state whether the debarment is temporary or permanent. If the debarment is temporary, the Secretary shall specify a date, not earlier than 3 years after the date of the order, on or after which the agency or person may apply to the Secretary for withdrawal of the debarment.

(3) EFFECT OF DEBARMENT.—An accrediting entity may take into account the circumstances of the debarment of an agency or person that has been debarred pursuant to this subsection in considering any subsequent application of the agency or person, or of any other entity in which the agency or person has an ownership or control interest, for accreditation or approval under this title.

SEC. 205. STATE PLAN REQUIREMENT.

Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) is amended—

(1) in paragraph (11), by striking "and" at the end;

(2) in paragraph (12), by striking "children." and inserting "children;"; and

(3) by adding at the end the following new paragraphs:

"(13) contain a description of the activities that the State has undertaken for children adopted from other countries, including the provision of adoption and post-adoption services; and

"(14) provide that the State shall collect and report information on children who are adopted from other countries and who enter into State custody as a result of the disruption of a placement for adoption or the dissolution of an adoption, including the number of children, the agencies who handled the placement or adoption, the plans for the child, and the reasons for the disruption or dissolution.".

TITLE III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

SEC. 301. ADOPTIONS OF CHILDREN IMMIGRATING TO THE UNITED STATES.

(a) LEGAL EFFECT OF ADOPTIONS FINALIZED IN THE UNITED STATES.—

(1) ISSUANCE OF CERTIFICATES BY THE SECRETARY OF STATE.—Pursuant to Article 23 of the Convention, the Secretary of State shall, with respect to each Convention adoption, issue a certificate to the adoptive citizen parent domiciled in the United States that the adoption has been granted or, in the case of a prospective adoptive citizen parent, that legal custody of the child has been granted to the citizen parent for purposes of emigration and adoption, pursuant to the Convention and this Act, if the Secretary of State—

(A) receives appropriate notification from the central authority of such child's country of origin; and

(B) has verified that the requirements of this Act have been met with respect to the adoption.

(2) LEGAL EFFECT OF CERTIFICATES.—If appended to an original adoption decree, the certificate described in paragraph (1) shall be treated by Federal and State agencies, courts, and other public and private persons and entities as conclusive evidence of the facts certified therein and shall constitute the certification required by section 204(d)(2) of the Immigration and Nationality Act, as amended by this Act.

(b) LEGAL EFFECT OF CONVENTION ADOPTION FINALIZED IN ANOTHER CONVENTION COUNTRY.—A final adoption in another Convention country, certified by the Secretary of State pursuant to subsection (a) of this section or section 303(c), shall be

recognized as a final valid adoption for purposes of all Federal, State, and local laws of the United States.

(c) CONDITION ON FINALIZATION OF CONVENTION ADOPTION BY STATE COURT.—In the case of a child who has entered the United States from another Convention country for the purpose of adoption, a State court may not issue an order declaring the adoption final unless the Secretary of State has issued the certificate provided for in subsection (a) with respect to the adoption.

SEC. 302. IMMIGRATION AND NATIONALITY ACT AMENDMENTS RELATING TO CHILDREN ADOPTED FROM CONVENTION COUNTRIES.

(a) DEFINITION OF CHILD.—Section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) is amended—

(1) by striking "or" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; or"; and

(3) by adding after subparagraph (F) the following new subparagraph:

"(G) a child, under the age of sixteen at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States, by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age—

"(i) if—

"(I) the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States;

"(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

"(III) the child is not the grandchild, niece, nephew, brother, sister, aunt, uncle, or first cousin of one or both of the adopting parents, unless—

"(aa) the child has no living parents because of the death or disappearance of, abandonment or desertion by, separation from, or loss of, both parents; or

"(bb) the sole or surviving parent is incapable of providing the proper care for the child and has in writing irrevocably released the child for emigration and adoption; and

"(IV) in the case of a child who has not been adopted—

"(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

"(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and

"(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.".

(b) APPROVAL OF PETITIONS.—Section 204(d) of the Immigration and Nationality Act (8 U.S.C. 1154(d)) is amended—

(1) by striking "(d)" and inserting "(d)(1)";

(2) by striking "section 101(b)(1)(F)" and inserting "subparagraph (F) or (G) of section 101(b)(1)"; and

(3) by adding at the end the following new paragraph:

"(2) Notwithstanding the provisions of subsections (a) and (b), no petition may be approved on behalf of a child defined in section 101(b)(1)(G) unless the Secretary of State has certified that the central authority of the child's country of origin has notified the United States central authority under the convention referred to in such section 101(b)(1)(G) that a United States citizen habitually resident in the United States has effected final adoption of the child, or has been granted custody of the child for the purpose of emigration and adoption, in accordance with such convention and the Intercountry Adoption Act of 2000.".

(c) DEFINITION OF PARENT.—Section 101(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(2)) is amended by inserting "and paragraph (1)(G)(i)" after "second proviso therein)".

SEC. 303. ADOPTIONS OF CHILDREN EMIGRATING FROM THE UNITED STATES.

(a) DUTIES OF ACCREDITED AGENCY OR APPROVED PERSON.—In the case of a Convention adoption involving the emigration of a child residing in the United States to a foreign country, the accredited agency or approved person providing adoption services, or the prospective adoptive parent or parents acting on their own behalf (if permitted by the laws of such other Convention country in which they reside and the laws of the State in which the child resides), shall do the following:

(1) Ensure that, in accordance with the Convention—

(A) a background study on the child is completed;

(B) the accredited agency or approved person—

(i) has made reasonable efforts to actively recruit and make a diligent search for prospective adoptive parents to adopt the child in the United States; and

(ii) despite such efforts, has not been able to place the child for adoption in the United States in a timely manner; and

(C) a determination is made that placement with the prospective adoptive parent or parents is in the best interests of the child.

(2) Furnish to the State court with jurisdiction over the case—

(A) documentation of the matters described in paragraph (1);

(B) a background report (home study) on the prospective adoptive parent or parents (including a criminal background check) prepared in accordance with the laws of the receiving country; and

(C) a declaration by the central authority (or other competent authority) of such other Convention country—

(i) that the child will be permitted to enter and reside permanently, or on the same basis as the adopting parent, in the receiving country; and

(ii) that the central authority (or other competent authority) of such other Convention country consents to the adoption, if such consent is necessary under the laws of such country for the adoption to become final.

(3) Furnish to the United States central authority—

(A) official copies of State court orders certifying the final adoption or grant of custody for the purpose of adoption;

(B) the information and documents described in paragraph (2), to the extent required by the United States central authority; and

(C) any other information concerning the case required by the United States central authority to perform the functions specified in subsection (c) or otherwise to carry out the duties of the United States central authority under the Convention.

(b) CONDITIONS ON STATE COURT ORDERS.—A State court shall not enter an order declaring an adoption to be final or granting custody for the purpose of adoption in a case described in subsection (a) unless the court—

(1) has received and verified to the extent the court may find necessary—

(A) the material described in subsection (a)(2); and

(B) satisfactory evidence that the requirements of Articles 4 and 15 through 21 of the Convention have been met; and

(2) has determined that the adoptive placement is in the child's best interests.

(c) DUTIES OF THE SECRETARY OF STATE.—In a case described in subsection (a), the Secretary, on receipt and verification as necessary of the material and information described in subsection (a)(3), shall issue, as applicable, an official certification that the child has been adopted or a declaration that custody for purposes of adoption has been granted, in accordance with the Convention and this Act.

(d) FILING WITH REGISTRY REGARDING NONCONVENTION ADOPTIONS.—Accredited agencies, approved persons, and other persons, including governmental authorities, providing adoption services in an intercountry adoption not subject to the Convention that involves the emigration of a child from the United States shall file information required by regulations jointly issued by the Attorney General and the Secretary of State for purposes of implementing section 102(e).

TITLE IV—ADMINISTRATION AND ENFORCEMENT

SEC. 401. ACCESS TO CONVENTION RECORDS.

(a) PRESERVATION OF CONVENTION RECORDS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary, in consultation with the Attorney General, shall issue

regulations that establish procedures and requirements in accordance with the Convention and this section for the preservation of Convention records.

(2) APPLICABILITY OF NOTICE AND COMMENT RULES.—Subsections (b), (c), and (d) of section 553 of title 5, United States Code, shall apply in the development and issuance of regulations under this section.

(b) ACCESS TO CONVENTION RECORDS.—

(1) PROHIBITION.—Except as provided in paragraph (2), the Secretary or the Attorney General may disclose a Convention record, and access to such a record may be provided in whole or in part, only if such record is maintained under the authority of the Immigration and Nationality Act and disclosure of, or access to, such record is permitted or required by applicable Federal law.

(2) EXCEPTION FOR ADMINISTRATION OF THE CONVENTION.—A Convention record may be disclosed, and access to such a record may be provided, in whole or in part, among the Secretary, the Attorney General, central authorities, accredited agencies, and approved persons, only to the extent necessary to administer the Convention or this Act.

(3) PENALTIES FOR UNLAWFUL DISCLOSURE.—Unlawful disclosure of all or part of a Convention record shall be punishable in accordance with applicable Federal law.

(c) ACCESS TO NON-CONVENTION RECORDS.—Disclosure of, access to, and penalties for unlawful disclosure of, adoption records that are not Convention records, including records of adoption proceedings conducted in the United States, shall be governed by applicable State law.

SEC. 402. DOCUMENTS OF OTHER CONVENTION COUNTRIES.

Documents originating in any other Convention country and related to a Convention adoption case shall require no authentication in order to be admissible in any Federal, State, or local court in the United States, unless a specific and supported claim is made that the documents are false, have been altered, or are otherwise unreliable.

SEC. 403. AUTHORIZATION OF APPROPRIATIONS; COLLECTION OF FEES.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to agencies of the Federal Government implementing the Convention and the provisions of this Act.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(b) ASSESSMENT OF FEES.—

(1) The Secretary may charge a fee for new or enhanced services that will be undertaken by the Department of State to meet the requirements of this Act with respect to intercountry adoptions under the Convention and comparable services with respect to other intercountry adoptions. Such fee shall be prescribed by regulation and shall not exceed the cost of such services.

(2) Fees collected under paragraph (1) shall be retained and deposited as an offsetting collection to any Department of State appropriation to recover the costs of providing such services.

(3) Fees authorized under this section shall be available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

(c) RESTRICTION.—No funds collected under the authority of this section may be made available to an accrediting entity to carry out the purposes of this Act.

SEC. 404. ENFORCEMENT.

(a) CIVIL PENALTIES.—Any person who—

(1) violates section 201;

(2) makes a false or fraudulent statement or misrepresentation of material fact, or offers, gives, solicits, or accepts inducement by way of compensation intended to influence or affect in the United States or a foreign country—

(A) a decision by an accrediting entity with respect to the accreditation of an agency or approval of a person under title II;

(B) the relinquishment of parental rights or parental consent relating to the adoption of a child in a case subject to the Convention; or

(C) a decision or action of any entity performing a central authority function; or

(3) engages another person as an agent, whether in the United States or in a foreign country, who in the course of that agency takes any of the actions described in paragraph (1) or (2),

shall be subject, in addition to any other penalty that may be prescribed by law, to a civil money penalty of not more than $50,000 for a first violation, and not more than $100,000 for each succeeding violation.

(b) CIVIL ENFORCEMENT.—

(1) AUTHORITY OF ATTORNEY GENERAL.—The Attorney General may bring a civil action to enforce subsection (a) against any person in any United States district court.

(2) FACTORS TO BE CONSIDERED IN IMPOSING PENALTIES.—In imposing penalties the court shall consider the gravity of the violation, the degree of culpability of the defendant, and any history of prior violations by the defendant.

(c) CRIMINAL PENALTIES.—Whoever knowingly and willfully violates paragraph (1) or (2) of subsection (a) shall be subject to a fine of not more than $250,000, imprisonment for not more than 5 years, or both.

TITLE V—GENERAL PROVISIONS

SEC. 501. RECOGNITION OF CONVENTION ADOPTIONS.

Subject to Article 24 of the Convention, adoptions concluded between two other Convention countries that meet the requirements of Article 23 of the Convention and that became final before the date of entry into force of the Convention for the United States shall be recognized thereafter in the United States and given full effect. Such recognition shall include the specific effects described in Article 26 of the Convention.

SEC. 502. SPECIAL RULES FOR CERTAIN CASES.

(a) AUTHORITY TO ESTABLISH ALTERNATIVE PROCEDURES FOR ADOPTION OF CHILDREN BY RELATIVES.—To the extent consistent with the Convention, the Secretary may establish by regulation alternative procedures for the adoption of children by individuals related to them by blood, marriage, or adoption, in cases subject to the Convention.

(b) WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, to the extent consistent with the Convention, the Secretary may, on a case-by-case basis, waive applicable requirements of this Act or regulations issued under this Act, in the interests of justice or to prevent grave physical harm to the child.

(2) NONDELEGATION.—The authority provided by paragraph (1) may not be delegated.

SEC. 503. RELATIONSHIP TO OTHER LAWS.

(a) PREEMPTION OF INCONSISTENT STATE LAW.—The Convention and this Act shall not be construed to preempt any provision of the law of any State or political subdivision thereof, or prevent a State or political subdivision thereof from enacting any provision of law with respect to the subject matter of the Convention or this Act, except to the extent that such provision of State law is inconsistent with the Convention or this Act, and then only to the extent of the inconsistency.

(b) APPLICABILITY OF THE INDIAN CHILD WELFARE ACT.—The Convention and this Act shall not be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

SEC. 504. NO PRIVATE RIGHT OF ACTION.

The Convention and this Act shall not be construed to create a private right of action to seek administrative or judicial relief, except to the extent expressly provided in this Act.

SEC. 505. EFFECTIVE DATES; TRANSITION RULE.

(a) EFFECTIVE DATES.—

(1) PROVISIONS EFFECTIVE UPON ENACTMENT.—Sections 2, 3, 101 through 103, 202 through 205, 401(a), 403, 503, and 505(a) shall take effect on the date of the enactment of this Act.

(2) PROVISIONS EFFECTIVE UPON THE ENTRY INTO FORCE OF THE CONVENTION.—Subject to subsection (b), the provisions of this Act not specified in paragraph (1) shall take effect upon the entry into force of the Convention for the United States pursuant to Article 46(2)(a) of the Convention.

(b) TRANSITION RULE.—The Convention and this Act shall not apply—

(1) in the case of a child immigrating to the United States, if the application for advance processing of an orphan petition or petition to classify an orphan as an immediate relative for the child is filed before the effective date described in subsection (a)(2); or

(2) in the case of a child emigrating from the United States, if the prospective adoptive parents of the child initiated the adoption process in their country of residence with the filing of an appropriate application before the effective date described in subsection (a)(2).

BACKGROUND AND PURPOSE

Over the course of the last ten years, U.S. families have increasingly been built through intercountry adoptions. Between 1989 and 1999 the number of children being adopted by U.S. families doubled, from nearly 8,000 to more than 16,000 annually, with a total of over 85,000 children from other countries being adopted during that period. Most intercountry adoptions result in the successful placement of happy, well adjusted children with parents who will love and care for them, and the majority of leading international adoption agencies maintain high ethical and professional standards.

As intercountry adoptions have increased, however, abusive practices have become more prevalent. Abuses by less reputable agencies range from the charging of exorbitant fees by so-called "facilitators" in some countries to even cases of child kidnaping and coerced parental consent. They include situations in which adoptive families are poorly prepared for their parenting responsibilities, and instances in which information has been improperly withheld from these families with regard to the child's medical or psychological condition.

During a staff fact-finding trip to Paraguay, for example, consular officials at the U.S. embassy at Asuncion described cases from the mid-1990's involving coaching of women to fraudulently represent themselves as birth mothers and even murders of birth mothers by criminal organizations after birth mothers changed their minds about placement. During some years, fully half of all applications for an immigrant visa related to an intercountry adoption were rejected by the Embassy because of suspected fraud.

Abuses are not limited to Latin America. Stories in the press and relayed by prospective adoptive parents also described the deceptive practices of so-called "facilitators" in countries of Eastern Europe. Medical records are often not given to the prospective adoptive parents before they travel, or are incomplete, and the parents only learn upon arrival of significant medical problems. Other times, upon arrival, prospective adoptive parents are told that the child they thought they were adopting had already been adopted, but that another child (often with undisclosed medical or developmental problems) is "available."

To combat these abuses, representatives from countries around the world gathered under the auspices of the Hague Conference on Private International Law to draft a treaty to establish internationally agreed upon norms and procedures for international adoptions. The goal of the negotiations was to adopt a convention to protect the children, birth parents and adoptive parents involved in the intercountry adoptions.

Over 65 countries participated in the negotiations, among them the United States and virtually all major states of origin and other major receiving states. The final text of the Convention was adopted on May 29, 1993, and the Convention entered into force on May 1, 1995. The United States signed the Convention on March 31, 1994.

The Convention provides a formal approval process for intercountry adoptions; establishes a minimum set of standards governing international adoptions; establishes a central authority in

each Convention country that can provide reliable information regarding international adoptions; creates reasonable certainty that an adoption decree from a foreign court will be recognized in the receiving state; and creates a system that will allow tracking of children who leave the state of origin for adoption by persons resident abroad.

Between 1994 and 1998, the Clinton Administration convened an interagency group which drafted implementing legislation for the Convention, with input from various elements within the adoption community.

The Administration submitted implementing legislation on June 11, 1998, and resubmitted it on May 12, 1999. Congress took an immediate interest in this issue and the legislation. After extensive discussions, Chairman Gilman introduced, on September 22, 1999, H.R. 2909, the Intercountry Adoption Act of 1999, a bipartisan measure with 36 original cosponsors representing all points on the ideological spectrum. (An additional 15 members cosponsored the bill by the time of the filing of this report, for a total of 51 cosponsors.)

The Committee took extensive testimony and received numerous communications regarding the legislation, voicing both support and concerns regarding the text as introduced. In an effort to move this legislation expeditiously, a working group was formed representing members from the Committees of jurisdiction in both the House and the Senate to try to achieve convergence between H.R. 2909 and the legislation introduced by Senators Helms and Landrieu, S. 682. The result of these discussions was an agreement to bring amendments to the relevant committees in both chambers that would revise both bills with substantially identical text. The guiding principle for these discussions was to write legislation to implement only the requirements of the Convention and not to reach beyond those obligations.

Prompt U.S. ratification and implementation of the Hague Convention is of enormous importance to many thousands of needy children throughout the world who cannot be placed for adoption in their countries of origin. U.S. ratification will signal to other nations our willingness to help provide homes for these children through intercountry adoption and U.S. commitment to creating a legal framework that will better protect them and their families from the various abuses that gave rise to the Convention. By requiring greater disclosure to adoptive families and mandating tough, more uniform standards for those who provide international adoption services, the Convention will help eliminate these problems and enable both birth parents and adoptive families to participate in the intercountry adoption process with confidence and a greater sense of security. Indeed, these protections are deemed so vital that some countries that have ratified the Convention will only allow placements with citizens of other countries that have ratified the Convention.

COMMITTEE ACTION

H.R. 2909 was introduced by Representative Gilman on September 22, 1999, with 36 co-sponsors. The bill was referred to the Committee on International Relations, with additional referrals to

the Committees on the Judiciary, Education and Workforce, and, subsequently, Ways and Means.

On October 29, 1999, the Committee took testimony from the Assistant Secretary for Consular Affairs in the Department of State, from the Department of Health and Human Services, and from private witnesses representing adoption agencies, adoptive parents, international adoptees, medical experts, and an organization responsible for accrediting social service agencies.

The Committee on International Relations marked up the bill in open session, pursuant to notice, on March 22, 2000. During its consideration, the Committee agreed to an amendment in the nature of a substitute offered by Mr. Gilman (for himself, Mr. Gejdenson, Mr. Burr, Mr. Delahunt, Mr. Ballenger and Mr. Pomeroy). The amendment was agreed to by voice vote. Subsequently, the Committee agreed to a motion offered by Mr. Bereuter to favorably report the bill, as amended, to the House of Representatives by a vote of 28–0.

RECORD VOTES ON AMENDMENTS AND MOTION TO REPORT

Clause (3)(b) of rule XIII of the Rules of the House of Representatives requires that the results of each record vote on an amendment or motion to report, together with the names of those voting for or against, be printed in the committee report.

DESCRIPTION OF AMENDMENT, MOTION, ORDER, OR OTHER PROPOSITION

(Votes during markup of H.R. 2909—March 22, 2000)

Vote No. 1.—Bereuter motion to favorably report to the House of Representatives H.R. 2909, as amended.

Voting Aye: Gilman, Goodling, Bereuter, Smith, Ballenger, Manzullo, King, Chabot, Sanford, Salmon, McHugh, Burr, Gillmor, Cooksey, Tancredo, Gejdenson, Payne, Hastings, Danner, Hilliard, Sherman, Rothman, Davis, Pomeroy, Delahunt, Lee, Crowley, and Hoeffel.

Voting No: none.

Ayes, 28. Noes, 0.

OTHER MATTERS

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

Clause 3(c)(4) of rule XIII of the Rules of the House of Representatives requires each Committee report to contain a summary of the oversight findings and recommendations made by the Government Reform Committee pursuant to clause (4)(c)(2) of rule X of those Rules. The Committee on International Relations has received no

such findings or recommendations from the Committee on Government Reform.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

CONSTITUTIONAL AUTHORITY STATEMENT

In compliance with clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee cites the following specific powers granted to the Congress in the Constitution as authority for enactment of H.R. 2909 as reported by the Committee: Article I, section 8, clause 1 (relating to providing for the common defense and general welfare of the United States); Article I, section 8, clause 3 (relating to the regulation of commerce with foreign nations); and Article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the Government of the United States or in any department or Officer thereof).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt State or local law.

In general, requirements in the Act are in addition to any requirements in State law, but do not displace them. States may not adopt laws inconsistent with the Act, however, in areas where the Act provides a particular rule. For example, the requirements for accreditation of agencies and approval of persons in title II will not deprive the States of authorities to license adoption agencies, but such agencies will not be able to provide adoption services in cases involving another country that has ratified the Hague Convention unless it has been accredited under this Act.

Sections 301 and 303 place certain limitations on States regarding intercountry adoptions subject to this Act and requires recognition of adoption decrees issued by foreign government authorities if certified by the Secretary of State; this also involves preempting otherwise applicable State law.

These provisions are discussed more fully in the section-by-section analysis.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES, CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, AND FEDERAL MANDATES STATEMENTS

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives requires each Committee report that accompanies a measure providing new budget authority, new spending authority, or new

credit authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974, as amended, and, when practicable with respect to estimates of new budget authority, a comparison of the estimated funding level for the relevant program (or programs) to the appropriate levels under current law.

Clause 3(d) of rule XIII of the Rules of the House of Representatives requires Committees to include their own cost estimates in certain Committee reports, which include, when practicable, a comparison of the total estimated funding level for the relevant program (or programs) with the appropriate levels under current law.

Clause 3(c)(3) of rule XIII of the Rules of the House of Representatives requires the report of any Committee on a measure which has been approved by the Committee to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted.

Section 423 of the Congressional Budget Act requires the report of any committee on a bill or joint resolution that includes any Federal mandate to include specific information about such mandates. The Committee states that H.R. 2909 does not include any such mandate.

The Committee adopts the cost estimate of the Congressional Budget Office as its own submission of any new required information with respect to H.R. 2909 on new budget authority, new spending authority, new credit authority, or an increase or decrease in the national debt. It also adopts the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. The estimate and report that has been received is set out below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 7, 2000.

Hon. BENJAMIN A. GILMAN,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2909 the Intercountry Adoption Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte.

Sincerely,

STEVEN LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2909—Intercountry Adoption Act of 2000

Summary: H.R. 2909 would authorize the United States to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and would authorize appropriations for that purpose. CBO estimates that those discretionary costs would be less than $500,000 a year over the 2001–2005 period, assuming appropriation of the necessary amounts. The bill has other provisions that would affect governmental receipts (revenues) and direct spending, but CBO estimates that those effects

would be insignificant. Because enactment of H.R. 2909 would affect receipts and direct spending, pay-as-you-go procedures would apply.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from application of that act bills that would be necessary for the ratification or implementation of international treaty obligations. CBO has determined that the provisions of H.R. 2909 would implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and would thus fall within that exclusion.

Estimated cost to the Federal Government: For purposes of this estimate, CBO assumes that the initial appropriations for H.R. 2909 would be provided in fiscal year 2001 and that outlays would follow historical spending patterns. The costs of this legislation fall within budget function 150 (international relations) and 750 (administration of justice).

Spending subject to appropriation

The bill would provide an open-ended authorization of appropriations for the Departments of State and Justice to meet the requirements of the bill and would authorize new consular fees, which the State Department could spend subject to appropriation action. CBO estimates that the net cost of implementing the bill would be less than $500,000 annually over the 2001–2005 period.

Department of State. H.R. 2909 would designate the State Department as the central authority responsible for coordinating and implementing international adoptions under the convention. Under current law, the State Department has no routine role in international adoptions. When it does act, it is usually in response to requests from the adopters. The bill would establish an official role for the department and require it to:

- Enter into agreements with nonprofit organizations that would accredit and monitor adoption agencies that would provide services under the convention.
- Monitor the performance of accreditation agencies.
- Monitor and facilitate individual cases of adoption under the convention.
- Provide the Congress with an annual report on international adoptions and the implementation of the convention.
- Establish a registry of all international adoptions, and
- Issue certificates when an adoption under the convention has been finalized.

Based on information from the State Department, CBO estimates the department would spend approximately $4 million a year to carry out those responsibilities. This estimate includes costs for hiring personnel and contractors and implementing a computerized tracking system to monitor individual adoption cases. To recover those costs, the bill would allow the department to charge a new fee for its services and to retain and spend any collections on consular services, subject to appropriation action. CBO estimates the department would charge a $200 fee on approximately 20,000 cases each year.

Civil and Criminal Prosecutions. Violators of the provisions of H.R. 2909 would be subject to civil penalties and criminal prosecution. As a result, the federal government would be able to pursue

cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved.

Direct spending and revenues

Because violators of the provisions of H.R. 2909 could be subject to criminal and civil fines, the federal government might collect additional fines if the bill is enacted. Collections of criminal fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. Civil fines are recorded as receipts and deposited into the general fund of the Treasury. CBO expects that any additional receipts and direct spending would be less than $500,000 each year.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that the net changes in both outlays and governmental receipts that are subject to pay-as-you-go procedures would be negligible.

Intergovernmental and private-sector impact: Section 4 of UMRA excludes from application of that act bills that would be necessary for the ratification or implementation of international treaty obligations. CBO has determined that the provisions of H.R. 2909 would implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and would thus fall within that exclusion.

Estimate prepared by: Federal Costs: International Affairs: Sunita D'Monte; Immigration Law Enforcement: Mark Grabowicz, Impact on State, Local, and Tribal Governments: Leo Lex, Impact on the Private Sector: Keith Mattrick.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

JURISDICTIONAL MATTERS

The Committee has consulted with the Committee on the Judiciary which has rule X jurisdiction over certain matters within the bill. We have been assured by that Committee that the final language in the bill meets their concerns, and that, accordingly, they would be willing to forgo formal consideration of the bill. The Committee appreciates the cooperation.

In addition, the following letters are included from the Committee on Ways and Means and Education and the Workforce.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, June 19, 2000.

Hon. BENJAMIN GILMAN,
Chairman, Committee on International Relations, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN GILMAN: I write with respect to H.R. 2909, the "Intercountry Adoption Act," which was ordered reported by the Committee on International Relations on March 22, 2000.

As you know, the subject matter of adoption is of longstanding interest to the Committee on Ways and Means. Accordingly, agreement was reached to include in this legislation an amendment to

Title IV–B of the Social Security Act to modify state Child Welfare plan requirements with respect to intercountry adoptions.

Normally, the Committee on Ways and Means would meet to consider such legislation. However, in order to expedite consideration of H.R. 2909, I did not object to the inclusion of this provision as part of a manager's amendment during consideration of this bill by your Committee, and, for this reason, it was not necessary for the Committee on Ways and Means to meet to consider the legislation.

However, this has been done with the understanding that you have agreed to accept no additional changes on matters of concern to this Committee during further consideration of this legislation. Finally, this action was done with the understanding that it will not prejudice the jurisdictional prerogatives of the Committee on Ways and Means on these provisions or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to this Committee in the future.

I would ask that you include a copy of this letter in your Committee Report on the legislation, as it supercedes previous correspondence on the matter. Thank you for your assistance and cooperation. With best personal regards.

Sincerely,

BILL ARCHER,
Chairman.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC, May 24, 2000.

Hon. BENJAMIN A. GILMAN,
Chairman, Committee on International Relations, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN GILMAN: I am writing regarding H.R. 2909, the Intercountry Adoption Act, which is within the jurisdiction of the Committee on International Relations and in addition the Committee on Education and the Workforce. I have no objection to this bill being scheduled under suspension of the House Rules. The Committee on International Relations ordered the bill favorably reported on March 22, 2000. Since I support the reported bill, I do not intend to call a full Committee meeting to consider this bill. However, I do so only with the understanding that this procedural route should not be construed to prejudice the Committee on Education and the Workforce jurisdictional interest and prerogatives on these provisions or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. As such, members of the Education and the Workforce would expect to be represented should the provisions of this bill be considered in a conference with the Senate.

I would appreciate the inclusion of this letter in the report you file to accompany this bill. I thank you for your attention to this matter and look forward to swift passage of H.R. 2909.

Sincerely,

BILL COODLING,
Chairman.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title; table of contents

This section provides the bill's short title and table of contents.

Sec. 2. Findings and purposes

This section describes the purposes of the legislation: to implement the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the "Convention") (done at the Hague on May 29, 1993), to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions subject to the Convention, and to ensure that such adoptions are in the children's best interests; and to improve the ability of the Federal Government to assist U.S. citizens seeking to adopt children from abroad and residents of other Convention countries seeking to adopt children from the United States.

Sec. 2. Definitions

This section defines various terms used in the Act. The Committee amended the definition of "adoption services" by deleting the subparagraphs relating to counseling and post-adoption services. There are a broad range of individuals who perform counseling of prospective adoptive parents, adoptive parents, and adopted children at various points in the adoption process, including after the adoption is finalized. Otherwise such individuals do not provide other adoption services, and the Committee has determined that there should be no requirement for accreditation or approval for anyone engaged in such counseling. Similarly, post-adoption services often address matters that are not related to the adoption itself, such as cultural and educational activities in connection with the adopted child's state of origin.

TITLE I—UNITED STATES CENTRAL AUTHORITY

Sec. 101. Authority of the Department of State

Subsection (a) designates the Department of State as the United States Central Authority for purposes of carrying out U.S. obligations under the Convention.

Subsection (b) provides that the Secretary of State shall be responsible for the performance of all central authority functions of the United States under the Convention and the Act, except as otherwise specified in the Act. It also requires that personnel hired by the State Department to carry out these new responsibilities have some professional experience with consular or child services, or personal or professional experience in the field of international adoption. These duties are new to the Department of State. Therefore, hiring of experienced, motivated staff will facilitate the implementation of the new obligations and responsibilities. The Committee is interested in the State Department providing the best possible service to the prospective adoptive parents and others involved in the adoption process.

Subsection (c) authorizes the Secretary of State to prescribe regulations to carry out central authority functions on behalf of the United States.

Sec. Responsibilities of the Secretary of State

Subsection (a) provides that the Secretary of State shall be responsible for liaison with the central authorities of other Convention countries and the coordination of Convention activities by persons subject to U.S. jurisdiction.

Subsection (b) provides that the Secretary of State shall be responsible for providing information, and facilitating the transmittal and exchange of information, to and among the central authorities of other Convention countries, Federal and State agencies (including state courts) within the United States, and agencies accredited and persons approved under title II of the Act to provide adoption services in the United States in cases subject to the Convention.

Subsection (c) provides that the Secretary of State shall carry out the functions prescribed by the Convention with respect to the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention as provided in title II of this Act. It also provides that the Secretary of State may not delegate this authority to any other Federal agency. The text of H.R. 2909 as referred to the Committee vested this responsibility in the Secretary of Health and Human Services. In the amendment in the nature of a substitute by the Committee, this responsibility was conferred on the Secretary of State. This decision reflected the judgment that neither the Department of State nor the Department of Health and Human Services had any capacity in the area of accreditation of adoption agencies and therefore whichever agency received this responsibility would have to develop such capacity; the Department of State is already the primary agency with regard to most other central authority functions; and the assignment of responsibilities under this Act to the Departments of State and Justice (as opposed to three federal agencies) would create a more streamlined interagency coordination process.

Subsection (d) provides that the Secretary of State shall monitor individual adoption cases involving U.S. citizens, may facilitate interactions between U.S. citizens and officials of other Convention countries in any case in which an accredited agency or approved person is unwilling or unable to do so, and may provide any other appropriate assistance in other cases.

Subsection (e) provides that the Secretary of State and the Attorney General shall jointly establish a case registry to track all adoptions involving immigration of the child into the United States (regardless of whether the adoption occurs under the Convention) and all adoptions involving emigration of the child from the United States to any other Convention country. This registry shall be for the purpose of easing administration of the Act and the Convention so that Federal agencies and prospective adoptive parents can determine the status of particular cases and for the purpose of creating a system to track children who leave the United States to be adopted abroad. The information in the registry should be tailored to these purposes, and would be subject to release to persons outside the relevant Federal agencies only in accordance with Federal law regarding Federal records, such as the Privacy Act.

Subsection (f) provides that the Secretary of State may authorize public or private entities to perform appropriate central authority functions for which the Secretary is responsible, pursuant to regu-

lations or under agreements published in the Federal Register, and may carry out such functions through grants to, or contracts with, such entities. However, this authority needs to be read in conjunction with subsection (c), which prohibits the delegation of any authorities regarding that subsection to any other Federal agency. The Committee does not intend that subsection (f) permit delegation of the authorities described in subsection (c) to any Federal agency.

Sec. 103. Responsibilities of the Attorney General

This section provides that the Attorney General shall perform the central authority functions specified in Article 14 of the Convention, which requires prospective adoptive parents to apply to the central authority of their country of residence.

Sec. 104. Annual report on intercountry adoptions

This section requires the Secretary of State, in consultation with the Attorney General and other appropriate agencies, to submit an annual report to House and Senate Committees describing the activities of the U.S. Central Authority. The report must include information on intercountry adoptions involving immigration to and emigration from the United States; disruption rates for Convention adoptions and certain information provided by the states regarding dissolution rates (as required by sec. 205); the average time required for the completion of a Convention adoption; a list of agencies accredited and persons approved to provide adoption-related services; the names of agencies and persons debarred from accreditation or approval; the range of adoption fees charged in connection with Convention adoptions; and the range of fees charged for accreditation of agencies and the approval of persons engaged in providing adoption services. The purpose of this provision is to improve the type of data collected; to develop a data base on intercountry adoptions, and to increase access to information that may be of interest to the Congress, the public or prospective adoptive parents.

TITLE II—PROVISIONS RELATING TO ACCREDITATION AND APPROVAL

Sec. 201. Accreditation or approval required in order to provide adoption services in cases subject to the Convention

This section provides that no person shall offer or provide adoption services in the United States in a case subject to the Convention unless that person is accredited or approved under this title, or is providing the services through or under the supervision and responsibility of an agency or person so accredited or approved. This requirement does not apply to: (1) a social work professional or organization that provides only the background or home study, or the report on such a study, as long as the background or home study is approved by an accredited agency; (2) an entity that provides only child welfare services in connection with a case subject to the Convention; (3) a person who provides only legal services (rather than adoption services) in connection with a case subject to the Convention; or (4) U.S. prospective adoptive parents acting on

their own behalf, to the extent permitted by the law of the State in which they reside.

The Committee does not intend to alter the current practice followed by some prospective adoptive parents of obtaining a home or background study prior to the actual selection of a placing agency. A home study completed by a social worker or an agency who is not accredited or approved under this Act may be used during such initial stages of the intercountry adoption process. However, at the point where a placing agency is selected and a placement is imminent, such a home or background study is still required to be approved by an accredited agency.

Sec. 202. Process for accreditation and approval; role of accrediting entities

Subsection (a) provides that the Secretary of State shall designate one or more qualified private, nonprofit entities as accrediting entities responsible for the accreditation of agencies and approval of other persons providing adoption services under the Convention. This is a critical responsibility under the Convention and this Act, and this section provides that the Secretary may select the best private or public entity or entities for this purpose. However, the Committee is concerned that an accrediting entity designated by the Secretary pursuant to this section not use the authority granted by this section to, in effect, require an agency or person seeking accreditation or approval to use the accrediting entity's other services if such services are not essential to the accreditation process and the agency is not seeking such services. The Secretary of State should ensure that no such "leverage" is used, and the Committee intends to review the practices of the accrediting entity or entities carefully in this regard.

Subsection (b) sets forth the responsibilities of accrediting entities, including accreditation and approval, monitoring of the compliance of accredited agencies and approved persons with applicable requirements (including review of complaints), the imposition of sanctions for noncompliance, and record keeping and reporting.

Subsection (c) provides remedies for adverse action by an accrediting entity. The subject of the action may re-apply for accreditation or approval upon demonstrating to the satisfaction of the accrediting entity that the deficiencies resulting in the adverse action have been corrected, and may appeal the adverse action in Federal district court. The adverse action is not subject to administrative review, but an agency or person who is subject to the adverse action may seek judicial review under the standards applicable to a federal agency under the Administrative Procedure Act.

Subsection (d) requires that fees set by accredited agencies and approved persons must be approved by the Secretary of State, may not exceed the costs of accreditation, and must take into account the relative size of, the geographic location of, and the number of convention adoption cases managed by the agency or approved person. We understand that certain entities that provide accreditation services have a sliding fee scale, based on the revenue base of the agency being accredited. In particular, the Council on Accreditation, which currently accredits agencies for international adoption, indicates that it charges much lower fees to smaller agencies. The Committee believes that the Secretary should carefully review the

fees of any qualified accrediting entity designated under this section to ensure that smaller agencies are not charged fees that will make it impossible for them to continue to provide intercountry adoption services.

The Committee is also concerned about the practice by certain accrediting entities of providing discounts to agencies based on their affiliation with associations or organizations. The Committee believes that any fee structure established by an entity should not discriminate against agencies that are not members of such associations or organizations.

Moreover, the Committee recognizes that there may be a surge in requests for accreditation as the treaty enters into force. The Committee believes that smaller agencies should not be disadvantaged during this process. The State Department and the accrediting entities should develop procedures to minimize this risk.

This provision allows for more than one accrediting entity to accredit agencies and approve persons. However, the Committee is concerned that if an agency or person fails to obtain accreditation or approval it may seek accreditation or approval from another accrediting entity. It is the Committee's view that regulations should provide that if an agency is denied accreditation, or believes it will be denied accreditation, it should not be permitted to seek accreditation from another accrediting entity.

Sec. 203. Standards and procedures for providing accreditation or approval

Subsection (a) requires the Secretary of State to establish by regulation standards and procedures to be used by accrediting entities in accrediting agencies and approving persons to provide adoption services in the United States in cases subject to the Convention. In developing the regulations, the Secretary of State must consider standards and procedures developed by outside experts, provide the opportunity for notice and comment (consistent with 5 U.S.C. § 553), and consider the views of individuals and entities with interest and expertise in international adoptions and family social services. The Committee understands that an alliance of agencies, lawyers, adoptive parents and adoptee organizations and child welfare agencies have already drafted accreditation standards that the alliance believes are appropriate for both large and small agencies conducting Hague Convention adoptions. As the regulations are drafted and prepared for public comment, the Committee intends that the Secretary consider these standards as well as other relevant material.

Subsection (b) sets forth certain minimum requirements which must be included in the standards for accreditation and approval. Many of these requirements, which agencies and approved persons must meet prior to accreditation or approval, are designed to improve the adoption process and protect adoptive parents and children and to ensure that the agency or person has the capacity to provide intercountry adoption services and meet the other requirements of this Act.

The standards must require that an accredited agency or approved persons: (1) provide a copy of the child's medical records, in English if practicable, before the adoption is completed: (2) provide prospective adoptive parents with a training program that includes

counseling and guidance to promote a successful intercountry adoption; (3) employ personnel providing intercountry adoption services only on a fee for service basis; (4) fully disclose its policies and practices and disruption rates to prospective adoptive parents; (5) have the capacity (either directly or through arrangements with others) to perform all adoption services in cases subject to the Convention; (6) have procedures in place to ensure that social service functions requiring the application of clinical skills and judgment are performed only by qualified professionals; (7) have the ability to comply with information management requirements concerning record retention, reports, reviews, inspections, and audits, and the safeguarding of sensitive information; (8) have adequate liability insurance; and (9) have adequate measures in place to ensure compliance with the Convention, the Act, and any other applicable law.

With regard to that training listed about, the Committee expects the regulations promulgated to implement this section will provide flexibility to allow appropriate training for parents that already have experience, such as a previous international adoption. Recognizing that each adoption could raise different issues because of the age, health, or institutional care of the child, the adoption agencies should tailor training or educational programs to the specific circumstances of the adoption, even with respect to experienced families to be sure they are prepared for the adoption.

In addition to the above, accredited agencies must be private nonprofit organizations licensed to provide adoption services in at least one State.

Accreditation or approval shall be granted for a period of not less than three and not more than five years, and may be renewed on a showing that the agency or person continues to meet the applicable requirements.

Subsection (c) authorizes the Secretary to establish through regulations issued under this section a temporary registration system for small community based agencies. An agency that is registered under such a system can provide adoption services for a period of up to two years even if it does not meet the standards in subsection (b) as long as it satisfies the following criteria: (1) is a non-profit agency licensed in the state where it is located; (2) has been providing intercountry adoption services for at least five years; (3) has provided adoption services in fewer than 20 intercountry adoptions in the preceding calendar year; (4) has demonstrated that it will be able to provide all information related to the annual report required under section 104; (5) has initiated the process of becoming accredited and is taking steps to become accredited; and (6) has not been found to be involved in any improper conduct relating to intercountry adoptions.

This provision is intended to ensure that for two years after the Convention enters into force, established, small community based agencies can continue to provide services with respect to Convention adoptions even if they do not meet the standards in subsection (b) so long as they meet certain standards and are actively seeking accreditation. This provision will also have the salutary effect of allowing the President to ratify the Convention earlier than would be necessary if the President waits for all agencies that conduct intercountry adoptions with Hague countries to obtain accreditation.

Sec. 204. Secretarial oversight of accreditation and approval

Subsection (a) requires the Secretary of State to monitor the performance of accrediting entities, and to suspend or cancel the designation an accrediting entity if the Secretary finds the entity to be substantially out of compliance with the Convention, the Act, other applicable laws, or the regulations prescribed pursuant to the Act.

Subsection (b) requires the Secretary of State to suspend or cancel the accreditation or approval granted by an accrediting entity if the Secretary finds that the agency or person is substantially out of compliance with applicable requirements and the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate corrective action. Once the Secretary is satisfied that the deficiencies have been corrected, an agency or person whose accreditation or approval has been suspended is entitled to be reinstated, and an agency or person whose accreditation or approval has been canceled is entitled to re-apply to the accrediting entity for accreditation or approval.

Subsection (c) authorizes the Secretary of State to debar an agency from accreditation or a person from approval, either temporarily (for a minimum of three years, after which time the agency or person may apply to the Secretary for withdrawal of the debarment) or permanently, if there is substantial evidence that the agency or person is out of compliance with applicable requirements and there has been a pattern of serious, willful, or grossly negligent failures to comply or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned.

A provision in H.R. 2909 regarding judicial review was not included in the amendment. Rather, the Committee believes that the regime generally applicable to the review of adverse actions by Federal agencies contained in the Administrative Procedures Act is the appropriate framework for review of adverse action by the Secretary under this section. Under that Act, accrediting entities, accredited agencies, and approved persons can seek judicial review of the Secretary's adverse actions under standards that are well understood and have been subject to extensive judicial interpretation.

Sec. 205. State plan requirement

This section amends Part B of Title IV of the Social Security Act to add a requirement to State plans under that title that States describe activities undertaken for children adopted from other countries including the provision of adoption and post adoption services. This amendment also requires States to collect and report information on children who are adopted from other countries and who enter State custody as a result of a dissolution or disruption of an adoption. This provision was added at the request of the Ways and Means Committee. Information on disrupted and dissolved adoptions should include the aggregate number of children, special needs status, the reason for placement into state custody, the age of the child, the agency that made adoption arrangements, the country from which the child emigrated, and the plans for the child.

TITLE III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

Sec. 301. Adoptions of children immigrating to the United States

Subsection (a) directs the Secretary of State to issue a final adoption certificate if the Secretary receives appropriate notification from the central authority of the child's country of origin and has verified that the requirements of the Act have been met with respect to the adoption or prospective adoption. The certificate, together with the original adoption decree, shall be treated in the United States as conclusive evidence that a final adoption has taken place.

Subsection (b) provides that a final adoption in another Convention country, certified by the Secretary of State in accordance with the Convention and the Act, shall be recognized in the United States as a final valid adoption for the purposes of all Federal, State, and local laws.

Subsection (c) provides that a State court shall not have the authority to finalize the adoption of a child who has entered the United States from another Convention country for purposes of adoption unless the Secretary of State has issued the certificate issue under subsection (a).

Sec. 302. Immigration and Nationality Act amendments relating to children adopted from Convention countries

Subsection (a) amends section 101(b) of the Immigration and Nationality Act (INA) to add children adopted in Hague Convention countries, or emigrating from such countries, for purposes of their adoption in the United States, as new categories of children who may be classified as immediate relatives of U.S. citizens for immigration purposes. These children would not need to meet the definition of "orphan" under the INA, but other requirements of current law would continue to apply, including those relating to age and U.S. citizenship of the adoptive parents. The Committee has been assured that consular officers of the Department of State and officials of the Immigration and Naturalization Service will continue to be vigilant in identifying cases where there is fraud or improper financial inducement related to adoptions. While the Convention is intended to help states of origin implement protections to end abuses in their countries, the Committee strongly believes that both sending and receiving countries must cooperate to guarantee the integrity of the adoption process. In particular, the Attorney General must be satisfied that the purpose of the adoption is to form a bona fide parent-child relationship and that the parent-child relationship of the child and the biological parents has been permanently terminated.

Subsection (b) amends section 204(d) of the INA to provide that, in the case of a Convention adoption, an immigrant visa shall not be issued to a child as an immediate relative of the prospective adoptive parent unless the Secretary of State has certified that the central authority of the child's country of origin has given notice that the child has been adopted, or custody for purposes of adoption has been granted, in accordance with the Convention.

Subsection (c) is a conforming amendment to the definition of "parent" under the INA.

Sec. 303. Adoptions of children emigrating from the United States

Subsection (a) requires, in regard to a U.S. resident child emigrating to another Convention country for purposes of adoption, that the accredited agency or approved person providing adoptive services, or the prospective adoptive parents acting on their own behalf, ensure that (1) a background study on the child is completed in accordance with the standards set forth in the Convention; (2) the accredited agency or approved person has made reasonable efforts to actively recruit and make a diligent search for adoptive parents in the U.S., but despite such efforts, has not been able to place the child for placement in the U.S. in a timely manner; and (c) a determination is made that the placement is in the best interests of the child. The subsection also requires the agency or person to furnish the necessary documentation to the U.S. Central Authority and the State court with jurisdiction over the case.

The provision also requires the background report to include a criminal background check. While the Committee understands that local police records may vary widely, every effort should be made to locate any criminal history that may exist. The Committee expects that the Secretary and the Attorney General will work with other central authorities to improve the quality and timeliness and uniformity of such checks.

Subsection (b) provides that a State court shall not finalize an adoption or grant custody for the purpose of adoption in the case of a U.S. resident child emigrating to another Convention country for purposes of adoption unless the court has received and verified the documents required under the Convention, made the determinations required of the country of origin by the Convention, and determined that the placement is in the best interests of the child. The appropriate authorities should closely review the background or home study to be sure it meets the standards set forth in the Convention under Article 15.

Subsection (c) requires the Secretary of State to issue a certificate of adoption, or a declaration of custody for purposes of adoption, in each case in which the requirements of this section have been met.

Subsection (d) requires accredited agencies or approved persons or others to file information as required by the registry provision (section 102(e)) on non-Convention intercountry adoptions involving emigration from the U.S.

H.R. 2909 as introduced included a provision that would have limited the ability of State courts to void a foreign decree related to an intercountry adoption and would have required State courts to recognize a foreign decree voiding an adoption decree issued in that country. This provision was deleted by the Committee because it was determined that the Convention does not require such a provision, and the Committee believes that the enforcement of foreign decrees, and their invalidation, should be left to current law regarding recognition of foreign judgments.

TITLE IV—ADMINISTRATION AND ENFORCEMENT

Sec. 401. Access to Convention records

Subsection (a) requires the Secretary of State, in consultation with the Attorney General, to issue regulations, following notice

and comment, that establish procedures and requirements for the preservation of Convention records (defined as information about a Convention adoption that has been preserved by the Secretary of State or the Attorney General). Records that are required to be preserved pursuant to this subsection should be limited to only those records necessary to implement the Convention and this Act.

Subsection (b) permits the disclosure of a Convention record maintained under the authority of the Immigration and Nationality Act (INA) to the adopted child or the adoptive parents under applicable federal law. This subsection also provides that unlawful disclosure of a Convention record will be punishable under applicable federal law.

Subsection (b) further provides that access to a convention record is permitted among the Secretary of State, the Attorney General, central authorities, accredited agencies and approved persons to the extent necessary to administer the Convention or this Act.

Subsection (c) provides that access to non-Convention records including records of State adoption proceedings shall be governed by applicable State law. Penalties for unlawful disclosure of a non-convention record shall be governed by applicable State law.

In recent years, the issue of access to adoption records has been extensively debated in the States, with ballot initiatives and court cases providing the battleground. The Committee takes no position with respect to that debate, and does not intend to affect the extent to which access is provided to adoption records pursuant to Federal or State law. Under current law, Federal records that contain information regarding intercountry adoptions are subject to Federal laws regarding disclosure and access to information maintained by the Federal government (such as the Privacy Act and the Freedom of Information Act). Records regarding intercountry adoptions that are in State custody or in the files of adoption agencies are governed by applicable State laws. State laws regarding access to adoption records vary from jurisdiction to jurisdiction: some States have a restrictive regime with respect to such records, others have an open regime, and yet others take a variety of approaches in between. Under section 401, Federal records will continue to be governed by applicable federal law, while non-federal records, including records of adoption proceedings conducted in the United States, will continue to be governed by applicable State law. No State is required by this provision to change its laws regarding access to and disclosure of adoption records or is precluded from doing so.

Sec. 402. Documents of other Convention countries

This section provides that documents originating in another Convention country and related to a Convention adoption shall require no authentication or legalization to be admissible in U.S. courts, unless a specific and supported claim is made that the documents are false, have been altered, or are otherwise unreliable.

Sec. 403. Authorization of appropriations; collection of fees

Subsection (a) authorizes appropriation of such sums as may be necessary to agencies of the Federal Government for the purpose of implementing the Convention and the Act, and provides for such sums to remain available until expended.

Subsection (b) permits the Secretary of State, subject to appropriations, to charge and retain a fee prescribed by regulation for new or enhanced intercountry adoption services undertaken to meet the requirements of the Act. These fees may not exceed the costs of such services.

Sec. 404. Enforcement

This section provides for the Attorney General to seek in an appropriate Federal district court civil money penalties of not more than $50,000 for a first violation and not more than $100,000 for each subsequent violation against any person who (1) provides adoption services in the United States in connection with Convention adoptions without proper accreditation or approval; (2) provides false statements or improper inducements to obtain consent to adoption or the relinquishment of parental rights or to influence a decision of an accrediting entity or any entity performing a central authority function, or (3) engages another person as an agent in the United States or abroad who takes any of the actions described in (1) or (2) within the scope of such agency. H.R. 2909 as introduced provided for waiver of civil penalties. However, the Committee determined that since this is a discretionary responsibility, no express waiver authority was required. The Committee believes that in the exercise of that discretion the Attorney General should not seek civil money penalties in the case of unintentional or harmless failures to comply with the requirements of the Convention, this Act, or implementing regulations issued under this Act. The section also provides for criminal penalties of not more than $250,000, imprisonment for up to 5 years, or both, for knowing and willful violations of paragraphs (1) or (2) of subsection (a).

TITLE V—GENERAL PROVISIONS

Sec. 501. Recognition of Convention adoptions

This section provides for the recognition in the United States of Convention adoptions concluded between two other Convention countries before the date the Convention enters into force for the United States.

Sec. 502. Special rules for certain cases

Subsection (a) authorizes the Secretary of State to establish by regulation alternative procedures for the adoption of children in Convention cases by individuals related to them by blood, marriage or adoption. The Committee's adoption in this list recognizes that there is and ought to be no legal distinction between family relationships established through the act of adoption and those derived from blood or marriage.

Subsection (b) provides that notwithstanding any other provision of the Act, to the extent consistent with the Convention, the Secretary of State may, on a case-by-case basis, waive applicable requirements of, or regulations issued under the Act, in the interests of justice or to prevent grave physical harm to the child. This authority may not be delegated.

Sec. 503. Relationship to other laws

Subsection (a) provides that the Convention and the Act shall not be construed to preempt any provision of State or local law except to the extent that any such provision is inconsistent with either the Convention or the Act, and then only to the extent of the inconsistency.

Subsection (b) provides that nothing in the Act shall be construed to affect the application of the Indian Child Welfare Act.

Sec. 504. No private right of action

This section provides that the Convention and the Act shall not be construed to create a private right of action to seek administrative or judicial relief, except as expressly provided in the Act.

Sec. 505. Effective dates; transition rule

Subsection (a)(1) provides that specific provisions of the Act are to become effective immediately upon enactment, so that various preparatory steps can be taken before the Convention's entry into force for the United States, including the establishment of the U.S. Central Authority and a case tracking system, designation by the Secretary of State of accrediting entities, and issuance by the Secretary of State of regulations to establish standards and procedures for accreditation and approval.

Subsection (a)(2) provides that the remaining provisions of the Act shall take effect upon the entry into force of the Convention for the United States, and that the substantive provisions of the Act will govern Convention adoptions that are finalized after that date.

Subsection (b) provides that the Convention and the Act shall not govern adoption cases (1) initiated by the filing of an orphan petition or petition to classify an orphan as an immediate relative before the Convention's entry into force for the United States, or (2) involving foreign nationals seeking to adopt children resident in the United States, where the prospective adoptive parents initiated an adoption application in their home country before the Convention's entry into force for the United States.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 422 OF THE SOCIAL SECURITY ACT

STATE PLANS FOR CHILD WELFARE SERVICES

SEC. 422. (a) * * *

(b) Each plan for child welfare services under this subpart shall—

(1) * * *

* * * * * * *

(11) contain a description, developed after consultation with tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) in the State, of

the specific measures taken by the State to comply with the Indian Child Welfare Act; [and]

(12) contain assurances that the State shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children[.]*;*

(13) contain a description of the activities that the State has undertaken for children adopted from other countries, including the provision of adoption and post-adoption services; and

(14) provide that the State shall collect and report information on children who are adopted from other countries and who enter into State custody as a result of the disruption of a placement for adoption or the dissolution of an adoption, including the number of children, the agencies who handled the placement or adoption, the plans for the child, and the reasons for the disruption or dissolution.

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IMMIGRATION AND NATIONALITY ACT

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) * * *

* * * * * * *

(b) As used in titles I and II—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) * * *

* * * * * * *

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided,* That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; [or]

(F)(i) * * *

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the

time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)[.]*; or*

(G) a child, under the age of sixteen at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States, by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age—

(i) if—

(I) the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States;

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

(III) the child is not the grandchild, niece, nephew, brother, sister, aunt, uncle, or first cousin of one or both of the adopting parents, unless—

(aa) the child has no living parents because of the death or disappearance of, abandonment or desertion by, separation from, or loss of, both parents; or

(bb) the sole or surviving parent is incapable of providing the proper care for the child and has in writing irrevocably released the child for emigration and adoption; and

(IV) in the case of a child who has not been adopted—

(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and

(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

(2) The term "parent", "father", or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) *and paragraph (1)(G)(i)* in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father or the child if the father has disappeared or abandoned or deserted the

child or if the father has in writing irrevocably released the child for emigration and adoption.

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TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

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PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a) * * *

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(d)*(1)* Notwithstanding the provisions of subsections (a) and (b) no petition may be approved on behalf of a child defined in ⟦section 101(b)(1)(F)⟧ *subparagraph (F) or (G) of section 101(b)(1)* unless a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States.

(2) Notwithstanding the provisions of subsections (a) and (b), no petition may be approved on behalf of a child defined in section 101(b)(1)(G) unless the Secretary of State has certified that the central authority of the child's country of origin has notified the United States central authority under the convention referred to in such section 101(b)(1)(G) that a United States citizen habitually resident in the United States has effected final adoption of the child, or has been granted custody of the child for the purpose of emigration and adoption, in accordance with such convention and the Intercountry Adoption Act of 2000.

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