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H.R. 2909, THE INTERCOUNTRY ADOPTION ACT OF 1999

MARKUP

BEFORE THE

COMMITTEE ON INTERNATIONAL RELATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

MARCH 22, 2000

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H.R. 2909, THE INTERCOUNTRY ADOPTION ACT

WEDNESDAY, MARCH 22, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room 2200, Rayburn House Office Building, Hon. Benjamin A. Gilman (Chairman of the Committee) presiding.

Chairman. GILMAN. The Committee will come to order.

The Committee meets in open session today, pursuant to notice, to consider H.R. 2909, the Intercountry Adoption Act of the year 2000.

I regret that we were delayed. That was due to a meeting of the Democratic Caucus, and we are now ready to proceed.

The Chair lays the bill before the Committee. The Clerk will report the title of the bill.

[The bill appears in the appendix.]

Ms. BLOOMER. H.R. 2909, a bill to provide for implementation by the United States of the Hague Convention on protection of children and cooperation in respect of intercountry adoption and further purposes.

Chairman. GILMAN. The Clerk will read the bill for amendment.

Ms. BLOOMER. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Section 1, Short Title: Table of Contents, (a) Short Title——

Chairman. GILMAN. The bill will be considered as having been read. I have an amendment at the desk, which the Clerk will report.

Ms. BLOOMER. Amendment in the nature of a substitute to H.R. 2909, offered by Mr. Gilman, Mr. Gejdenson, Mr. Burr, Mr. Delahunt, Mr. Ballenger, and Mr. Pomeroy.

[The amendment of Mr. Gilman appears in the appendix.]

Chairman. GILMAN. I ask unanimous consent that the amendment in the nature of a substitute be considered as original text for the purposes of amendment, and that it be considered as having been read, and be open to amendment at any point. Is there any objection?

[No response.]

If there is no objection, so ordered.

I will now recognize myself for 5 minutes on the amendment to open the discussion.

Today we are marking up H.R. 2909, the Intercountry Adoption Act of the year 2000. This bipartisan bill has strong Congressional support, a total of 45 co-sponsors.

May we have order, please.

We will be considering an amendment in the nature of a substitute that reflects bipartisan and bicameral participation. The purpose of this bill is to provide the Department of State with the necessary authorities to implement the Hague Convention on the protection of children and cooperation in respect of intercountry adoption.

As a signatory to this Convention, our Nation must now meet the obligations of the Convention, which requires the creation of a central authority to administer the new duties. The legislation designates the State Department as the central authority.

Senator Helms also introduced implementing legislation, Senate 682; and Mr. Burr of North Carolina introduced the companion bill in the House, H.R. 2342. A major element in the Helms-Burr bill, giving total responsibility to the State Department, has been accommodated in this substitute. We appreciate Mr. Burr's interest and attention to this measure.

There have been significant differences between the House and the Senate bills. However, both Committees, intent on enacting the legislation this year, reconcile those differences and produce a substitute amendment.

We appreciate the input received from many outside groups, the many individuals, and the administration, who made important contributions to this substitute. We are also very grateful for the many letters of support we have received for this substitute provision.

I say with confidence that we have before us a solid bill, a bill that will enable the State Department to get started on performing needed services to the thousands of Americans who each year adopt children from overseas. We want those parents to have the best information and services available to them. This bill provides many consumer protections to improve the intercountry adoption process and to establish a consistent and reliable system that will be recognized by foreign nations.

This bill also has been referred to the Ways and Means Committee, to the Education and the Workforce Committee, and to the Judiciary Committee. We have worked with those committees throughout the process, and we hope they will also expeditiously advance this bill.

We also have a letter from Senate sponsors of their bill, stating their full support. I will read their short letter dated March 21st addressed to myself and to Mr. Gejdenson, our Ranking Member.

Dear Ben and Sam: We understand that the House International Relations Committee will consider implementing legislation for the Intercountry Adoption Act on Wednesday, March 22nd. We are pleased that you will be jointly bringing forward a substitute bill—an amalgamation of both the House bill, H.R. 2909, and our Senate bill, Senate 682—representing a solid compromise that we believe will gain wide support in both the House and Senate.

It is our intention to ensure that the same amendment is considered by the Foreign Relations Committee and the full Senate. The Foreign Relations Committee will take up the legislation, as well as the treaty, on April 11th. We anticipate speedy consideration of this very important legislation.

We deeply appreciate your efforts and those of the staff for the many hours that have been spent developing this compromise legislation. Signed, Senators Jesse Helms and Mary Landrieu.

The Chair now recognizes the Ranking Minority Member, the gentleman from Connecticut, Mr. Gejdenson.

Mr. GEJDENSON. Thank you, Mr. Chairman. I want to commend the Chairman for his efforts, coming together with this bipartisan piece of legislation and an amendment that I think reaches a fair compromise.

I am gratified that the bill has a provision which pushes to protect small but established community-based agencies. It has broad support from children's international groups, such as the Child Welfare League of America. The American Academy of Adoption Attorneys has endorsed the amendment. As you indicated, we have the support from the Senate.

I would also particularly like to thank my chief counsel for working on this legislation, as well as Mark Agrast of Mr. Delahunt's staff who worked tirelessly and added considerably to the final product, and as well Mr. Delahunt who always pulls his fair share of the load and then some.

I hope we can move this quickly. It is a good bill and it achieves, I think, what is the best interest of the families that adopt and the children.

Thank you, Mr. Chairman.

Chairman. GILMAN. Thank you, Mr. Gejdenson.

Before asking for other Members' comments, I would like to call on Susan Jacobs, Deputy Assistant Secretary of State for Legislative Affairs, for the State Department's comments on the bill.

Ms. Jacobs, thank you for being here.

Ms. JACOBS. Thank you, Mr. Chairman.

The State Department supports this bill, and we would like to thank very much the efforts of the staff—Kristin Gilley, David Abromowitz, Mark Agrast, and Cassie Bevin—for working so cooperatively with the State Department, with INS, and with HHS, on this bill.

The only trepidation we have is taking on the accreditation process because it is not something that we have ever done before, and we hope that your trust in us won't be misplaced.

Chairman. GILMAN. Thank you very much.

[Laughter.]

Mr. Smith.

Mr. SMITH. Thank you very much, Mr. Chairman.

I want to just say at the outset that I support the goals of the Intercountry Adoption Act, which are to facilitate international adoptions while protecting the best interests of the children involved. In general, I think the proposed act admirably promotes these objectives.

I do, however, have a few reservations about the bill in its present form, and I expect that when the bill is considered by the full House other Members will also have ideas about how it can be improved. I will, therefore, support reporting the bill out of committee today to advance the process of its consideration.

I strongly recommend, however, that the bill be considered under a rule that will allow a reasonable number of amendments. Mr. Chairman, I ask that you support such a rule.

Chairman. GILMAN. Thank you, Mr. Smith.

I want to recognize the gentleman who has done a great deal of work on this bill in trying to arrive at a compromise, Mr. Delahunt.

Mr. DELAHUNT. Yes. Thank you, Mr. Chairman.

I would like to start with a personal note. Two weeks from tomorrow—I think some might wonder why I have such a personal interest in this particular legislation. Two weeks from tomorrow my daughter, my younger daughter, who I know you have met, arrived in this country from Vietnam on—I know there are some folks here with white hair that will have a memory of Operation Baby Lift.

Some of you would remember the first plane that left the airport in Saigon crashed, killing some 110 orphans. My daughter was on the second plane. She arrived in this country 2 weeks from tomorrow, April 6th. So this particular bill has special meaning to me.

I am confident that the problems that have been associated with international adoption, exorbitant fees in some cases, excessive red tape, outright fraud, kidnappings, concealment of medical records that should have been made available to potentially adoptive parents, improper inducements to relinquish parental rights, all of those concerns that really are the object of the Convention will be addressed by this particular legislation.

I would hope that once we report this bill out that the Chair would consider putting this particular legislation on the fast track. In any event——

Chairman. GILMAN. We will try our best, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Gilman.

You know, this bill has come a long way. It has been truly an odyssey, and I sincerely and genuinely want to thank you, Mr. Gilman, for your efforts, and to Sam Gejdenson. You both have done extraordinary work. I also recognize my friend and colleague from North Carolina, Mr. Burr, who has a genuine and sincere interest in this issue. He and I have had many conversations on it.

Dave Camp, who serves on the Ways and Means Committee, and is active in adoption issues, also has played a critical role. I mean—and I think that it would be remiss not to again state the fine work that your staff, represented by Kristin Gilley, and Mr. Gejdenson's staff, represented by David Abromowitz—they have done just Herculean efforts to make this happen.

I would be remiss not to single out my own legislative director, who has taken this particular measure on because he is aware of my personal involvement in this issue, for what simply is extraordinary in terms of commitment, skill, and the ability to help broker what I think is a very responsible compromise, which this amendment represents, on a variety of tough issues.

Every compromise involves some degree of sacrifice by all concerned. I am honestly very grateful that so many organizations, representing such a broad spectrum of opinions, have been willing to set aside their lingering reservations to give support to this amendment. I think that speaks well of all of the stakeholders in this particular effort.

I am particularly gratified by the progress that has been made with regard to one of the most contentious provisions of the bill as originally introduced, and that is the provision related to the disclosure of adoption records. To say that this is an emotionally charged issue would be, at best, a serious understatement.

As an adoptive parent myself, I share the feelings of thousands of parents about their children's right to their birth records, whether for serious medical reasons or simply to satisfy the need that we all have to understand who we are and what we are about. Personally, I support maximum responsible disclosure, but I also recognize that other people of good conscience feel differently.

The amendment deals with this issue rather simply. It simply preserves the status quo. Convention records held in Federal immigration files will continue to be available to the extent—but only to the extent permitted by current applicable Federal law. There is no change whatsoever.

Access to all other adoption records will continue to be governed by applicable State laws. Again, no change. This result reflects, really, a hard won compromise. I don't expect or suppose that those with strong views on either side of the issue will greet this particular formulation with a chorus of hallelujahs. But I am satisfied that it is a fair and balanced outcome which will enable the laws to evolve as the State courts and the State legislatures continue to grapple with this very complex and emotional issue.

It is now my hope that this amendment will be quickly approved by both the Committee and the full House, without extraneous and controversial amendments that could jeopardize the speedy enactment of this legislation and upset the comprehensive agreement that has been worked out among the various House committees and with our Senate colleagues.

Again, Mr. Chairman, I would be remiss if I didn't note that Senator Biden, Senator Helms, and Senator Landrieu have really been actively involved in this particular proposal. I applaud each and every one of those Senators.

Prompt U.S. ratification and implementation of the Hague Convention is of enormous support to many thousands of children throughout the world who cannot be placed for adoption in their countries of origin. That is what we are talking about here. U.S. ratification will signal to the rest of the world our willingness to help provide homes for these children through intercountry adoption.

I urge my colleagues to support this amendment in the nature of a substitute, and look forward to its passage.

I yield back, Mr. Chairman.

Chairman. GILMAN. Thank you, Mr. Delahunt, for your supportive remarks.

Mr. Burr, who has been one of the sponsors—of the early sponsors of this measure, we thank Mr. Burr for his good work on this measure.

Mr. BURR. Thank you, Mr. Chairman. Mr. Chairman, I think it is safe to say, in the 6 years that I have been fortunate enough to be part of the Congress of the United States, I don't think I have seen an issue that was resolved as quickly and as effectively as the differences that we had over the legislation introduced on the

House side. You are to be commended for your leadership, along with Mr. Gejdenson.

But I also want to highlight my colleague, Mr. Delahunt, who from day one looked at me and said, "Don't worry. We can work this out." And for that I am eternally grateful because I think that, in fact, as we have gone through this process everybody involved had one thing in mind, and that was to make sure that those people who wanted to provide a loving home for a child had the opportunity to do it.

Let me say to my good friends from the State Department, I have every degree of confidence in your ability——

[Laughter.]

Mr. BURR [continuing]. And wait enthusiastically to watch the great success that you achieve.

Ms. JACOBS. Thank you.

Mr. BURR. It was clear from our hearings very early on that HHS was not the appropriate agency, and I think for those that started out that way their testimony quickly led to the lack of expertise. Not to suggest that the expertise is already there at State, but clearly the experience has been established in the past that will make this an expertise.

It is my understanding that our colleagues from the Senate will consider the same language when they mark up the legislation in the Foreign Relations Committee. I am hopeful that we can now proceed on a track that gets this legislation passed, signed into law. Hopefully, we can get it done before this Congress adjourns, and I look forward to working with each one of my colleagues on making sure we do that.

I would like to also take this opportunity to thank the many individuals and groups who took the time to contact me with their concerns and comments about the process that we are engaged in. I would especially like to thank those who were parents of adopted children, who internationally adopted children who came in to talk firsthand about the experience they went through, and how in a perfect bill it should work. I think we have done everything to reach that point that, in fact, they shared with us.

Despite our different approaches, Mr. Chairman, I think it is safe to say that we did want the same thing, and that is to help those who want nothing more than to provide a child with a loving home. I believe this amendment, if accepted by the Committee, will provide them with at least some of the help they need.

I encourage my colleagues to support the substitute. I thank you once again, and I yield back.

Mr. GEJDENSON. Mr. Chairman.

Chairman. GILMAN. Mr. Gejdenson.

Mr. GEJDENSON. Mr. Chairman, I would ask—you know, Members are kind of strewn around the Capitol at the moment. In order to facilitate a quorum and not wanting to cut anybody off, but that we would set, on the assumption that we have a quorum, that in 5 minutes we actually hold the vote.

That way Members, as they are being called, will hopefully be more ready to come, knowing that they won't be held up by an extended discussion. That if any other discussion occurs, we could do

it after the vote on the bill. Since there seems to be broad support and no opposition in moving forward.

Chairman. GILMAN. Thank you, Mr. Gejdenson. Without objection, within 5 minutes we will have a final vote on the measure.

Any further requests for discussion? Anyone have any further requests for discussion?

Mr. GEJDENSON. Move the amendment.

Chairman. GILMAN. If there are no further amendments, the previous question is ordered on the Gilman amendment in the nature of a substitute, as amended.

The question is on agreeing to the Gilman amendment in the nature of a substitute. All in favor of the Gilman amendment in the nature of a substitute, as amended, signify by saying aye.

[Ayes.]

Any opposed say no.

[No response.]

The amendment is agreed to.

We will take just a moment—recess—to give the Members an opportunity to respond to the request for attendance.

[Recess.]

Chairman. GILMAN. The gentleman from Nebraska is recognized to offer a motion.

Mr. BEREUTER. Mr. Chairman, I move the Committee report the bill H.R. 2909, as amended, with a recommendation that the bill, as amended, do pass.

Chairman. GILMAN. The question is on the motion to report the bill, as set forth by Mr. Bereuter, and reported favorably to the House. All those in favor say aye.

[Ayes.]

All those opposed say no.

[No response.]

Mr. GEJDENSON. Ask for a recorded vote.

Chairman. GILMAN. Mr. Gejdenson asks for a recorded vote. All in favor signify with a show of hands. It is a sufficient number. Without objection, we will now proceed with the roll call. The Clerk will call the roll.

Ms. BLOOMER. Mr. Gilman.

Chairman. GILMAN. Aye.

Ms. BLOOMER. Mr. Gilman votes aye.

Mr. Goodling.

Mr. GOODLING. Aye.

Ms. BLOOMER. Mr. Goodling votes aye.

Mr. Leach.

[No response.]

Mr. Hyde.

[No response.]

Mr. Bereuter.

Mr. BEREUTER. Aye.

Ms. BLOOMER. Mr. Bereuter votes yes.

Chairman. GILMAN. May we have a little order, please, so the Clerk can hear the responses.

Ms. BLOOMER. Mr. Smith.

Mr. SMITH. Aye.

Ms. BLOOMER. Mr. Smith votes yes.

Mr. Burton.
[No response.]
Mr. Gallegly.
[No response.]
Ms. Ros-Lehtinen.
[No response.]
Mr. Ballenger.
Mr. BALLENGER. Aye.
Ms. BLOOMER. Mr. Ballenger votes yes.
Mr. Rohrabacher.
[No response.]
Mr. Manzullo.
Mr. MANZULLO. Aye.
Ms. BLOOMER. Mr. Manzullo votes yes.
Mr. Royce.
[No response.]
Mr. King.
Mr. KING. Aye.
Ms. BLOOMER. Mr. King votes yes.
Mr. Chabot.
Mr. CHABOT. Aye.
Ms. BLOOMER. Mr. Chabot votes yes.
Mr. Sanford.
Mr. SANFORD. Aye.
Ms. BLOOMER. Mr. Sanford votes yes.
Mr. Salmon.
[No response.]
Mr. Houghton.
[No response.]
Mr. Campbell.
[No response.]
Mr. McHugh.
Mr. MCHUGH. Aye.
Ms. BLOOMER. Mr. McHugh votes yes.
Mr. Brady.
[No response.]
Mr. Burr.
Mr. BURR. Aye.
Ms. BLOOMER. Mr. Burr votes yes.
Mr. Gillmor.
Mr. GILLMOR. Yes.
Ms. BLOOMER. Mr. Gillmor votes yes.
Mr. Radanovich.
[No response.]
Mr. Cooksey.
Mr. COOKSEY. Yes.
Ms. BLOOMER. Mr. Cooksey votes yes.
Mr. Tancredo.
Mr. TANCREDO. Aye.
Ms. BLOOMER. Mr. Tancredo votes yes.

Chairman. GILMAN. If I might interrupt our roll call a moment, let me remind our Members that we have our very important oil crisis price reduction measure on the floor in the early afternoon.

We will welcome all of our Members to be present at that time. Thank you.

Please continue.

Ms. BLOOMER. Mr. Gejdenson.

Mr. GEJDENSON. Aye.

Ms. BLOOMER. Mr. Gejdenson votes yes.

Mr. Lantos.

[No response.]

Mr. Berman.

[No response.]

Mr. Ackerman.

[No response.]

Chairman. GILMAN. I ask our Members to stay until the vote is complete, just in the event we have any problem.

Please continue.

Ms. BLOOMER. Mr. Faleomavaega.

[No response.]

Mr. Martinez.

[No response.]

Mr. Payne.

Mr. PAYNE. Yes.

Ms. BLOOMER. Mr. Payne votes yes.

Mr. Menendez.

[No response.]

Mr. Brown.

[No response.]

Ms. McKinney.

[No response.]

Mr. Hastings.

Mr. HASTINGS. Aye.

Ms. BLOOMER. Mr. Hastings votes yes.

Chairman. GILMAN. We are asking our Members not to leave until the roll call is over.

Ms. BLOOMER. Ms. Danner.

Ms. DANNER. Aye.

Ms. BLOOMER. Ms. Danner votes yes.

Mr. Hilliard.

Mr. HILLIARD. Aye.

Ms. BLOOMER. Mr. Hilliard votes yes.

Mr. Sherman.

Mr. SHERMAN. Aye.

Ms. BLOOMER. Mr. Sherman votes yes.

Mr. Wexler.

[No response.]

Mr. Rothman.

Mr. ROTHMAN. Aye.

Ms. BLOOMER. Mr. Rothman votes yes.

Mr. Davis.

[No response.]

Mr. Pomeroy.

Mr. POMEROY. Yes.

Ms. BLOOMER. Mr. Pomeroy votes yes.

Mr. Delahunt.

Mr. DELAHUNT. Yes.

Ms. BLOOMER. Mr. Delahunt votes yes.
Mr. Meeks.
[No response.]
Ms. Lee.
Ms. LEE. Aye.
Ms. BLOOMER. Ms. Lee votes yes.
Mr. Crowley.
[No response.]
Mr. Hoeffel.
Mr. HOEFFEL. Aye.
Ms. BLOOMER. Mr. Hoeffel votes yes.
OK. Mr. Leach.
[No response.]
Mr. Hyde.
[No response.]
Chairman. GILMAN. The Clerk is calling the absentees.
Ms. BLOOMER. Mr. Burton.
[No response.]
Mr. Gallegly.
[No response.]
Ms. Ros-Lehtinen.
[No response.]
Mr. Rohrabacher.
[No response.]
Mr. Royce.
[No response.]
Mr. Salmon.
Mr. SALMON. Aye.
Ms. BLOOMER. Mr. Salmon votes yes.
Mr. Houghton.
[No response.]
Mr. Campbell.
[No response.]
Mr. Brady.
[No response.]
Mr. Radanovich.
[No response.]
Mr. Lantos.
[No response.]
Mr. Berman.
[No response.]
Mr. Ackerman.
[No response.]
Mr. Faleomavaega.
[No response.]
Mr. Martinez.
[No response.]
Mr. Menendez.
[No response.]
Mr. Brown.
[No response.]
Ms. McKinney.
[No response.]
Mr. Wexler.

[No response.]

Mr. Davis.

Mr. DAVIS. Aye.

Ms. BLOOMER. Mr. Davis votes yes.

Mr. Meeks.

[No response.]

Mr. Crowley.

Mr. CROWLEY. Aye.

Ms. BLOOMER. Mr. Crowley votes yes.

Chairman. GILMAN. The Clerk will read the tally.

Ms. BLOOMER. On this vote, there were 28 ayes and zero nays.

Chairman. GILMAN. Without objection, the bill is authorized. The motion is agreed to. Without objection, the Chairman is authorized to make motions under Rule 20 relative to going to conference on this or a companion bill for the Senate. Without objection, the Chief of Staff is authorized to make grammatical changes to the bill.

Mr. Pomeroy.

Mr. POMEROY. Mr. Chairman, I ask unanimous consent to include a statement in the record.

Chairman. GILMAN. Without objection.

The Committee stands adjourned.

[Whereupon, at 10:58 a.m., the Committee was adjourned.]

A P P E N D I X

MARCH 22, 2000

Statement of Chairman Gilman
Markup - HR 2909, The Intercountry Adoption Act of 2000
March 22, 2000

Today we are marking up H.R. 2909, the Intercountry Adoption Act of 2000. This bipartisan bill has strong Congressional support -- with a total of 45 cosponsors. We will be considering an amendment in the nature of a substitute that reflects bipartisan and bicameral participation.

The purpose of the bill is to provide the Department of State with the necessary authorities to implement The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. As a signatory to this Convention, the U.S. must now meet the obligations of the Convention which requires the creation of a Central Authority to administer the new duties. The legislation designates the State Department as the Central Authority.

Senator Helms also introduced implementing legislation, S. 682, and Congressman Burr of North Carolina introduced the companion bill in the House, H.R. 2342. A major element in the Helms/Burr bill -- giving total responsibility to the State Department -- has been accommodated in this substitute. I appreciate Mr. Burr's interest and attention to this measure.

There were significant differences between the House and Senate bills. However, both Committees, intent on enacting the legislation this year, reconciled these differences and produced the substitute amendment. We appreciate the input received from many outside groups, individuals, and the Administration who made important contributions to this substitute. We are also very grateful for the many letters of support we received for this substitute provision.

I say with confidence, that we have before us a solid bill that will enable the State Department to get started on performing needed services for the thousands of Americans who each year adopt children from overseas. We want those parents to have the best information and services available to them. This bill provides many "consumer protections" to improve the intercountry adoption process and to establish a consistent and reliable system that will be recognized by foreign countries.

This bill also has been referred to the Ways and Means Committee, the Education and Workforce Committee, and the Judiciary Committee. We have worked with these Committees throughout the process and hope that they will also expeditiously advance the bill.

We also have a letter from the Senate sponsors of their bill stating their full support for this provision. READ THE LETTER:

MR. POMEROY

Opening Statement
H.R. 2909, the Intercountry Adoption Act
House International Relations Committee
~~October 20, 1999~~
March 22, 2000

Mr. Chairman, thank you very much for the opportunity to make a few remarks on this important legislation. As an original cosponsor of H.R. 2909, I would like to express my strong support for the Chairman's legislation. By providing for the implementation of the Hague Convention, this legislation will help unite American families with waiting children from around the world. I would like to thank Chairman Gilman, as well as Rep. Delahunt, Chairman Bliley, and the other drafters of this legislation for their leadership.

For years, American families have reached across cultural and national boundaries to embrace children through international adoption. In 1998 alone, almost 16,000 children were adopted from abroad by American families. By signing the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, the United States and over 60 other nations recognized the importance of international adoption. The Hague Convention creates a structure to strengthen cooperation among nations in adoption and protects adoptive families from fraud and abuse.

Although the United States signed the Hague Convention in 1994, Congress has yet to ratify and implement the Convention. The Intercountry Adoption Act, by providing making the legislative changes necessary to implement the Hague Convention, would strengthen the process that builds thousands of international adoptive families every year. Our legislation sends a strong signal that the United States is committed to providing permanent homes for its own children and for children all across the globe.

Mr. Chairman, the Hague Convention promotes cooperation among national governments, but its most significant impact is deeply personal. On February 4, 1994, I attended a National Prayer Breakfast, where Mother Theresa spoke at length about adoption. In the course of that day, during a meeting with the other members of the North Dakota delegation, Senators Conrad and Dorgan, I was passed a note saying it was time to go to the airport. I met my wife Laurie at National Airport and we greeted our adopted baby daughter from Korea, Kathryn. Two years later, we adopted a second child from Korea, my son Scott.

Mr. Chairman, my own family was forever changed and enriched by the adoption of our two children from Korea. I am profoundly grateful to have Kathryn and Scott in my life. Passing this legislation will help me to express my gratitude by aiding efforts to unite every waiting child in every country with a permanent family.

106TH CONGRESS
1ST SESSION

H. R. 2909

To provide for implementation by the United States of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 1999

Mr. GILMAN (for himself, Mr. CAMP, Mr. DELAHUNT, Mr. GEJDENSON, Mr. BLILEY, Mr. OBERSTAR, Mr. SMITH of New Jersey, Mr. POMEROY, Mr. MCGOVERN, Mr. BARRETT of Wisconsin, Mr. ENGLISH, Mr. FARR of California, Mr. HORN, Mr. FORBES, Mr. RAMSTAD, Mrs. MINK of Hawaii, Mrs. JOHNSON of Connecticut, Mr. CAPUANO, Mr. FROST, Mr. PORTER, Mr. BARCIA, Mr. BURTON of Indiana, Mr. UNDERWOOD, Mr. COOKSEY, Mr. HASTINGS of Florida, Mr. BARRETT of Nebraska, Mr. SMITH of Texas, Ms. ROS-LEHTINEN, Mr. GREENWOOD, Mr. ACKERMAN, Mr. BERMAN, Mr. DAVIS of Florida, Mr. STUPAK, Mr. CARDIN, Ms. ESHOO, Mr. LANTOS, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committees on the Judiciary, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for implementation by the United States of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Intercountry Adoption Act of 1999".

4 (b) TABLE OF CONTENTS.—The table of contents of
5 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. Role of Secretary of Health and Human Services.
Sec. 202. Accreditation or approval required in order to provide adoption services in cases subject to the Convention.
Sec. 203. Process for accreditation and approval; role of accrediting entities.
Sec. 204. Standards and procedures for providing accreditation or approval.
Sec. 205. Secretarial oversight of accreditation and approval.
Sec. 206. Limitations on authorization of appropriations.

TITLE III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

Sec. 301. Adoptions of children immigrating to the United States.
Sec. 302. Immigration and Nationality Act amendments relating to children adopted from Convention countries.
Sec. 303. Adoptions of children emigrating from the United States.
Sec. 304. Voiding of adoptions for cause.

TITLE IV—ADMINISTRATION AND ENFORCEMENT

Sec. 401. Records; privacy provisions.
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.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress recognizes—

3 (1) the international character of the Conven-
4 tion on Protection of Children and Co-operation in
5 Respect of Intercountry Adoption (done at The
6 Hague on May 29, 1993),

7 (2) the need for uniform interpretation and im-
8 plementation of the Convention in the United States
9 and abroad,

10 and therefore finds that enactment of a Federal law gov-
11 erning adoptions and prospective adoptions subject to the
12 Convention involving United States residents is essential.

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

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

16 (2) to protect the rights of, and prevent abuses
17 against, children, birth families, and adoptive par-
18 ents involved in adoptions (or prospective adoptions)
19 subject to the Convention, and to ensure that such
20 adoptions are in the children's best interests; and

21 (3) to improve the ability of the Federal Gov-
22 ernment to assist United States citizens seeking to
23 adopt children from abroad and residents of other
24 countries party to the Convention seeking to adopt
25 children from the United States.

1 **SEC. 3. DEFINITIONS.**

2 As used in this Act:

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

7 (2) ACCREDITING ENTITY.—The term "accred-
8 iting entity" means an entity designated under sec-
9 tion 203(a) to accredit agencies and approve persons
10 under title II.

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

13 (A) identifying a child for adoption and ar-
14 ranging an adoption;

15 (B) securing necessary consent to termi-
16 nation of parental rights and to adoption;

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

20 (D) making determinations of the best in-
21 terests of a child and the appropriateness of
22 adoptive placement for the child;

23 (E) providing professional counseling serv-
24 ices for a child, a birth parent, or a prospective
25 adoptive parent with respect to adoption;

1 (F) post-placement monitoring of a case
2 until final adoption;
3 (G) where made necessary by disruption
4 before final adoption, assuming custody and
5 providing child care or any other social service
6 pending an alternative placement; and
7 (H) post-adoption services, other than ac-
8 tivities relating to identifying or locating birth
9 parents or siblings.
10 The term "providing", with respect to an adoption
11 service, includes facilitating the provision of the
12 service.
13 (4) AGENCY.—The term "agency" means any
14 person other than an individual.
15 (5) APPROVED PERSON.—The term "approved
16 person" means a person approved under title II to
17 provide adoption services in the United States in
18 cases subject to the Convention.
19 (6) ATTORNEY GENERAL.—The term "Attorney
20 General" means the Attorney General, acting
21 through the Commissioner of Immigration and Nat-
22 uralization.
23 (7) CENTRAL AUTHORITY.—The term "central
24 authority" means the entity designated as such by
25 any Convention country under Article 6.1 of the

1 Convention, or if no such designation has been
2 made, the entity having responsibility for the dis-
3 charge of the obligations of that country under the
4 Convention.

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

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

13 (10) CONVENTION ADOPTION.—The term "Con-
14 vention adoption" means an adoption of a child resi-
15 dent in a foreign country party to the Convention by
16 a United States citizen, or an adoption of a child
17 resident in the United States by an individual resid-
18 ing in another Convention country.

19 (11) CONVENTION ADOPTION RECORD.—The
20 term "Convention adoption record" means any item,
21 collection, or grouping of information contained in
22 an electronic or physical document, an electronic col-
23 lection of data, a photograph, an audio or video
24 tape, or any other information storage medium of
25 any type whatever that contains information about a

specific past, current, or prospective Convention adoption (regardless of whether the adoption was made final).

(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 include any agency of government.

(15) 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

1 (2) the Secretary of State shall serve as the
2 head of the central authority of the United States.
3 (b) PERFORMANCE OF CENTRAL AUTHORITY FUNC-
4 TIONS.—Except as otherwise provided in this Act, the Sec-
5 retary of State shall be responsible for the performance
6 of all central authority functions for the United States
7 under the Convention and this Act.
8 (c) AUTHORITY TO ISSUE REGULATIONS.—Except as
9 otherwise provided in this Act, the Secretary of State may
10 prescribe such regulations as may be necessary to carry
11 out central authority functions on behalf of the United
12 States.

13 **SEC. 102. RESPONSIBILITIES OF THE SECRETARY OF**
14 **STATE.**

15 (a) LIAISON RESPONSIBILITIES.—The Secretary of
16 State shall have responsibility for—
17 (1) liaison with the central authorities of other
18 Convention countries; and
19 (2) the coordination of activities under the Con-
20 vention by persons subject to the jurisdiction of the
21 United States.
22 (b) INFORMATION EXCHANGE.—The Secretary of
23 State shall be responsible for—
24 (1) providing the central authorities of other
25 Convention countries with information concerning—

1 (A) agencies accredited and persons ap-
2 proved under title II, accredited agencies and
3 approved persons whose accreditation or ap-
4 proval has been suspended or canceled, and ac-
5 credited agencies and approved persons who
6 have been temporarily or permanently debarred
7 from accreditation or approval;
8 (B) Federal and State laws relevant to im-
9 plementing the Convention; and
10 (C) any other matters necessary and ap-
11 propriate for implementation of the Convention;
12 (2) providing Federal agencies, State courts,
13 and accredited agencies and approved persons with
14 an identification of Convention countries and per-
15 sons authorized to perform functions under the Con-
16 vention in each such country; and
17 (3) facilitating the transmittal of other appro-
18 priate information to, and among, central authori-
19 ties, Federal and State agencies (including State
20 courts), and accredited agencies and approved per-
21 sons.
22 (c) ADDITIONAL RESPONSIBILITIES.—The Secretary
23 of State—
24 (1) shall monitor individual Convention adop-
25 tion cases involving United States citizens;

1 (2) may facilitate interactions between such
2 citizens and officials of other Convention countries
3 on matters relating to the Convention in any case in
4 which an accredited agency or approved person is
5 unwilling or unable to provide such facilitation; and
6 (3) may provide any other appropriate assist-
7 ance in other cases, or take other appropriate ac-
8 tions necessary to implement the Convention.
9 (d) ESTABLISHMENT OF REGISTRY.—The Secretary
10 of State and the Attorney General shall jointly establish
11 a case registry of—
12 (1) all adoptions involving immigration into the
13 United States, regardless of whether the adoption
14 occurs under the Convention; and
15 (2) all adoptions involving emigration of the
16 child from the United States to any other Conven-
17 tion country.
18 Such registry shall permit tracking of pending cases and
19 retrieval of information on both pending and closed cases.
20 (e) METHODS OF PERFORMING RESPONSIBIL-
21 ITIES.—The Secretary of State may—
22 (1) authorize public or private entities to per-
23 form appropriate central authority functions for
24 which the Secretary is responsible, pursuant to regu-

1 lations or under agreements published in the Federal
2 Register; and
3 (2) carry out central authority functions
4 through grants to, or contracts with, any individual
5 or public or private entity, except as may be other-
6 wise specifically provided for in this Act.

7 **SEC. 103. RESPONSIBILITIES OF THE ATTORNEY GENERAL.**

8 In addition to such other responsibilities as are spe-
9 cifically conferred upon the Attorney General by this Act,
10 the central authority functions specified in Article 14 of
11 the Convention (relating to the filing of applications by
12 prospective adoptive parents to the central authority of
13 their country of residence) shall be performed by the At-
14 torney General.

15 **SEC. 104. ANNUAL REPORT ON INTERCOUNTRY ADOP-**
16 **TIONS.**

17 (a) REPORTS REQUIRED.—Beginning one year after
18 the date of enactment of this Act, and each year there-
19 after, the Secretary of State, in consultation with the Sec-
20 retary of Health and Human Services, the Attorney Gen-
21 eral, and other appropriate agencies, shall submit a report
22 to the Congress describing the activities of the central au-
23 thority of the United States under this Act during the pre-
24 ceding year.

1 (b) REPORT ELEMENTS.—Each report under sub-
2 section (a) shall set forth with respect to the year con-
3 cerned, the following:

4 (1) The number of intercountry adoptions in-
5 volving immigration to the United States, regardless
6 of whether the adoption occurred under the Conven-
7 tion, including the country from which each child
8 emigrated, the State to which each child immigrated,
9 and the country in which the adoption was finalized.

10 (2) The number of intercountry adoptions in-
11 volving emigration from the United States, regard-
12 less of whether the adoption occurred under the
13 Convention, including the country to which each
14 child immigrated and the State from which each
15 child emigrated.

16 (3) The number of Convention adoptions that
17 were disrupted, including the country from which
18 the child emigrated, the age of the child, the date of
19 the adoption, the reasons for the disruption, and the
20 resolution of the disruption.

21 (4) The current list of agencies accredited and
22 persons approved under this Act to provide adop-
23 tion-related services.

24 (5) The names of the accredited agencies and
25 approved persons temporarily or permanently

1 debarred from accreditation or approval under this
2 Act, and the reasons for the debarment.
3 (6) The range of adoption fees charged in con-
4 nection with Convention adoptions involving immi-
5 gration to or emigration from the United States by
6 all entities, including accredited agencies and ap-
7 proved persons, set forth by country.
8 (7) The number of Convention adoptions involv-
9 ing immigration to the United States that were va-
10 cated for cause or in which proceedings to vacate for
11 cause are pending.

12 TITLE II—PROVISIONS RELAT-
13 ING TO ACCREDITATION AND
14 APPROVAL

15 SEC. 201. ROLE OF SECRETARY OF HEALTH AND HUMAN
16 SERVICES.

17 The Secretary of Health and Human Services (in this
18 title referred to as the "Secretary"), in coordination with
19 the Secretary of State, shall carry out the functions pre-
20 scribed by the Convention with respect to the accreditation
21 of agencies and the approval of persons to provide adop-
22 tion services in the United States in cases subject to the
23 Convention.

1 **SEC. 202. ACCREDITATION OR APPROVAL REQUIRED IN**
2 **ORDER TO PROVIDE ADOPTION SERVICES IN**
3 **CASES SUBJECT TO THE CONVENTION.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b), a person shall not offer or provide an adoption service
6 in the United States in a case subject to the Convention
7 unless the person is accredited or approved under this
8 title, or is providing the service through or under the su-
9 pervision and responsibility of a person so accredited or
10 approved.

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

13 (1) BACKGROUND STUDIES AND HOME STUD-
14 IES.—The performance of a background study on a
15 child or a home study on a prospective adoptive par-
16 ent, or any report on any such study, by a social
17 work professional or organization who is not pro-
18 viding any other adoption service in any case subject
19 to the Convention.

20 (2) CHILD WELFARE SERVICES.—The provision
21 of a child welfare service by a person who is not pro-
22 viding any other kind of adoption service in the case.

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

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

6 **SEC. 203. PROCESS FOR ACCREDITATION AND APPROVAL;**
7 **ROLE OF ACCREDITING ENTITIES.**

8 (a) DESIGNATION OF ACCREDITING ENTITIES.—
9 (1) IN GENERAL.—The Secretary, with the con-
10 currence of the Secretary of State, shall enter into
11 agreements with one or more qualified entities under
12 which such entities will perform the duties described
13 in subsection (b) in accordance with the Convention,
14 this title, and the regulations prescribed under sec-
15 tion 204, and upon entry into each such agreement
16 shall designate the qualified entity as an accrediting
17 entity.
18 (2) QUALIFIED ENTITY.—In paragraph (1), the
19 term "qualified entity" means a nonprofit private
20 entity that has experience and expertise in devel-
21 oping and administering standards for entities pro-
22 viding child welfare services and that meets such
23 other criteria as the Secretary may by regulation es-
24 tablish.

1 (b) DUTIES OF ACCREDITING ENTITIES.—The duties
2 described in this subsection are the following:
3 (1) ACCREDITATION AND APPROVAL.—Accredi-
4 tation of agencies, and approval of persons, to pro-
5 vide adoption services in the United States in cases
6 subject to the Convention.
7 (2) OVERSIGHT.—Ongoing monitoring of the
8 compliance of accredited agencies and approved per-
9 sons with applicable requirements, including review
10 of complaints against such agencies and persons in
11 accordance with procedures established by the ac-
12 crediting entity and approved by the Secretary.
13 (3) ENFORCEMENT.—Taking of adverse actions
14 (including requiring corrective action, imposing sanc-
15 tions, and refusing to renew, suspending, or can-
16 celing accreditation or approval) for noncompliance
17 with applicable requirements, and notifying the
18 agency or person against whom adverse actions are
19 taken of the deficiencies necessitating the adverse
20 action.
21 (4) DATA, RECORDS, AND REPORTS.—Collection
22 of data, maintenance of records, and reporting to
23 the Secretary, the United States central authority,
24 State courts, and other entities (including on per-
25 sons and agencies granted or denied approval or ac-

1 creditation), to the extent and in the manner that
2 the Secretary requires.
3 (c) REMEDIES FOR ADVERSE ACTION BY ACCRED-
4 ITING ENTITY.—
5 (1) CORRECTION OF DEFICIENCY.—An agency
6 or person who is the subject of an adverse action by
7 an accrediting entity may re-apply for accreditation
8 or approval (or petition for termination of the ad-
9 verse action) on demonstrating to the satisfaction of
10 the accrediting entity that the deficiencies necessi-
11 tating the adverse action have been corrected.
12 (2) NO OTHER ADMINISTRATIVE REVIEW.—An
13 adverse action by an accrediting agency shall not be
14 subject to administrative review sought by the agen-
15 cy or person against whom the adverse action has
16 been taken.
17 (3) JUDICIAL REVIEW.—An agency or person
18 who is the subject of an adverse action by an accred-
19 iting agency may petition the United States district
20 court in the judicial district in which the agency is
21 located or the person resides to set aside the adverse
22 action. The court may set aside the adverse action
23 only upon clear and convincing proof that the deci-
24 sion to take the adverse action was not based on
25 substantial evidence of deficiencies or that the ac-

1 crediting entity abused its discretion in taking the
2 adverse action.
3 (d) FEES.—
4 (1) AUTHORITY TO ASSESS.—An accrediting en-
5 tity may assess fees against agencies and persons
6 seeking or maintaining accreditation or approval
7 under this title, in amounts approved by the Sec-
8 retary.
9 (2) FEE AMOUNTS.—The Secretary may ap-
10 prove fees to be assessed under paragraph (1) by an
11 accrediting entity if the Secretary estimates that the
12 aggregate of the amounts to be collected from the
13 fees will not exceed the sum of—
14 (A) the total amount of all direct or indi-
15 rect costs of the accrediting entity for accredita-
16 tion or approval and ongoing oversight (which
17 shall be estimated on the basis of the number
18 of cases subject to the Convention handled by
19 the agencies and persons accredited or approved
20 by the accrediting entity and other relevant fac-
21 tors); and
22 (B) an amount determined by the Sec-
23 retary to be the amount necessary to cover all
24 direct and indirect costs of Federal oversight of
25 the accrediting entity under section 205.

1 (3) COLLECTION; PAYMENT TO THE TREAS-
2 URY.—The accrediting entity shall collect the fees
3 assessed under paragraph (1), and from the
4 amounts collected remit to the Secretary the amount
5 determined under paragraph (2)(B). The Secretary
6 shall deposit in the Treasury of the United States
7 all amounts remitted under the preceding sentence.

8 **SEC. 204. STANDARDS AND PROCEDURES FOR PROVIDING**
9 **ACCREDITATION OR APPROVAL.**

10 (a) IN GENERAL.—
11 (1) PROMULGATION OF REGULATIONS.—The
12 Secretary, with the concurrence of the Secretary of
13 State, shall, by regulation, prescribe the standards
14 and procedures to be used by accrediting entities for
15 the accreditation of agencies and the approval of
16 persons to provide adoption services in the United
17 States in cases subject to the Convention.
18 (2) CONSIDERATION OF VIEWS.—In developing
19 such regulations, the Secretary shall consider the
20 views of individuals and entities with interest and
21 expertise in international adoptions and family social
22 services, including public and private entities with
23 experience in licensing and accrediting adoption
24 agencies.

1 (3) APPLICABILITY OF NOTICE AND COMMENT
2 RULES.—Subsections (b), (c), and (d) of section 553
3 of title 5, United States Code, shall apply in the de-
4 velopment and issuance of regulations under this
5 section.
6 (b) MINIMUM REQUIREMENTS.—
7 (1) ACCREDITATION.—The standards pre-
8 scribed under subsection (a) shall include the re-
9 quirement that accreditation of an agency may not
10 be provided or continued under this title unless the
11 agency meets the following requirements:
12 (A) CAPACITY TO PROVIDE ADOPTION
13 SERVICES.—The agency has, directly or through
14 arrangements with other persons, a sufficient
15 number of appropriately trained and qualified
16 personnel, sufficient financial resources, appro-
17 priate organizational structure, and appropriate
18 procedures to enable the agency to provide, in
19 accordance with this Act, all adoption services
20 in cases subject to the Convention.
21 (B) USE OF SOCIAL SERVICE PROFES-
22 SIONALS.—The agency has established proce-
23 dures designed to ensure that social service
24 functions requiring the application of clinical
25 skills and judgment are performed only by pro-

1 fessionals with appropriate qualifications and
2 credentials.
3 (C) RECORDS, REPORTS, AND INFORMA-
4 TION MATTERS.—The agency is capable of—
5 (i) maintaining such records and mak-
6 ing such reports as may be required by the
7 Secretary, the United States central au-
8 thority, and the accrediting entity that ac-
9 credits the agency;
10 (ii) cooperating with reviews, inspec-
11 tions, and audits;
12 (iii) safeguarding sensitive individual
13 information; and
14 (iv) complying with other require-
15 ments concerning information management
16 necessary to ensure compliance with the
17 Convention, this Act, and any other appli-
18 cable law.
19 (D) LIABILITY INSURANCE.—The agency
20 agrees to have in force adequate liability insur-
21 ance for professional negligence and any other
22 insurance that the Secretary considers appro-
23 priate, unless the agency is a State, local, or
24 tribal government entity.

1 (E) COMPLIANCE WITH APPLICABLE
2 RULES.—The agency has established adequate
3 measures to comply (and to ensure compliance
4 of their agents and clients) with the Conven-
5 tion, this Act, and any other applicable law.
6 (F) NONPROFIT ORGANIZATION WITH
7 STATE LICENSE TO PROVIDE ADOPTION SERV-
8 ICES.—The agency is a private nonprofit orga-
9 nization licensed to provide adoption services in
10 at least one State, unless the agency is a State,
11 local, or tribal government entity.
12 (2) APPROVAL.—The standards prescribed
13 under subsection (a) shall include the requirement
14 that a person shall not be approved under this title
15 unless the person is a private for-profit entity that
16 meets the requirements of subparagraphs (A)
17 through (E) of paragraph (1) of this subsection.
18 (3) RENEWAL OF ACCREDITATION OR AP-
19 PROVAL.—The standards prescribed under sub-
20 section (a) shall provide that the accreditation of an
21 agency or approval of a person under this title shall
22 be for a period of not less than 3 years and not
23 more than 5 years, and may be renewed on a show-
24 ing that the agency or person meets the require-

1 ments applicable to original accreditation or ap-
2 proval under this title.

3 **SEC. 205. SECRETARIAL OVERSIGHT OF ACCREDITATION**
4 **AND APPROVAL.**

5 (a) OVERSIGHT OF ACCREDITING ENTITIES.—The
6 Secretary shall monitor the performance by each accred-
7 iting entity of its duties under section 203 and its compli-
8 ance with requirements of the Convention, this Act, other
9 applicable laws, and applicable regulations prescribed
10 under this Act, and shall suspend or cancel the designation
11 of the entity as an accrediting entity if the Secretary finds
12 the entity to be substantially out of compliance with the
13 Convention, this Act, other applicable laws, or such regula-
14 tions.

15 (b) SUSPENSION OR CANCELLATION OF ACCREDITA-
16 TION OR APPROVAL.—

17 (1) SECRETARY'S AUTHORITY.—The Secretary
18 shall suspend or cancel the accreditation or approval
19 granted by an accrediting entity to an agency or per-
20 son pursuant to section 203 when the Secretary
21 finds that—

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

1 (B) the accrediting entity has failed or re-
2 fused, after consultation with the Secretary, to
3 take appropriate corrective action.
4 (2) CORRECTION OF DEFICIENCY.—At any time
5 when the Secretary is satisfied that the deficiencies
6 on the basis of which an adverse action is taken
7 under paragraph (1) have been corrected, the Sec-
8 retary shall—
9 (A) notify the accrediting entity that the
10 decifiencies have been corrected; and
11 (B)(i) in the case of a suspension, termi-
12 nate the suspension; or
13 (ii) in the case of a cancellation, notify the
14 agency or person that the agency or person may
15 re-apply to the accrediting entity for accredita-
16 tion or approval.
17 (c) DEBARMENT.—
18 (1) SECRETARY'S AUTHORITY.—On the initia-
19 tive of the Secretary, or on request of an accrediting
20 entity, the Secretary may temporarily or perma-
21 nently debar an agency from accreditation or a per-
22 son from approval under this title, but only if—
23 (A) there is substantial evidence that the
24 agency or person is out of compliance with ap-
25 plicable requirements; and

1 (B) there has been a pattern of serious,
2 willful, or grossly negligent failures to comply
3 or other aggravating circumstances indicating
4 that continued accreditation or approval would
5 not be in the best interests of the children and
6 families concerned.
7 (2) PERIOD OF DEBARMENT.—The Secretary's
8 debarment order shall state whether the debarment
9 is temporary or permanent. If the debarment is tem-
10 porary, the Secretary shall specify a date, not earlier
11 than 3 years after the date of the order, on or after
12 which the agency or person may apply to the Sec-
13 retary for withdrawal of the debarment.
14 (3) EFFECT OF DEBARMENT.—An accrediting
15 entity may take into account the circumstances of
16 the debarment of an agency or person that has been
17 debarred pursuant to this paragraph in considering
18 any subsequent application of the agency or person,
19 or of any other entity in which the agency or person
20 has an ownership or control interest, for accredita-
21 tion or approval under this title.
22 (d) JUDICIAL REVIEW.—
23 (1) IN GENERAL.—A person (other than a pro-
24 spective adoptive parent), an agency, or an accred-
25 iting entity adversely affected by a final determina-

1 tion of the Secretary under this title with respect to
2 the designation of an accrediting entity, or the ac-
3 creditation of an agency or approval of a person,
4 may bring an action for review of the determination
5 in the United States District Court for the District
6 of Columbia, or in the United States district court
7 in the judicial district in which the person resides or
8 the agency or accrediting entity is located.

9 (2) STANDARD OF REVIEW.—The court may set
10 aside a determination referred to in paragraph (1)
11 only if there is clear and convincing evidence that
12 the determination was an abuse of discretion.

13 **SEC. 206. LIMITATIONS ON AUTHORIZATION OF APPRO-**
14 **PRIATIONS.**

15 For activities of the Secretary under this title, there
16 are authorized to be appropriated to the Secretary, for the
17 third fiscal year beginning after the date of the enactment
18 of this Act and for each succeeding fiscal year, an amount
19 not to exceed the aggregate of the amounts remitted to
20 the Treasury under section 203(d)(3).

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—

(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.

1 (2) LEGAL EFFECT OF CERTIFICATES.—If ap-
2 pended to an original adoption decree, the certificate
3 described in paragraph (1) shall be treated by Fed-
4 eral and State agencies, courts, and other public and
5 private persons and entities as conclusive evidence of
6 the facts certified therein, except as provided in sec-
7 tion 304, and shall constitute the certification re-
8 quired by section 204(d)(2) of the Immigration and
9 Nationality Act, as amended by this Act.
10 (b) LEGAL EFFECT OF CONVENTION ADOPTION FI-
11 NALIZED IN ANOTHER CONVENTION COUNTRY.—A final
12 adoption in another Convention country, certified by the
13 Secretary of State pursuant to subsection (a) of this sec-
14 tion or section 303(c), shall be recognized as a final valid
15 adoption for purposes of all Federal, State, and local laws
16 of the United States.
17 (c) CONDITION ON FINALIZATION OF CONVENTION
18 ADOPTION BY STATE COURT.—In the case of a child who
19 has entered the United States from another Convention
20 country for the purpose of adoption, a State court may
21 not issue an order declaring the adoption final unless the
22 Secretary of State has issued the certificate provided for
23 in subsection (a) with respect to the adoption.

1 **SEC. 302. IMMIGRATION AND NATIONALITY ACT AMEND-**
2 **MENTS RELATING TO CHILDREN ADOPTED**
3 **FROM CONVENTION COUNTRIES.**

4 (a) DEFINITION OF CHILD.—Section 101(b)(1) of
5 the Immigration and Nationality Act (8 U.S.C.
6 1101(b)(1)) is amended—

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

9 (2) by striking the period at the end of sub-
10 paragraph (F) and inserting "; or"; and

11 (3) by adding after subparagraph (F) the fol-
12 lowing new subparagraph:

13 "(G) a child, under the age of sixteen at the
14 time a petition is filed on the child's behalf to accord
15 a classification as an immediate relative under sec-
16 tion 201(b), who has been adopted in a foreign state
17 that is a party to the Convention on Protection of
18 Children and Co-operation in Respect of Inter-
19 country Adoption done at The Hague on May 29,
20 1993, or who is emigrating from such a foreign state
21 to be adopted in the United States, by a United
22 States citizen and spouse jointly, or by an unmarried
23 United States citizen at least twenty-five years of
24 age—

25 "(i) if—

1 "(I) the Attorney General is satisfied
2 that proper care will be furnished the child
3 if admitted to the United States;
4 "(II) the child's natural parents (or
5 parent, in the case of a child who has one
6 sole or surviving parent because of the
7 death or disappearance of, abandonment or
8 desertion by, the other parent), or other
9 persons or institutions that retain legal
10 custody of the child, have freely given their
11 written irrevocable consent to the termi-
12 nation of their legal relationship with the
13 child, and to the child's emigration and
14 adoption;
15 "(III) the child is not the grandchild,
16 niece, nephew, brother, sister, aunt, uncle,
17 or first cousin of one or both of the adopt-
18 ing parents, unless—
19 "(aa) the child has no living par-
20 ents because of the death or dis-
21 appearance of, abandonment or deser-
22 tion by, separation from, or loss of,
23 both parents; or
24 "(bb) the sole or surviving parent
25 is incapable of providing the proper

1 care for the child and has in writing
2 irrevocably released the child for emi-
3 gration and adoption; and
4 "(IV) in the case of a child who has
5 not been adopted—
6 "(aa) the competent authority of
7 the foreign state has approved the
8 child's emigration to the United
9 States for the purpose of adoption by
10 the prospective adoptive parent or
11 parents; and
12 "(bb) the prospective adoptive
13 parent or parents has or have com-
14 plied with any pre-adoption require-
15 ments of the child's proposed resi-
16 dence; and
17 "(ii) except that no natural parent or prior
18 adoptive parent of any such child shall there-
19 after, by virtue of such parentage, be accorded
20 any right, privilege, or status under this Act.".
21 (b) APPROVAL OF PETITIONS.—Section 204(d) of the
22 Immigration and Nationality Act (8 U.S.C. 1154(d)) is
23 amended—
24 (1) by striking "(d)" and inserting "(d)(1)";

1 (2) by striking "section 101(b)(1)(F)" and in-
2 serting "subparagraph (F) or (G) of section
3 101(b)(1)"; and
4 (3) by adding at the end the following new
5 paragraph:
6 "(2) Notwithstanding the provisions of subsections
7 (a) and (b) no petition may be approved on behalf of a
8 child defined in section 101(b)(1)(G) unless the Secretary
9 of State has certified that the central authority of the
10 child's country of origin has notified the United States
11 central authority under the convention referred to in such
12 section 101(b)(1)(G) that a United States citizen habit-
13 ually resident in the United States has effected final adop-
14 tion of the child, or has been granted custody of the child
15 for the purpose of emigration and adoption, in accordance
16 with such convention and the Intercountry Adoption Act
17 of 1999.".
18 (c) DEFINITION OF PARENT.—Section 101(b)(2) of
19 the Immigration and Nationality Act (8 U.S.C.
20 1101(b)(2)) is amended by inserting "and paragraph
21 (1)(G)(i)" after "second proviso therein)".
22 **SEC. 303. ADOPTIONS OF CHILDREN EMIGRATING FROM**
23 **THE UNITED STATES.**
24 (a) DUTIES OF ACCREDITED AGENCY OR APPROVED
25 PERSON.—In the case of a Convention adoption involving

1 the emigration of a child residing in the United States
2 to a foreign country, the accredited agency or approved
3 person providing adoption services, or the prospective
4 adoptive parent or parents acting on their own behalf (if
5 permitted by the laws of such other Convention country
6 in which they reside and the laws of the State in which
7 the child resides), shall do the following:
8 (1) Ensure that, in accordance with the
9 Convention—
10 (A) a background study on the child is
11 completed;
12 (B) a determination is made that the child
13 cannot expeditiously be placed for adoption in
14 the United States; and
15 (C) a determination is made that place-
16 ment with the prospective adoptive parent or
17 parents is in the best interests of the child.
18 (2) Furnish to the State court with jurisdiction
19 over the case—
20 (A) documentation of the matters de-
21 scribed in paragraph (1);
22 (B) the background report (home study)
23 on the prospective adoptive parent or parents
24 prepared in accordance with the laws of the re-
25 ceiving country; and

1 (C) a declaration by the Central Authority
2 (or other competent authority) of such other
3 Convention country—
4 (i) that the child will be permitted to
5 enter and reside permanently, or on the
6 same basis as the adopting parent, in the
7 receiving country; and
8 (ii) that the Central Authority (or
9 other competent authority) of such other
10 Convention country consents to the adop-
11 tion, if such consent is necessary under the
12 laws of such country for the adoption to
13 become final.
14 (3) Furnish to the United States central
15 authority—
16 (A) official copies of State court orders
17 certifying the final adoption or grant of custody
18 for the purpose of adoption;
19 (B) the information and documents de-
20 scribed in paragraph (2), to the extent required
21 by the United States central authority; and
22 (C) any other information concerning the
23 case required by the United States central au-
24 thority to perform the functions specified in
25 subsection (c) or otherwise to carry out the du-

1 ties of the United States central authority
2 under the Convention.
3 (b) CONDITIONS ON STATE COURT ORDERS.—A
4 State court shall not enter an order declaring an adoption
5 to be final or granting custody for the purpose of adoption
6 in a case described in subsection (a) unless the court—
7 (1) has received and verified to the extent the
8 court may find necessary—
9 (A) the material described in subsection
10 (a)(2); and
11 (B) satisfactory evidence that the require-
12 ments of articles 4 and 15 through 21 of the
13 Convention have been met; and
14 (2) has determined that the adoptive placement
15 is in the child's best interests.
16 (c) DUTIES OF THE SECRETARY OF STATE.—In a
17 case described in subsection (a), the Secretary of State,
18 on receipt and verification as necessary of the material
19 and information described in subsection (a)(3), shall issue,
20 as applicable, an official certification that the child has
21 been adopted or a declaration that custody for purposes
22 of adoption has been granted, in accordance with the Con-
23 vention and this Act.

1 **SEC. 304. VOIDING OF ADOPTIONS FOR CAUSE.**

2 (a) VOIDING OF ADOPTION BY STATE COURT.—A
3 State court may not vacate a final adoption decree entered
4 pursuant to the Convention unless—

5 (1) the decree was granted by a State court;

6 (2) the court finds clear and convincing evi-
7 dence that—

8 (A) the consent of a birth parent or, in the
9 absence of such consent, the consent of a bio-
10 logical relative if required by the law of the
11 State in which the decree was granted, to ter-
12 mination of parental rights or to the adoption
13 was not obtained, or was obtained as a result
14 of fraud, duress, or inducement by compensa-
15 tion; or

16 (B) consent of an adoptive parent to the
17 adoption was obtained by fraud which the adop-
18 tive parent did not and could not reasonably
19 have been expected to discover;

20 (3) voiding the adoption is in the best interests
21 of the child, taking into consideration the wishes of
22 the child as appropriate given the age of the child;
23 and

24 (4) the adoptive parents are afforded an oppor-
25 tunity to be heard in the proceeding.

1 (b) RECOGNITION OF PROCEEDING OF ANOTHER
2 CONVENTION COUNTRY TO VACATE CONVENTION ADOP-
3 TION.—A decision by the competent authorities of another
4 Convention country to vacate an adoption decree originally
5 issued in the country pursuant to the Convention shall be
6 recognized as valid and given full effect in the United
7 States upon receipt by the Secretary of State of notifica-
8 tion from such authorities that the conditions provided in
9 paragraphs (2) through (4) of subsection (a) were satis-
10 fied by the proceeding to vacate the decree.
11 (c) VOIDING OF ADOPTION NOT VOIDING CHILD'S
12 NATURALIZATION.—The vacating of an adoption decree in
13 a case subject to the Convention shall not be construed
14 to void or prohibit the naturalization of the child as a cit-
15 izen of the United States. Nothing in this provision shall
16 be construed to limit the Attorney General's authority
17 under title III of the Immigration and Nationality Act to
18 revoke the naturalization of such a child, or to limit the
19 Attorney General's discretion to consider a finding of fact
20 by a State court that is relevant to such a determination.

21 **TITLE IV—ADMINISTRATION**
22 **AND ENFORCEMENT**

23 **SEC. 401. RECORDS PRIVACY PROVISIONS.**

24 (a) REGULATIONS REGARDING CONVENTION ADOP-
25 TION RECORDS PRESERVATION.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of the enactment of this Act, the Sec-
3 retary of State, in consultation with the Attorney
4 General, shall issue regulations that establish proce-
5 dures and requirements in accordance with the Con-
6 vention and this section for the preservation of Con-
7 vention adoption records.
8 (2) NOTICE AND COMMENT REQUIREMENT.—
9 Section 553 of title 5, United States Code, shall
10 apply to regulations issued under this section with-
11 out regard to subsection (a) of that section.
12 (b) PROHIBITION ON DISCLOSURE OF AND PROVI-
13 SION OF ACCESS TO IDENTIFYING INFORMATION.—
14 (1) PROHIBITION.—Identifying information in
15 any Convention adoption record shall not be dis-
16 closed by any person, and access to such information
17 shall not be provided by any person, except as other-
18 wise authorized by this subsection or the law of the
19 State in which the adoptive parents resided at the
20 time of the adoption.
21 (2) EXCEPTION FOR ADMINISTRATION OF THE
22 CONVENTION.—Identifying information in a Conven-
23 tion adoption record may be disclosed, and access to
24 such information may be provided, among the Attor-
25 ney General, central authorities, accredited agencies,

1 and approved persons, to the extent necessary to ad-
2 minister the Convention or this Act.
3 (c) RELATIONSHIP TO OTHER LAWS.—Sections 552
4 and 552a of title 5, United States Code, popularly known,
5 respectively, as the Freedom of Information Act and the
6 Privacy Act, shall not apply to the disclosure of, or the
7 provision of access to, identifying information in Conven-
8 tion adoption records.
9 (d) IDENTIFYING INFORMATION DEFINED.—
10 (1) DEFINITION.—In this section, the term
11 "identifying information"—
12 (A) except as provided in subparagraph
13 (B), means any information contained in a Con-
14 vention adoption record; and
15 (B) does not include information relating
16 to the health, social, or genetic background of
17 any individual if there is no reasonable basis to
18 believe that such information could be used to
19 identify the adopted child or any birth parent
20 or other birth relative of an adopted child.
21 (2) REGULATIONS.—Not later than 180 days
22 after the date of the enactment of this Act, the Sec-
23 retary of Health and Human Services, in consulta-
24 tion with the Secretary of State and the Attorney

1 General, shall issue regulations prescribing the infor-
2 mation referred to in paragraph (1)(B).

3 **SEC. 402. DOCUMENTS OF OTHER CONVENTION COUN-**
4 **TRIES.**

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

11 **SEC. 403. AUTHORIZATION OF APPROPRIATIONS; COLLEC-**
12 **TION OF FEES.**

13 (a) AUTHORIZATION OF APPROPRIATIONS.—
14 (1) IN GENERAL.—There are authorized to be
15 appropriated such sums as may be necessary to
16 agencies of the Federal Government implementing
17 the Convention and the provisions of this Act.
18 (2) AVAILABILITY OF FUNDS.—Amounts appro-
19 priated pursuant to paragraph (1) are authorized to
20 remain available until expended.
21 (b) ASSESSMENT OF FEES.—
22 (1) The Secretary of State may charge a fee
23 prescribed by regulation to cover the costs of new or
24 enhanced services that will be undertaken by the De-

1 partment of State to meet the requirements of this
2 Act.
3 (2) Fees collected under paragraph (1) shall be
4 retained and deposited as an offsetting collection to
5 any Department of State appropriation to recover
6 the costs of providing such services.
7 (3) Fees authorized under this section shall be
8 available for obligation only to the extent and in the
9 amount provided in advance in appropriations Acts.
10 **SEC. 404. ENFORCEMENT.**
11 (a) CIVIL PENALTIES.—Any person who—
12 (1) violates section 202;
13 (2) violates section 401 or any regulation issued
14 under section 401; or
15 (3) makes a false or fraudulent statement or
16 misrepresentation of material fact, or offers, gives,
17 solicits, or accepts inducement by way of compensa-
18 tion intended to influence or affect—
19 (A) a decision by an accrediting entity with
20 respect to the accreditation of an agency or ap-
21 proval of a person under title II;
22 (B) the relinquishment of parental rights
23 or parental consent relating to the adoption of
24 a child in a case subject to the Convention; or

1 (C) a decision or action of any entity per-
2 forming a central authority function,
3 shall be subject, in addition to any other penalty that may
4 be prescribed by law, to a civil money penalty of not more
5 than $25,000 for a first violation, and not more than
6 $50,000 for each succeeding violation.
7 (b) ENFORCEMENT.—
8 (1) COORDINATION WITH ATTORNEY GEN-
9 ERAL.—The Secretary of Health and Human Serv-
10 ices, with respect to violations of subsection (a) in-
11 volving the Department of Health and Human Serv-
12 ices, an accrediting entity, an agency that has ap-
13 plied for or received accreditation under title II, or
14 a person who has applied for or received approval
15 under title II, and the Secretary of State, with re-
16 spect to violations of paragraphs (2) and (3) of sub-
17 section (a) involving the Department of State, may
18 impose a civil money penalty under subsection (a)
19 pursuant to this subsection and such procedures as
20 may be agreed upon by such Secretaries and the At-
21 torney General.
22 (2) NOTICE AND HEARING.—A penalty shall not
23 be imposed under subsection (a) until the person
24 charged has been given written notice of, and an op-
25 portunity to respond to the charge.

1 (3) FACTORS CONSIDERED IN IMPOSING PEN-
2 ALTY.—In determining the amount of a penalty to
3 be imposed under subsection (a), the gravity of the
4 violation, the degree of culpability of the violator,
5 and any history of prior violations by the violator
6 shall be considered.

7 (c) CRIMINAL PENALTIES.—Whoever knowingly and
8 willfully violates paragraph (2) or (3) of subsection (a)
9 shall be subject to a fine of not more than $50,000, im-
10 prisonment for not more than 1 year, or both.

11 TITLE V—GENERAL PROVISIONS

12 SEC. 501. RECOGNITION OF CONVENTION ADOPTIONS.

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

21 SEC. 502. SPECIAL RULES FOR CERTAIN CASES.

22 (a) AUTHORITY TO ESTABLISH ALTERNATIVE PRO-
23 CEDURES FOR ADOPTION OF CHILDREN BY RELATIVES.—
24 To the extent consistent with the Convention, the Sec-
25 retary of State may establish by regulation alternative

1 procedures for the adoption of children by individuals re-
2 lated to them by blood or marriage, in cases subject to
3 the Convention.

4 (b) WAIVER AUTHORITY.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of this Act, to the extent consistent with
7 the Convention, the Secretary of State may, on a
8 case-by-case basis, waive applicable requirements of,
9 and penalties for noncompliance with, the provisions
10 of this Act or regulations issued under this Act, in
11 the interests of justice or to prevent grave physical
12 harm to the child.

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

15 **SEC. 503. RELATIONSHIP TO OTHER LAWS.**

16 (a) PREEMPTION OF INCONSISTENT STATE LAW.—
17 The Convention and this Act shall not be construed to pre-
18 empt any provision of the law of any State or political
19 subdivision thereof, or prevent a State or political subdivi-
20 sion thereof from enacting any provision of law with re-
21 spect to the subject matter of the Convention or this Act,
22 except to the extent that such provision of State law is
23 inconsistent with the Convention or this Act, and then
24 only to the extent of the inconsistency.

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

5 **SEC. 504. NO PRIVATE RIGHT OF ACTION.**

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

10 **SEC. 505. EFFECTIVE DATES; TRANSITION RULE.**

11 (a) EFFECTIVE DATES.—
12 (1) PROVISIONS EFFECTIVE UPON ENACT-
13 MENT.—Sections 2, 101 through 104, 201, 203
14 through 206, and 403 shall take effect on the date
15 of the enactment of this Act.
16 (2) PROVISIONS EFFECTIVE UPON THE ENTRY
17 INTO FORCE OF THE CONVENTION.—Subject to sub-
18 section (b), the Convention and the provisions of this
19 Act not specified in paragraph (1) of this subsection
20 shall take effect upon the entry into force of the
21 Convention for the United States pursuant to Article
22 46(2)(a) of the Convention, and shall govern Con-
23 vention adoptions made final thereafter.
24 (b) TRANSITION RULE.—The Convention and this
25 Act shall not apply—

1 (1) in the case of a child immigrating to the
2 United States, if the application for advance proc-
3 essing of an orphan petition or petition to classify an
4 orphan as an immediate relative for the child is filed
5 before the effective date described in subsection
6 (a)(2); or
7 (2) in the case of a child emigrating from the
8 United States, if the prospective adoptive parents of
9 the child initiated the adoption process in their
10 country of residence with the filing of an appropriate
11 application before the effective date described in
12 subsection (a)(2).

○

MARCH 21, 2000

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2909 OFFERED BY MR. GILMAN, MR. GEJDENSON, MR. BURR, MR. DELAHUNT, MR. BALLENGER, AND MR. POMEROY

Strike all after the enacting clause and insert the following:

1 **SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.**

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

4 (b) TABLE OF CONTENTS.—The table of contents of
5 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.
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.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress recognizes—

3 (1) the international character of the Conven-
4 tion on Protection of Children and Co-operation in
5 Respect of Intercountry Adoption (done at The
6 Hague on May 29, 1993), and

7 (2) the need for uniform interpretation and im-
8 plementation of the Convention in the United States
9 and abroad,

10 and therefore finds that enactment of a Federal law gov-
11 erning adoptions and prospective adoptions subject to the
12 Convention involving United States residents is essential.

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

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

1 (2) to protect the rights of, and prevent abuses
2 against, children, birth families, and adoptive par-
3 ents involved in adoptions (or prospective adoptions)
4 subject to the Convention, and to ensure that such
5 adoptions are in the children's best interests; and
6 (3) to improve the ability of the Federal Gov-
7 ernment to assist United States citizens seeking to
8 adopt children from abroad and residents of other
9 countries party to the Convention seeking to adopt
10 children from the United States.

11 **SEC. 3. DEFINITIONS.**

12 As used in this Act:
13 (1) ACCREDITED AGENCY.—The term "accred-
14 ited agency" means an agency accredited under title
15 II to provide adoption services in the United States
16 in cases subject to the Convention.
17 (2) ACCREDITING ENTITY.—The term "accred-
18 iting entity" means an entity designated under sec-
19 tion 202(a) to accredit agencies and approve persons
20 under title II.
21 (3) ADOPTION SERVICE.—The term "adoption
22 service" means—
23 (A) identifying a child for adoption and ar-
24 ranging an adoption;

1 (B) securing necessary consent to termi-
2 nation of parental rights and to adoption;
3 (C) performing a background study on a
4 child or a home study on a prospective adoptive
5 parent, and reporting on such a study;
6 (D) making determinations of the best in-
7 terests of a child and the appropriateness of
8 adoptive placement for the child;
9 (E) post-placement monitoring of a case
10 until final adoption; and
11 (F) where made necessary by disruption
12 before final adoption, assuming custody and
13 providing child care or any other social service
14 pending an alternative placement.
15 The term "providing", with respect to an adoption
16 service, includes facilitating the provision of the
17 service.
18 (4) AGENCY.—The term "agency" means any
19 person other than an individual.
20 (5) APPROVED PERSON.—The term "approved
21 person" means a person approved under title II to
22 provide adoption services in the United States in
23 cases subject to the Convention.
24 (6) ATTORNEY GENERAL.—The term "Attorney
25 General" means the Attorney General, acting

1 through the Commissioner of Immigration and Nat-
2 uralization.
3 (7) CENTRAL AUTHORITY.—The term "central
4 authority" means the entity designated as such by
5 any Convention country under Article 6(1) of the
6 Convention.
7 (8) CENTRAL AUTHORITY FUNCTION.—The
8 term "central authority function" means any duty
9 required to be carried out by a central authority
10 under the Convention.
11 (9) CONVENTION.—The term "Convention"
12 means the Convention on Protection of Children and
13 Co-operation in Respect of Intercountry Adoption,
14 done at The Hague on May 29, 1993.
15 (10) CONVENTION ADOPTION.—The term "Con-
16 vention adoption" means an adoption of a child resi-
17 dent in a foreign country party to the Convention by
18 a United States citizen, or an adoption of a child
19 resident in the United States by an individual resid-
20 ing in another Convention country.
21 (11) CONVENTION RECORD.—The term "Con-
22 vention record" means any item, collection, or
23 grouping of information contained in an electronic or
24 physical document, an electronic collection of data, a
25 photograph, an audio or video tape, or any other in-

1 formation storage medium of any type whatever that
2 contains information about a specific past, current,
3 or prospective Convention adoption (regardless of
4 whether the adoption was made final) that has been
5 preserved in accordance with section 401(a) by the
6 Secretary of State or the Attorney General.
7 (12) CONVENTION COUNTRY.—The term "Con-
8 vention country" means a country party to the Con-
9 vention.
10 (13) OTHER CONVENTION COUNTRY.—The
11 term "other Convention country" means a Conven-
12 tion country other than the United States.
13 (14) PERSON.—The term "person" shall have
14 the meaning provided in section 1 of title 1, United
15 States Code, and shall not include any agency of
16 government or tribal government entity.
17 (15) PERSON WITH AN OWNERSHIP OR CON-
18 TROL INTEREST.—The term "person with an owner-
19 ship or control interest" has the meaning given such
20 term in section 1124(a)(3) of the Social Security Act
21 (42 U.S.C. 1320a–3).
22 (16) SECRETARY.—The term "Secretary"
23 means the Secretary of State.
24 (17) STATE.—The term "State" means the 50
25 States, the District of Columbia, the Commonwealth

1 of Puerto Rico, the Commonwealth of the Northern
2 Mariana Islands, Guam, and the Virgin Islands.

3 TITLE I—UNITED STATES
4 CENTRAL AUTHORITY

5 **SEC. 101. DESIGNATION OF CENTRAL AUTHORITY.**

6 (a) IN GENERAL.—For purposes of the Convention
7 and this Act—
8 (1) the Department of State shall serve as the
9 central authority of the United States; and
10 (2) the Secretary shall serve as the head of the
11 central authority of the United States.
12 (b) PERFORMANCE OF CENTRAL AUTHORITY FUNC-
13 TIONS.—
14 (1) Except as otherwise provided in this Act,
15 the Secretary shall be responsible for the perform-
16 ance of all central authority functions for the United
17 States under the Convention and this Act.
18 (2) All personnel of the Department of State
19 performing core central authority functions in a pro-
20 fessional capacity in the Office of Children's Issues
21 shall have a strong background in consular affairs,
22 personal experience in international adoptions, or
23 professional experience in international adoptions or
24 child services.

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

5 **SEC. 102. RESPONSIBILITIES OF THE SECRETARY OF**
6 **STATE.**

7 (a) LIAISON RESPONSIBILITIES.—The Secretary
8 shall have responsibility for—
9 (1) liaison with the central authorities of other
10 Convention countries; and
11 (2) the coordination of activities under the Con-
12 vention by persons subject to the jurisdiction of the
13 United States.
14 (b) INFORMATION EXCHANGE.—The Secretary shall
15 be responsible for—
16 (1) providing the central authorities of other
17 Convention countries with information concerning—
18 (A) agencies accredited and persons ap-
19 proved under title II, accredited agencies and
20 approved persons whose accreditation or ap-
21 proval has been suspended or canceled, and ac-
22 credited agencies and approved persons who
23 have been temporarily or permanently debarred
24 from accreditation or approval;

1 (B) Federal and State laws relevant to im-
2 plementing the Convention; and
3 (C) any other matters necessary and ap-
4 propriate for implementation of the Convention;
5 (2) providing Federal agencies, State courts,
6 and accredited agencies and approved persons with
7 an identification of Convention countries and per-
8 sons authorized to perform functions under the Con-
9 vention in each such country; and
10 (3) facilitating the transmittal of other appro-
11 priate information to, and among, central authori-
12 ties, Federal and State agencies (including State
13 courts), and accredited agencies and approved per-
14 sons.
15 (c) ACCREDITATION AND APPROVAL RESPONSIBIL-
16 ITIES.—The Secretary shall carry out the functions pre-
17 scribed by the Convention with respect to the accreditation
18 of agencies and the approval of persons to provide adop-
19 tion services in the United States in cases subject to the
20 Convention as provided in title II. Such functions may not
21 be delegated to any other Federal agency.
22 (d) ADDITIONAL RESPONSIBILITIES.—The
23 Secretary—
24 (1) shall monitor individual Convention adop-
25 tion cases involving United States citizens; and

1 (2) may facilitate interactions between such
2 citizens and officials of other Convention countries
3 on matters relating to the Convention in any case in
4 which an accredited agency or approved person is
5 unwilling or unable to provide such facilitation.
6 (e) ESTABLISHMENT OF REGISTRY.—The Secretary
7 and the Attorney General shall jointly establish a case reg-
8 istry of all adoptions involving immigration of children
9 into the United States and emigration of children from
10 the United States, regardless of whether the adoption oc-
11 curs under the Convention. Such registry shall permit
12 tracking of pending cases and retrieval of information on
13 both pending and closed cases.
14 (f) METHODS OF PERFORMING RESPONSIBILITIES.—
15 The Secretary may—
16 (1) authorize public or private entities to per-
17 form appropriate central authority functions for
18 which the Secretary is responsible, pursuant to regu-
19 lations or under agreements published in the Federal
20 Register; and
21 (2) carry out central authority functions
22 through grants to, or contracts with, any individual
23 or public or private entity, except as may be other-
24 wise specifically provided in this Act.

1 **SEC. 103. RESPONSIBILITIES OF THE ATTORNEY GENERAL.**

2 In addition to such other responsibilities as are spe-
3 cifically conferred upon the Attorney General by this Act,
4 the central authority functions specified in Article 14 of
5 the Convention (relating to the filing of applications by
6 prospective adoptive parents to the central authority of
7 their country of residence) shall be performed by the At-
8 torney General.

9 **SEC. 104. ANNUAL REPORT ON INTERCOUNTRY ADOP-**
10 **TIONS.**

11 (a) REPORTS REQUIRED.—Beginning one year after
12 the date of the entry into force of the Convention for the
13 United States and each year thereafter, the Secretary, in
14 consultation with the Attorney General and other appro-
15 priate agencies, shall submit a report describing the activi-
16 ties of the central authority of the United States under
17 this Act during the preceding year to the Committee on
18 International Relations, the Committee on Ways and
19 Means, and the Committee on the Judiciary of the House
20 of Representatives and the Committee on Foreign Rela-
21 tions, the Committee on Finance, and the Committee on
22 Judiciary of the Senate.

23 (b) REPORT ELEMENTS.—Each report under sub-
24 section (a) shall set forth with respect to the year con-
25 cerned, the following:

1 (1) The number of intercountry adoptions in-
2 volving immigration to the United States, regardless
3 of whether the adoption occurred under the Conven-
4 tion, including the country from which each child
5 emigrated, the State to which each child immigrated,
6 and the country in which the adoption was finalized.
7 (2) The number of intercountry adoptions in-
8 volving emigration from the United States, regard-
9 less of whether the adoption occurred under the
10 Convention, including the country to which each
11 child immigrated and the State from which each
12 child emigrated.
13 (3) The number of Convention placements for
14 adoption that were disrupted, including the country
15 from which the child emigrated, the age of the child,
16 the date of the placement for adoption, the reasons
17 for the disruption, the resolution of the disruption,
18 the agencies that handled the placement for adop-
19 tion, and the plans for the child, and in addition,
20 any information regarding disruption or dissolution
21 of adoptions of children from other countries re-
22 ceived pursuant to section 422(b)(14) of the Social
23 Security Act, as amended by section 205 of this Act.

1 (4) The average time required for completion of
2 a Convention adoption, set forth by country from
3 which the child emigrated.
4 (5) The current list of agencies accredited and
5 persons approved under this Act to provide adoption
6 services.
7 (6) The names of the accredited agencies and
8 approved persons temporarily or permanently
9 debarred from accreditation or approval under this
10 Act, and the reasons for the debarment.
11 (7) The range of adoption fees charged in con-
12 nection with Convention adoptions involving immi-
13 gration to the United States and the median of such
14 fees set forth by the country of origin.
15 (8) The range of fees charged for accreditation
16 of agencies and the approval of persons in the
17 United States engaged in providing adoption services
18 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.

1 (2) CHILD WELFARE SERVICES.—The provision
2 of a child welfare service by a person who is not pro-
3 viding any other adoption service in the case.
4 (3) LEGAL SERVICES.—The provision of legal
5 services by a person who is not providing any adop-
6 tion service in the case.
7 (4) PROSPECTIVE ADOPTIVE PARENTS ACTING
8 ON OWN BEHALF.—The conduct of a prospective
9 adoptive parent on his or her own behalf in the case,
10 to the extent not prohibited by the law of the State
11 in which the prospective adoptive parent resides.

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

14 (a) DESIGNATION OF ACCREDITING ENTITIES.—
15 (1) IN GENERAL.—The Secretary shall enter
16 into agreements with one or more qualified entities
17 under which such entities will perform the duties de-
18 scribed in subsection (b) in accordance with the Con-
19 vention, this title, and the regulations prescribed
20 under section 203, and upon entry into each such
21 agreement shall designate the qualified entity as an
22 accrediting entity.
23 (2) QUALIFIED ENTITY.—In paragraph (1), the
24 term "qualified entity" means a nonprofit private
25 entity that has expertise in developing and admin-

1 istering standards for entities providing child welfare
2 services and that meets such other criteria as the
3 Secretary may by regulation establish.
4 (b) DUTIES OF ACCREDITING ENTITIES.—The duties
5 described in this subsection are the following:
6 (1) ACCREDITATION AND APPROVAL.—Accredi-
7 tation of agencies, and approval of persons, to pro-
8 vide adoption services in the United States in cases
9 subject to the Convention.
10 (2) OVERSIGHT.—Ongoing monitoring of the
11 compliance of accredited agencies and approved per-
12 sons with applicable requirements, including review
13 of complaints against such agencies and persons in
14 accordance with procedures established by the ac-
15 crediting entity and approved by the Secretary.
16 (3) ENFORCEMENT.—Taking of adverse actions
17 (including requiring corrective action, imposing sanc-
18 tions, and refusing to renew, suspending, or can-
19 celing accreditation or approval) for noncompliance
20 with applicable requirements, and notifying the
21 agency or person against whom adverse actions are
22 taken of the deficiencies necessitating the adverse
23 action.
24 (4) DATA, RECORDS, AND REPORTS.—Collection
25 of data, maintenance of records, and reporting to

1 the Secretary, the United States central authority,
2 State courts, and other entities (including on per-
3 sons and agencies granted or denied approval or ac-
4 creditation), to the extent and in the manner that
5 the Secretary requires.
6 (c) REMEDIES FOR ADVERSE ACTION BY ACCRED-
7 ITING ENTITY.—
8 (1) CORRECTION OF DEFICIENCY.—An agency
9 or person who is the subject of an adverse action by
10 an accrediting entity may re-apply for accreditation
11 or approval (or petition for termination of the ad-
12 verse action) on demonstrating to the satisfaction of
13 the accrediting entity that the deficiencies necessi-
14 tating the adverse action have been corrected.
15 (2) NO OTHER ADMINISTRATIVE REVIEW.—An
16 adverse action by an accrediting entity shall not be
17 subject to administrative review.
18 (3) JUDICIAL REVIEW.—An agency or person
19 who is the subject of an adverse action by an accred-
20 iting entity may petition the United States district
21 court in the judicial district in which the agency is
22 located or the person resides to set aside the adverse
23 action. The court shall review the adverse action in
24 accordance with section 706 of title 5, United States
25 Code, and for purposes of such review the accred-

1 iting entity shall be considered an agency within the
2 meaning of section 701 of such title.
3 (d) FEES.—The amount of fees assessed by accred-
4 iting entities for the costs of accreditation shall be subject
5 to approval by the Secretary. Such fees may not exceed
6 the costs of accreditation. In reviewing the level of such
7 fees, the Secretary shall consider the relative size of, the
8 geographic location of, and the number of Convention
9 adoption cases managed by the agencies or persons subject
10 to accreditation or approval by the accrediting entity.

11 **SEC. 203. STANDARDS AND PROCEDURES FOR PROVIDING**
12 **ACCREDITATION OR APPROVAL.**

13 (a) IN GENERAL.—
14 (1) PROMULGATION OF REGULATIONS.—The
15 Secretary, shall, by regulation, prescribe the stand-
16 ards and procedures to be used by accrediting enti-
17 ties for the accreditation of agencies and the ap-
18 proval of persons to provide adoption services in the
19 United States in cases subject to the Convention.
20 (2) CONSIDERATION OF VIEWS.—In developing
21 such regulations, the Secretary shall consider any
22 standards or procedures developed or proposed by,
23 and the views of, individuals and entities with inter-
24 est and expertise in international adoptions and fam-
25 ily social services, including public and private enti-

1 ties with experience in licensing and accrediting
2 adoption agencies.
3 (3) APPLICABILITY OF NOTICE AND COMMENT
4 RULES.—Subsections (b), (c), and (d) of section 553
5 of title 5, United States Code, shall apply in the de-
6 velopment and issuance of regulations under this
7 section.
8 (b) MINIMUM REQUIREMENTS.—
9 (1) ACCREDITATION.—The standards pre-
10 scribed under subsection (a) shall include the re-
11 quirement that accreditation of an agency may not
12 be provided or continued under this title unless the
13 agency meets the following requirements:
14 (A) SPECIFIC REQUIREMENTS.—
15 (i) The agency provides prospective
16 adoptive parents of a child in a prospective
17 Convention adoption a copy of the medical
18 records of the child on a date which is not
19 later than the earlier of the date that is 2
20 weeks before (I) the adoption or (II) the
21 date on which the prospective parents trav-
22 el to a foreign country to complete all pro-
23 cedures in such country relating to the
24 adoption. To the fullest extent practicable,

1 an English-language translation of such
2 records is provided.
3 (ii) The agency provides prospective
4 adoptive parents with a training program
5 that includes counseling and guidance for
6 the purpose of promoting a successful
7 intercountry adoption before such parents
8 travel to adopt the child or the child is
9 placed with such parents for adoption.
10 (iii) The agency employs personnel
11 providing intercountry adoption services on
12 a fee for service basis rather than on a
13 contingent fee basis.
14 (iv) The agency discloses fully its poli-
15 cies and practices, the disruption rates of
16 its placements for intercountry adoption,
17 and all fees charged by such agency for
18 intercountry adoption.
19 (B) CAPACITY TO PROVIDE ADOPTION
20 SERVICES.—The agency has, directly or through
21 arrangements with other persons, a sufficient
22 number of appropriately trained and qualified
23 personnel, sufficient financial resources, appro-
24 priate organizational structure, and appropriate
25 procedures to enable the agency to provide, in

1 accordance with this Act, all adoption services
2 in cases subject to the Convention.
3 (C) USE OF SOCIAL SERVICE PROFES-
4 SIONALS.—The agency has established proce-
5 dures designed to ensure that social service
6 functions requiring the application of clinical
7 skills and judgment are performed only by pro-
8 fessionals with appropriate qualifications and
9 credentials.
10 (D) RECORDS, REPORTS, AND INFORMA-
11 TION MATTERS.—The agency is capable of—
12 (i) maintaining such records and mak-
13 ing such reports as may be required by the
14 Secretary, the United States central au-
15 thority, and the accrediting entity that ac-
16 credits the agency;
17 (ii) cooperating with reviews, inspec-
18 tions, and audits;
19 (iii) safeguarding sensitive individual
20 information; and
21 (iv) complying with other require-
22 ments concerning information management
23 necessary to ensure compliance with the
24 Convention, this Act, and any other appli-
25 cable law.

1 (E) LIABILITY INSURANCE.—The agency
2 agrees to have in force adequate liability insur-
3 ance for professional negligence and any other
4 insurance that the Secretary considers appro-
5 priate.
6 (F) COMPLIANCE WITH APPLICABLE
7 RULES.—The agency has established adequate
8 measures to comply (and to ensure compliance
9 of their agents and clients) with the Conven-
10 tion, this Act, and any other applicable law.
11 (G) NONPROFIT ORGANIZATION WITH
12 STATE LICENSE TO PROVIDE ADOPTION SERV-
13 ICES.—The agency is a private nonprofit orga-
14 nization licensed to provide adoption services in
15 at least one State.
16 (2) APPROVAL.—The standards prescribed
17 under subsection (a) shall include the requirement
18 that a person shall not be approved under this title
19 unless the person is a private for-profit entity that
20 meets the requirements of subparagraphs (A)
21 through (F) of paragraph (1) of this subsection.
22 (3) RENEWAL OF ACCREDITATION OR AP-
23 PROVAL.—The standards prescribed under sub-
24 section (a) shall provide that the accreditation of an
25 agency or approval of a person under this title shall

1 be for a period of not less than 3 years and not
2 more than 5 years, and may be renewed on a show-
3 ing that the agency or person meets the require-
4 ments applicable to original accreditation or ap-
5 proval under this title.
6 (c) TEMPORARY REGISTRATION OF SMALL COMMU-
7 NITY BASED AGENCIES.—For a 2 year period after the
8 entry into force of the Convention and notwithstanding
9 subsection (b), the Secretary may provide, in regulations
10 issued pursuant to subsection (a), that an agency may reg-
11 ister with the Secretary and be accredited to provide adop-
12 tion services in the United States in cases subject to the
13 Convention during such period if the agency—
14 (1) is licensed in the State in which it is located
15 and is a non-profit agency;
16 (2) has been providing adoption services in con-
17 nection with intercountry adoptions for at least 5
18 years;
19 (3) has provided adoption services in fewer than
20 20 intercountry adoptions in the preceding calendar
21 year;
22 (4) has demonstrated that it will be able to pro-
23 vide the United States Government with all informa-
24 tion related to the elements described in section
25 104(b) and provides such information;

1 (5) has initiated the process of becoming ac-
2 credited under the provisions of this Act and is ac-
3 tively taking steps to become an accredited agency;
4 and
5 (6) has not been found to be involved in any
6 improper conduct relating to intercountry adoptions.
7 **SEC. 204. SECRETARIAL OVERSIGHT OF ACCREDITATION**
8 **AND APPROVAL.**
9 (a) OVERSIGHT OF ACCREDITING ENTITIES.—The
10 Secretary shall—
11 (1) monitor the performance by each accred-
12 iting entity of its duties under section 202 and its
13 compliance with the requirements of the Convention,
14 this Act, other applicable laws, and implementing
15 regulations under this Act; and
16 (2) suspend or cancel the designation of an ac-
17 crediting entity found to be substantially out of com-
18 pliance with the Convention, this Act, other applica-
19 ble laws, or implementing regulations under this Act.
20 (b) SUSPENSION OR CANCELLATION OF ACCREDITA-
21 TION OR APPROVAL.—
22 (1) SECRETARY'S AUTHORITY.—The Secretary
23 shall suspend or cancel the accreditation or approval
24 granted by an accrediting entity to an agency or per-

1 son pursuant to section 202 when the Secretary
2 finds that—
3 (A) the agency or person is substantially
4 out of compliance with applicable requirements;
5 and
6 (B) the accrediting entity has failed or re-
7 fused, after consultation with the Secretary, to
8 take appropriate corrective action.
9 (2) CORRECTION OF DEFICIENCY.—At any time
10 when the Secretary is satisfied that the deficiencies
11 on the basis of which an adverse action is taken
12 under paragraph (1) have been corrected, the Sec-
13 retary shall—
14 (A) notify the accrediting entity that the
15 decifiencies have been corrected; and
16 (B)(i) in the case of a suspension, termi-
17 nate the suspension; or
18 (ii) in the case of a cancellation, notify the
19 agency or person that the agency or person may
20 re-apply to the accrediting entity for accredita-
21 tion or approval.
22 (c) DEBARMENT.—
23 (1) SECRETARY'S AUTHORITY.—On the initia-
24 tive of the Secretary, or on request of an accrediting
25 entity, the Secretary may temporarily or perma-

1 nently debar an agency from accreditation or a per-
2 son from approval under this title, but only if—
3 (A) there is substantial evidence that the
4 agency or person is out of compliance with ap-
5 plicable requirements; and
6 (B) there has been a pattern of serious,
7 willful, or grossly negligent failures to comply
8 or other aggravating circumstances indicating
9 that continued accreditation or approval would
10 not be in the best interests of the children and
11 families concerned.
12 (2) PERIOD OF DEBARMENT.—The Secretary's
13 debarment order shall state whether the debarment
14 is temporary or permanent. If the debarment is tem-
15 porary, the Secretary shall specify a date, not earlier
16 than 3 years after the date of the order, on or after
17 which the agency or person may apply to the Sec-
18 retary for withdrawal of the debarment.
19 (3) EFFECT OF DEBARMENT.—An accrediting
20 entity may take into account the circumstances of
21 the debarment of an agency or person that has been
22 debarred pursuant to this paragraph in considering
23 any subsequent application of the agency or person,
24 or of any other entity in which the agency or person

1 has an ownership or control interest, for accredita-
2 tion or approval under this title.

3 **SEC. 205. STATE PLAN REQUIREMENT.**

4 Section 422(b) of the Social Security Act (42 U.S.C.
5 622(b)) is amended—

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

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

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

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

16 "(14) provide that the State shall collect and
17 report information on children who are adopted from
18 other countries and who enter into State custody as
19 a result of the disruption of a placement for adop-
20 tion or the dissolution of an adoption, including the
21 number of children, the agencies who handled the
22 placement or adoption, the plans for the child, and
23 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.

1 (2) LEGAL EFFECT OF CERTIFICATES.—If ap-
2 pended to an original adoption decree, the certificate
3 described in paragraph (1) shall be treated by Fed-
4 eral and State agencies, courts, and other public and
5 private persons and entities as conclusive evidence of
6 the facts certified therein and shall constitute the
7 certification required by section 204(d)(2) of the Im-
8 migration and Nationality Act, as amended by this
9 Act.

10 (b) LEGAL EFFECT OF CONVENTION ADOPTION FI-
11 NALIZED IN ANOTHER CONVENTION COUNTRY.—A final
12 adoption in another Convention country, certified by the
13 Secretary of State pursuant to subsection (a) of this sec-
14 tion or section 303(c), shall be recognized as a final valid
15 adoption for purposes of all Federal, State, and local laws
16 of the United States.

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

1 **SEC. 302. IMMIGRATION AND NATIONALITY ACT AMEND-**
2 **MENTS RELATING TO CHILDREN ADOPTED**
3 **FROM CONVENTION COUNTRIES.**

4 (a) DEFINITION OF CHILD.—Section 101(b)(1) of
5 the Immigration and Nationality Act (8 U.S.C.
6 1101(b)(1)) is amended—

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

9 (2) by striking the period at the end of sub-
10 paragraph (F) and inserting "; or"; and

11 (3) by adding after subparagraph (F) the fol-
12 lowing new subparagraph:

13 "(G) a child, under the age of sixteen at the
14 time a petition is filed on the child's behalf to accord
15 a classification as an immediate relative under sec-
16 tion 201(b), who has been adopted in a foreign state
17 that is a party to the Convention on Protection of
18 Children and Co-operation in Respect of Inter-
19 country Adoption done at The Hague on May 29,
20 1993, or who is emigrating from such a foreign state
21 to be adopted in the United States, by a United
22 States citizen and spouse jointly, or by an unmarried
23 United States citizen at least twenty-five years of
24 age—

25 "(i) if—

1 "(I) the Attorney General is satisfied
2 that proper care will be furnished the child
3 if admitted to the United States;
4 "(II) the child's natural parents (or
5 parent, in the case of a child who has one
6 sole or surviving parent because of the
7 death or disappearance of, abandonment or
8 desertion by, the other parent), or other
9 persons or institutions that retain legal
10 custody of the child, have freely given their
11 written irrevocable consent to the termi-
12 nation of their legal relationship with the
13 child, and to the child's emigration and
14 adoption;
15 "(III) the child is not the grandchild,
16 niece, nephew, brother, sister, aunt, uncle,
17 or first cousin of one or both of the adopt-
18 ing parents, unless—
19 "(aa) the child has no living par-
20 ents because of the death or dis-
21 appearance of, abandonment or deser-
22 tion by, separation from, or loss of,
23 both parents; or
24 "(bb) the sole or surviving parent
25 is incapable of providing the proper

1 care for the child and has in writing
2 irrevocably released the child for emi-
3 gration and adoption; and
4 "(IV) in the case of a child who has
5 not been adopted—
6 "(aa) the competent authority of
7 the foreign state has approved the
8 child's emigration to the United
9 States for the purpose of adoption by
10 the prospective adoptive parent or
11 parents; and
12 "(bb) the prospective adoptive
13 parent or parents has or have com-
14 plied with any pre-adoption require-
15 ments of the child's proposed resi-
16 dence; and
17 "(ii) except that no natural parent or prior
18 adoptive parent of any such child shall there-
19 after, by virtue of such parentage, be accorded
20 any right, privilege, or status under this Act.".
21 (b) APPROVAL OF PETITIONS.—Section 204(d) of the
22 Immigration and Nationality Act (8 U.S.C. 1154(d)) is
23 amended—
24 (1) by striking "(d)" and inserting "(d)(1)";

1 (2) by striking "section 101(b)(1)(F)" and in-
2 serting "subparagraph (F) or (G) of section
3 101(b)(1)"; and
4 (3) by adding at the end the following new
5 paragraph:
6 "(2) Notwithstanding the provisions of subsections
7 (a) and (b) no petition may be approved on behalf of a
8 child defined in section 101(b)(1)(G) unless the Secretary
9 of State has certified that the central authority of the
10 child's country of origin has notified the United States
11 central authority under the convention referred to in such
12 section 101(b)(1)(G) that a United States citizen habit-
13 ually resident in the United States has effected final adop-
14 tion of the child, or has been granted custody of the child
15 for the purpose of emigration and adoption, in accordance
16 with such convention and the Intercountry Adoption Act
17 of 2000.".
18 (c) DEFINITION OF PARENT.—Section 101(b)(2) of
19 the Immigration and Nationality Act (8 U.S.C.
20 1101(b)(2)) is amended by inserting "and paragraph
21 (1)(G)(i)" after "second proviso therein)".
22 **SEC. 303. ADOPTIONS OF CHILDREN EMIGRATING FROM**
23 **THE UNITED STATES.**
24 (a) DUTIES OF ACCREDITED AGENCY OR APPROVED
25 PERSON.—In the case of a Convention adoption involving

1 the emigration of a child residing in the United States
2 to a foreign country, the accredited agency or approved
3 person providing adoption services, or the prospective
4 adoptive parent or parents acting on their own behalf (if
5 permitted by the laws of such other Convention country
6 in which they reside and the laws of the State in which
7 the child resides), shall do the following:
8 (1) Ensure that, in accordance with the
9 Convention—
10 (A) a background study on the child is
11 completed;
12 (B) the accredited agency or approved
13 person—
14 (i) has made reasonable efforts to ac-
15 tively recruit and make a diligent search
16 for prospective adoptive parents to adopt
17 the child in the United States; and
18 (ii) despite such efforts, has not been
19 able to place the child for adoption in the
20 United States in a timely manner; and
21 (C) a determination is made that place-
22 ment with the prospective adoptive parent or
23 parents is in the best interests of the child.
24 (2) Furnish to the State court with jurisdiction
25 over the case—

1 (A) documentation of the matters de-
2 scribed in paragraph (1);
3 (B) a background report (home study) on
4 the prospective adoptive parent or parents (in-
5 cluding a criminal background check) prepared
6 in accordance with the laws of the receiving
7 country; and
8 (C) a declaration by the central authority
9 (or other competent authority) of such other
10 Convention country—
11 (i) that the child will be permitted to
12 enter and reside permanently, or on the
13 same basis as the adopting parent, in the
14 receiving country; and
15 (ii) that the central authority (or
16 other competent authority) of such other
17 Convention country consents to the adop-
18 tion, if such consent is necessary under the
19 laws of such country for the adoption to
20 become final.
21 (3) Furnish to the United States central
22 authority—
23 (A) official copies of State court orders
24 certifying the final adoption or grant of custody
25 for the purpose of adoption;

1 (B) the information and documents de-
2 scribed in paragraph (2), to the extent required
3 by the United States central authority; and
4 (C) any other information concerning the
5 case required by the United States central au-
6 thority to perform the functions specified in
7 subsection (c) or otherwise to carry out the du-
8 ties of the United States central authority
9 under the Convention.
10 (b) CONDITIONS ON STATE COURT ORDERS.—A
11 State court shall not enter an order declaring an adoption
12 to be final or granting custody for the purpose of adoption
13 in a case described in subsection (a) unless the court—
14 (1) has received and verified to the extent the
15 court may find necessary—
16 (A) the material described in subsection
17 (a)(2); and
18 (B) satisfactory evidence that the require-
19 ments of articles 4 and 15 through 21 of the
20 Convention have been met; and
21 (2) has determined that the adoptive placement
22 is in the child's best interests.
23 (c) DUTIES OF THE SECRETARY OF STATE.—In a
24 case described in subsection (a), the Secretary, on receipt
25 and verification as necessary of the material and informa-

1 tion described in subsection (a)(3), shall issue, as applica-
2 ble, an official certification that the child has been adopted
3 or a declaration that custody for purposes of adoption has
4 been granted, in accordance with the Convention and this
5 Act.

6 (d) FILING WITH REGISTRY REGARDING NON-
7 CONVENTION ADOPTIONS.—Accredited agencies, approved
8 persons, and other persons, including governmental au-
9 thorities, providing adoption services in an intercountry
10 adoption not subject to the Convention that involves the
11 emigration of a child from the United States shall file in-
12 formation required by regulations jointly issued by the At-
13 torney General and the Secretary of State for purposes
14 of implementing section 102(e).

15 TITLE IV—ADMINISTRATION 16 AND ENFORCEMENT

17 SEC. 401. ACCESS TO CONVENTION RECORDS.

18 (a) PRESERVATION OF CONVENTION RECORDS.—

19 (1) IN GENERAL.—Not later than 180 days
20 after the date of the enactment of this Act, the Sec-
21 retary, in consultation with the Attorney General,
22 shall issue regulations that establish procedures and
23 requirements in accordance with the Convention and
24 this section for the preservation of Convention
25 records.

1 (2) APPLICABILITY OF NOTICE AND COMMENT
2 RULES.—Subsections (b), (c), and (d) of section 553
3 of title 5, United States Code, shall apply in the de-
4 velopment and issuance of regulations under this
5 section.
6 (b) ACCESS TO CONVENTION RECORDS.—
7 (1) PROHIBITION.—Except as provided in para-
8 graph (2), the Secretary or the Attorney General
9 may disclose a Convention record, and access to
10 such a record may be provided in whole or in part,
11 only if such record is maintained under the authority
12 of the Immigration and Nationality Act and disclo-
13 sure of, or access to, such record is permitted or re-
14 quired by applicable Federal law.
15 (2) EXCEPTION FOR ADMINISTRATION OF THE
16 CONVENTION.—A Convention record may be dis-
17 closed, and access to such a record may be provided,
18 in whole or in part, among the Secretary, the Attor-
19 ney General, central authorities, accredited agencies,
20 and approved persons, only to the extent necessary
21 to administer the Convention or this Act.
22 (3) PENALTIES FOR UNLAWFUL DISCLOSURE.—
23 Unlawful disclosure of all or part of a Convention
24 record shall be punishable in accordance with appli-
25 cable Federal law.

1 (c) ACCESS TO NON-CONVENTION RECORDS.—Dis-
2 closure of, access to, and penalties for unlawful disclosure
3 of, adoption records that are not Convention records, in-
4 cluding records of adoption proceedings conducted in the
5 United States, shall be governed by applicable State law.

6 **SEC. 402. DOCUMENTS OF OTHER CONVENTION COUN-**
7 **TRIES.**

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

14 **SEC. 403. AUTHORIZATION OF APPROPRIATIONS; COLLEC-**
15 **TION OF FEES.**

16 (a) AUTHORIZATION OF APPROPRIATIONS.—
17 (1) IN GENERAL.—There are authorized to be
18 appropriated such sums as may be necessary to
19 agencies of the Federal Government implementing
20 the Convention and the provisions of this Act.
21 (2) AVAILABILITY OF FUNDS.—Amounts appro-
22 priated pursuant to paragraph (1) are authorized to
23 remain available until expended.
24 (b) ASSESSMENT OF FEES.—

1 (1) The Secretary may charge a fee for new or
2 enhanced services that will be undertaken by the De-
3 partment of State to meet the requirements of this
4 Act with respect to intercountry adoptions under the
5 Convention and comparable services with respect to
6 other intercountry adoptions. Such fee shall be pre-
7 scribed by regulation and shall not exceed the cost
8 of such new or enhanced services.
9 (2) Fees collected under paragraph (1) shall be
10 retained and deposited as an offsetting collection to
11 any Department of State appropriation to recover
12 the costs of providing such services.
13 (3) Fees authorized under this section shall be
14 available for obligation only to the extent and in the
15 amount provided in advance in appropriations Acts.
16 (c) RESTRICTION.—No funds collected under the au-
17 thority of this section may be made available to an accred-
18 iting entity to carry out the purposes of this Act.
19 **SEC. 404. ENFORCEMENT.**
20 (a) CIVIL PENALTIES.—Any person who—
21 (1) violates section 201;
22 (2) makes a false or fraudulent statement or
23 misrepresentation of material fact, or offers, gives,
24 solicits, or accepts inducement by way of compensa-

1 tion intended to influence or affect in the United
2 States or a foreign country—
3 (A) a decision by an accrediting entity with
4 respect to the accreditation of an agency or ap-
5 proval of a person under title II;
6 (B) the relinquishment of parental rights
7 or parental consent relating to the adoption of
8 a child in a case subject to the Convention; or
9 (C) a decision or action of any entity per-
10 forming a central authority function; or
11 (3) engages another person as an agent, wheth-
12 er in the United States or in a foreign country, who
13 in the course of that agency takes any of the actions
14 described in paragraphs (1) or (2),
15 shall be subject, in addition to any other penalty that may
16 be prescribed by law, to a civil money penalty of not more
17 than $50,000 for a first violation, and not more than
18 $100,000 for each succeeding violation.
19 (b) CIVIL ENFORCEMENT.—
20 (1) AUTHORITY OF ATTORNEY GENERAL.—The
21 Attorney General may bring a civil action to enforce
22 subsection (a) against any person in any United
23 States district court.
24 (2) FACTORS TO BE CONSIDERED IN IMPOSING
25 PENALTIES.—In imposing penalties the court shall

1 consider the gravity of the violation, the degree of
2 culpability of the defendant, and any history of prior
3 violations by the defendant.

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

8 TITLE V—GENERAL PROVISIONS

9 SEC. 501. RECOGNITION OF CONVENTION ADOPTIONS.

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

18 SEC. 502. SPECIAL RULES FOR CERTAIN CASES.

19 (a) AUTHORITY TO ESTABLISH ALTERNATIVE PRO-
20 CEDURES FOR ADOPTION OF CHILDREN BY RELATIVES.—
21 To the extent consistent with the Convention, the Sec-
22 retary may establish by regulation alternative procedures
23 for the adoption of children by individuals related to them
24 by blood, marriage, or adoption, in cases subject to the
25 Convention.

1 (b) WAIVER AUTHORITY.—

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

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

11 **SEC. 503. RELATIONSHIP TO OTHER LAWS.**

12 (a) PREEMPTION OF INCONSISTENT STATE LAW.—
13 The Convention and this Act shall not be construed to pre-
14 empt any provision of the law of any State or political
15 subdivision thereof, or prevent a State or political subdivi-
16 sion thereof from enacting any provision of law with re-
17 spect to the subject matter of the Convention or this Act,
18 except to the extent that such provision of State law is
19 inconsistent with the Convention or this Act, and then
20 only to the extent of the inconsistency.

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

1 **SEC. 504. NO PRIVATE RIGHT OF ACTION.**

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

6 **SEC. 505. EFFECTIVE DATES; TRANSITION RULE.**

7 (a) EFFECTIVE DATES.—

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

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

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

20 (1) in the case of a child immigrating to the
21 United States, if the application for advance proc-
22 essing of an orphan petition or petition to classify an
23 orphan as an immediate relative for the child is filed
24 before the effective date described in subsection
25 (a)(2); or

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

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