

106TH CONGRESS
1ST SESSION

H. R. 2342

To implement the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1999

Mr. BURR of North Carolina (for himself and Mr. BALLENGER) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on the Judiciary, 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

A BILL

To implement 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,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Intercountry Adoption Convention Implementation Act
6 of 1999”.

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

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

TITLE I—UNITED STATES CENTRAL AUTHORITY

- Sec. 101. Performance of central authority functions.
- Sec. 102. Authority of the Department of State.
- Sec. 103. Responsibilities of the Secretary of State.
- Sec. 104. Responsibilities of the Attorney General.
- Sec. 105. Annual report on intercountry adoptions.

TITLE II—ACCREDITATION OF PERSONS PROVIDING INTERCOUNTRY ADOPTION SERVICES

- Sec. 201. Eligibility to provide intercountry adoption services.
- Sec. 202. Accrediting entities.
- Sec. 203. Eligibility for accreditation.
- Sec. 204. Oversight of accreditation.

TITLE III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

- Sec. 301. Adoptions of children immigrating to the United States.
- Sec. 302. Amendments of the Immigration and Nationality Act.
- Sec. 303. Adoptions of children emigrating from the United States.
- Sec. 304. Special rules for certain cases.
- Sec. 305. Voiding of adoptions for cause.
- Sec. 306. Recognition of Convention adoptions before entry into force of Convention for the United States.

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. Relation to other laws.
- Sec. 502. No private right of action.
- Sec. 503. Effective date; transition provisions.

1 **SEC. 2. FINDINGS.**

2 Congress recognizes—

3 (1) the international character of the Conven-
4 tion, and

1 (2) the need for uniform interpretation and im-
2 plementation of the Convention in the United States
3 and abroad,
4 and therefore finds that enactment of a Federal law gov-
5 erning intercountry adoptions subject to the Convention
6 is necessary.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) ACCREDITED PERSON.—The term “accred-
10 ited person” means a person (including an agency),
11 not organized for profit, that has been accredited in
12 accordance with title II to provide adoption services
13 and to perform other functions under the Conven-
14 tion.

15 (2) ACCREDITING ENTITY.—The term “accred-
16 iting entity” means an entity designated under sec-
17 tion 202(a).

18 (3) ADOPTION SERVICES.—The term “adoption
19 services” means—

20 (A) identifying children for adoption and
21 arranging adoptions;

22 (B) securing necessary documentation of
23 consent to termination of parental rights and to
24 adoption;

1 (C) performing background studies on chil-
2 dren, home studies on prospective adoptive par-
3 ents, and reports of such studies;

4 (D) making determinations of the best in-
5 terests of the child and the appropriateness of
6 adoptive placement;

7 (E) counseling children and birth and
8 adoptive parents with respect to adoption;

9 (F) engaging in post-placement monitoring
10 of cases until final adoption; and

11 (G) if necessary because of disruption in
12 the adoption process, assuming custody of a
13 child, and providing child care or other social
14 services, pending an alternative placement of
15 the child.

16 (4) AGENCY.—The term “agency” means any
17 public entity or private corporation, partnership, or-
18 ganization, or other association.

19 (5) ATTORNEY GENERAL.—The term “Attorney
20 General” means the Attorney General, acting
21 through the Commissioner of Immigration and Nat-
22 uralization.

23 (6) BIRTH PARENT.—The term “birth parent”
24 means the biological mother and, where applicable
25 under the law of the place of birth of the child, the

1 biological father of the child who is the subject of an
2 adoption.

3 (7) CENTRAL AUTHORITY.—The term “central
4 authority” means the entity designated by any Con-
5 vention country under Article 6(1) of the Convention
6 as having primary responsibility for the discharge of
7 the obligations of that country under the Conven-
8 tion.

9 (8) CENTRAL AUTHORITY FUNCTION.—The
10 term “central authority function” means any duty
11 required to be carried out by a central authority
12 under chapter III or IV of the Convention.

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

17 (10) CONVENTION ADOPTION.—The term “Con-
18 vention adoption” means, upon entry into force of
19 the Convention in the United States—

20 (A) an adoption (or prospective adoption)
21 of a child habitually resident in a foreign coun-
22 try party to the Convention by a United States
23 citizen; or

24 (B) an adoption (or prospective adoption)
25 of a child habitually resident in the United

1 States by a person or persons residing in an-
2 other Convention country.

3 (11) CONVENTION ADOPTION RECORD.—The
4 term “Convention adoption record” means any item,
5 collection, or grouping of information, including any
6 index, contained in an electronic or physical docu-
7 ment, an electronic collection of data, a photograph,
8 an audio or video tape, or any other information
9 storage medium of any type whatever that contains
10 information about a specific past, current, or pro-
11 spective Convention adoption (regardless of whether
12 a final adoption resulted) and that has been identi-
13 fied and retained in accordance with section 401(a)
14 by the Secretary of State or the Attorney General.

15 (12) CONVENTION COUNTRY.—The term “Con-
16 vention country” means a country party to the Con-
17 vention.

18 (13) OTHER CONVENTION COUNTRY.—The
19 term “other Convention country” means a Conven-
20 tion country other than the United States.

21 (14) PERSON.—The term “person” has the
22 meaning given the term in section 1 of title 1,
23 United States Code.

24 (15) PERSON WITH AN OWNERSHIP OR CON-
25 TROL INTEREST.—The term “person with an owner-

1 ship or control interest” has the meaning given such
2 term in section 1124(a)(3) of the Social Security Act
3 (42 U.S.C. 1320a-3).

4 (16) STATE.—The term “State” means the 50
5 States, the District of Columbia, the Commonwealth
6 of Puerto Rico, the Commonwealth of the Northern
7 Mariana Islands, Guam, and the Virgin Islands.

8 **TITLE I—UNITED STATES** 9 **CENTRAL AUTHORITY**

10 **SEC. 101. PERFORMANCE OF CENTRAL AUTHORITY FUNC-** 11 **TIONS.**

12 All central authority functions of the United States
13 shall be carried out by the Department of State and other
14 officials of the United States specified in this Act.

15 **SEC. 102. AUTHORITY OF THE DEPARTMENT OF STATE.**

16 (a) IN GENERAL.—Except as otherwise provided in
17 this Act, for purposes of the Convention—

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

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

22 (b) STATE DEPARTMENT PERSONNEL PERFORMING
23 CENTRAL AUTHORITY FUNCTIONS.—All personnel of the
24 Department of State performing central authority func-
25 tions in a professional capacity shall have 3 to 5 years

1 of personal or professional experience in international
2 adoptions.

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

8 **SEC. 103. RESPONSIBILITIES OF THE SECRETARY OF**
9 **STATE.**

10 (a) **LIAISON RESPONSIBILITIES.**—The Secretary of
11 State shall have primary responsibility for—

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

14 (2) the coordination of activities under the Con-
15 vention by persons subject to the jurisdiction of the
16 United States.

17 (b) **INFORMATION EXCHANGE.**—The Secretary of
18 State shall be responsible for—

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

21 (A) persons accredited under title II, per-
22 sons whose accreditation is suspended or can-
23 celed, and persons temporarily or permanently
24 debarred from accreditation;

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 persons with an identification of Con-
7 vention countries and persons authorized to perform
8 functions under the Convention in each such coun-
9 try;

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 persons; and

14 (4) taking other appropriate actions necessary
15 to implement the Convention.

16 (c) ADDITIONAL RESPONSIBILITIES.—The Secretary
17 of State—

18 (1) shall monitor individual Convention adop-
19 tion cases involving United States citizens;

20 (2) may facilitate interactions between such
21 citizens and officials of other Convention countries
22 on matters relating to the Convention in any case in
23 which an accredited person is unwilling or unable to
24 provide such facilitation; and

1 (3) may provide any other appropriate assist-
2 ance in other cases.

3 (d) ESTABLISHMENT OF REGISTRY.—The Secretary
4 of State and the Attorney General shall jointly establish
5 a case registry on—

6 (1) all adoptions involving immigration into the
7 United States, regardless of whether the adoption
8 occurs under the Convention; and

9 (2) all adoptions involving emigration of the
10 child from the United States to any other Conven-
11 tion country.

12 Such registry shall permit tracking of pending cases and
13 retrieval of information on both pending and closed cases.

14 **SEC. 104. RESPONSIBILITIES OF THE ATTORNEY GENERAL.**

15 In addition to such other responsibilities as are spe-
16 cifically conferred upon the Attorney General by this Act,
17 the central authority functions specified in Article 14 of
18 the Convention (relating to the filing of applications by
19 prospective adoptive parents to the central authority of
20 their country of residence) shall be performed by the At-
21 torney General.

22 **SEC. 105. ANNUAL REPORT ON INTERCOUNTRY ADOPT-**
23 **TIONS.**

24 (a) REPORTS REQUIRED.—Beginning one year after
25 the date of enactment of this Act, and every year there-

1 after, the Secretary of State shall submit a report to Con-
2 gress describing the activities of the central authority of
3 the United States under this Act during the preceding
4 year.

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

8 (1) The number of adoptions involving immi-
9 gration to the United States, regardless of whether
10 the adoption occurred under the Convention, includ-
11 ing the country from which each child emigrated and
12 the State to which each child immigrated.

13 (2) The number of adoptions under the Conven-
14 tion, including the country from which each child
15 emigrated and the State to which each child immi-
16 grated.

17 (3) The number of intercountry adoptions that
18 were disrupted, including the country from which
19 the child emigrated, the age of the child, the date of
20 the adoption of the child, the reason for the disrup-
21 tion, and the resolution of the disruption.

22 (4) The names of the persons who possessed ac-
23 creditation to perform intercountry adoptions.

1 (5) The names of the persons who were
2 debarred from performing intercountry adoptions,
3 and the reasons for the debarrment.

4 (6) The average time required for completion of
5 an intercountry adoption.

6 (7) The number of intercountry adoptions that
7 were completed in the United States, and the num-
8 ber of adoptions that were completed in each foreign
9 country from which children subject to such adop-
10 tions emigrated.

11 (8) The number of intercountry adoptions to
12 the United States that were found to be fraudulent.

13 (9) The average adoption fee for intercountry
14 adoptions to the United States set forth by country.

15 (10) The average adoption fee for intercountry
16 adoptions from the United States set forth by coun-
17 try.

18 (11) The average fee for accreditation of per-
19 sons engaging in the provision of intercountry adop-
20 tion services.

1 **TITLE II—ACCREDITATION OF**
2 **PERSONS PROVIDING INTER-**
3 **COUNTRY ADOPTION SERV-**
4 **ICES**

5 **SEC. 201. ELIGIBILITY TO PROVIDE INTERCOUNTRY ADOP-**
6 **TION SERVICES.**

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

11 (1) is accredited by an accrediting entity in ac-
12 cordance with this title; or

13 (2) is providing such services through or under
14 the supervision and responsibility of an accredited
15 person.

16 (b) EXCEPTIONS.—Subsection (a) shall not apply to
17 any of the following persons:

18 (1) CERTAIN SOCIAL WORK PROFESSIONALS
19 AND ORGANIZATIONS.—A social work professional or
20 organization conducting (and reporting on) home
21 studies on prospective adoptive parents or back-
22 ground studies on children in connection with adop-
23 tions, but not arranging or otherwise facilitating
24 adoptions subject to the Convention.

1 (2) ENTITIES PROVIDING CHILD WELFARE
2 SERVICES.—A public or private entity intervening in
3 a Convention adoption to provide child welfare serv-
4 ices, but not itself arranging or facilitating the adop-
5 tion.

6 (3) ATTORNEYS PROVIDING LEGAL SERVICES.—
7 An attorney providing legal services in connection
8 with a Convention adoption, but not arranging, ei-
9 ther directly or through agents, the adoption or oth-
10 erwise providing adoption services in connection with
11 the adoption.

12 (4) PROSPECTIVE ADOPTIVE PARENTS ACTING
13 ON OWN BEHALF.—Prospective adoptive parents
14 when acting on their own behalf, if they are per-
15 mitted to do so under the law of the State in which
16 they reside.

17 **SEC. 202. ACCREDITING ENTITIES.**

18 (a) IN GENERAL.—

19 (1) DESIGNATIONS OF ENTITIES.—The Sec-
20 retary of State shall designate as accrediting enti-
21 ties, and enter into agreements with, no more than
22 five nonprofit private entities that—

23 (A) have experience and expertise in devel-
24 oping and administering international adoption

1 services and standards for entities providing
2 child welfare services; and

3 (B) meet such other criteria as the Sec-
4 retary may by regulation establish.

5 (2) LIMITATION.—An accrediting entity shall
6 undertake an accreditation strictly for intercountry
7 adoption, unless a person seeks additional program
8 accreditation.

9 (b) RESPONSIBILITIES OF ACCREDITING ENTI-
10 TIES.—The responsibilities of accrediting entities shall in-
11 clude the following:

12 (1) ACCREDITATION.—Accreditation of persons
13 to perform functions under the Convention, subject
14 to section 203.

15 (2) OVERSIGHT.—Ongoing monitoring of the
16 compliance by accredited persons with applicable re-
17 quirements, including review of complaints against
18 such persons in accordance with procedures estab-
19 lished by this Act and by such accrediting entity and
20 approved by the Secretary of State.

21 (3) ENFORCEMENT.—Imposition of administra-
22 tive remedies, including requirements for corrective
23 action, and sanctions for noncompliance, including
24 refusal to renew, or the suspension or cancellation
25 of, accreditation.

1 (4) DATA, RECORDS, AND REPORTS.—Collecting
2 data, maintaining records, and making reports to
3 the Secretary of State, State courts, and other enti-
4 ties (including reports on persons granted or denied
5 accreditation).

6 (c) REMEDIES FOR ACCREDITING ENTITY'S AD-
7 VERSE ACTION.—

8 (1) IN GENERAL.—In any case where an ac-
9 crediting entity denies, suspends, or cancels the ac-
10 creditation of a person under this title, mandates
11 corrective action, or takes other adverse action, the
12 accrediting entity shall specify the deficiencies on
13 which the adverse action was based, and paragraphs
14 (2), (3), and (4) shall apply with respect to rem-
15 edies.

16 (2) CORRECTION OF DEFICIENCY AND RE-
17 APPLICATION.—The person that is the subject of the
18 adverse action shall be permitted to reapply for ac-
19 creditation (or to petition for termination of any
20 other sanction applied) upon demonstrating to the
21 satisfaction of the accrediting entity that the defi-
22 ciencies have been corrected.

23 (3) JUDICIAL REVIEW.—The person that is the
24 subject of the adverse action may petition the
25 United States district court in the judicial district in

1 which such person resides to set aside the action,
2 but only upon clear and convincing proof that the
3 action was not supported by substantial evidence or
4 that the accrediting entity abused its discretion.

5 (4) NO FEDERAL ADMINISTRATIVE REVIEW.—

6 An adverse action by the accrediting entity shall not
7 be reviewable by the Secretary of State or any other
8 Federal agency or administrative entity.

9 (d) FEES.—

10 (1) AUTHORITY TO ASSESS.—Accrediting enti-
11 ties are authorized to assess fees in amounts ap-
12 proved by the Secretary of State against persons
13 seeking or maintaining accreditation for the pur-
14 poses of intercountry adoptions.

15 (2) FEE AMOUNTS.—The Secretary of State
16 may approve fees to be assessed under paragraph
17 (1) that do not exceed the amount estimated to be
18 necessary to cover all direct or indirect costs of ac-
19 creditation and ongoing oversight by the accrediting
20 entity with regard to Convention cases. Fees estab-
21 lished under this section shall reflect, to the max-
22 imum extent practicable, the extent to which overall
23 costs of accrediting persons varies in relation to the
24 volume of Convention adoption cases a person han-
25 dles.

1 (3) LIMITATION.—An accrediting entity shall
2 not provide discounted fees for certain persons for
3 accreditation for purposes of intercountry adoption.

4 **SEC. 203. ELIGIBILITY FOR ACCREDITATION.**

5 (a) ESTABLISHMENT OF STANDARDS.—

6 (1) ISSUANCE OF REGULATIONS.—The Sec-
7 retary of State shall establish by regulation stand-
8 ards and procedures to be used by accrediting enti-
9 ties for the accreditation of persons for the purpose
10 of arranging Convention adoptions.

11 (2) STANDARD-SETTING PROCESS.—In estab-
12 lishing standards and procedures under this section,
13 the Secretary of State—

14 (A) shall consider the views of individuals
15 and entities with interest and expertise in inter-
16 national adoptions and family social services,
17 including public and private entities with expe-
18 rience in licensing and accrediting adoption
19 agencies; and

20 (B) may adopt, after opportunity for pub-
21 lic comment, all or part of any standards or
22 procedures developed or proposed by such indi-
23 viduals or entities.

24 (b) REQUIREMENTS FOR ACCREDITATION.—

1 (1) CONDITIONS FOR ACCREDITATION.—Except
2 as the Secretary of State may by regulation other-
3 wise provide, each person seeking accreditation
4 under this title with respect to intercountry adoption
5 services shall satisfy the following requirements:

6 (A) SPECIFIC REQUIREMENTS.—To agree
7 as follows:

8 (i) To provide persons who would be
9 the adoptive parents of a child in a pro-
10 spective Convention adoption a copy in
11 English of the medical records of the child
12 not later than the earlier of 2 weeks before
13 the adoption or the date on which the per-
14 sons travel to a foreign country to finalize
15 the adoption.

16 (ii) To provide the persons a training
17 program that includes at least 6 weeks of
18 counseling and guidance before the parents
19 travel to a foreign country to finalize the
20 adoption.

21 (iii) To employ personnel providing
22 intercountry adoption services on a fee-for-
23 service basis rather than on a contingent-
24 arrangement basis.

1 (iv) To have in force adequate liability
2 insurance for professional negligence and
3 any other insurance that the Secretary
4 considers appropriate.

5 (v) To permit open examination of the
6 person's practices, including the disruption
7 rates of intercountry adoptions facilitated
8 by the person and the fees charged by the
9 person for intercountry adoptions.

10 (B) CAPACITY TO PERFORM ALL ASSIGNED
11 FUNCTIONS.—To have, either directly or
12 through arrangements with other qualified per-
13 sons, qualified personnel, financial resources, an
14 organizational structure, and appropriate proce-
15 dures sufficient to enable it to perform, in a
16 manner consistent with applicable standards, all
17 functions under the Convention which it is seek-
18 ing authority to perform in accordance with this
19 Act (including the counseling of individuals in-
20 volved in intercountry adoptions and the as-
21 sumption of custodial and financial responsi-
22 bility for children in cases where a placement
23 disrupts before final adoption).

24 (C) UTILIZATION OF SOCIAL SERVICE PRO-
25 FESSIONALS.—To have procedures designed to

1 ensure that social service functions requiring
2 the application of clinical skills and judgment
3 are performed only by professionals with appro-
4 priate qualifications and credentials.

5 (D) RECORDS, REPORTS, AND INFORMA-
6 TION MATTERS.—To provide for the mainte-
7 nance of such records and to make such reports
8 as may be required by the Secretary of State
9 and the designated accrediting entity; to cooper-
10 ate with reviews, inspections, and audits; to
11 safeguard sensitive individual information; and
12 to comply with other requirements concerning
13 information management necessary to ensure
14 compliance with the Convention, this Act, and
15 any other applicable laws.

16 (E) COMPLIANCE WITH CONVENTION.—To
17 establish adequate measures to comply (and to
18 ensure compliance of their agents and clients)
19 with the Convention, this Act, and all other ap-
20 plicable laws, particularly with provisions con-
21 cerning fraud, improper inducement, and simi-
22 larly egregious acts.

23 (2) ADDITIONAL CONDITIONS FOR ACCREDITA-
24 TION.—No person shall be accredited under this title
25 unless such person is a private organization, not or-

1 organized for profit, and licensed to provide adoption
2 services in at least one State.

3 **SEC. 204. OVERSIGHT OF ACCREDITATION.**

4 (a) OVERSIGHT OF ACCREDITING ENTITIES.—The
5 Secretary of State shall—

6 (1) monitor each accrediting entity’s perform-
7 ance of its functions under section 202 and its com-
8 pliance with the requirements of the Convention, this
9 Act, other applicable laws, and implementing regula-
10 tions; and

11 (2) suspend or cancel the designation of an en-
12 tity found to be substantially out of compliance with
13 the Convention, this Act, other applicable laws, or
14 implementing regulations.

15 (b) DEBARMENT.—

16 (1) SECRETARY’S AUTHORITY.—The Secretary
17 of State may, on the Secretary’s own initiative or
18 upon request by an accrediting entity, order the tem-
19 porary or permanent debarment of a person from ac-
20 creditation for purposes of intercountry adoptions if
21 there is no possibility for timely mediation and—

22 (A) there is substantial evidence that the
23 person is out of compliance with applicable re-
24 quirements;

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 renewal of accreditation would not be in
5 the best interests of the children and families
6 concerned; or

7 (C) actions by a person impact adversely
8 important national interests of the United
9 States.

10 (2) PERIOD OF DEBARMENT.—The debarment
11 order of the Secretary of State shall state whether
12 the debarment is temporary or permanent. If the de-
13 barment is temporary, the Secretary shall specify a
14 date, not earlier than 3 years after the date of the
15 order, on which date the person may apply to the
16 Secretary who ordered the debarment for withdrawal
17 of the debarment.

18 (3) EFFECT OF DEBARMENT.—In the case of a
19 person that has been debarred pursuant to this sub-
20 section, the accrediting entity may take the cir-
21 cumstances of such debarment into account in con-
22 sidering any subsequent application for accreditation
23 of the person or of any other person in which the
24 person has an ownership or control interest, notwith-
25 standing that the period of debarment has elapsed.

1 (c) JUDICIAL REVIEW OF SECRETARY'S DECI-
2 SIONS.—

3 (1) REVIEW BY FEDERAL DISTRICT COURT.—A
4 person (other than a prospective adoptive parent,
5 person, or accrediting entity adversely affected by a
6 final determination of the Secretary of State under
7 this title with respect to the designation of an ac-
8 crediting entity, or the accreditation of a person)
9 may obtain review of such determination by the
10 United States District Court for the District of Co-
11 lumbia, or in the United States district court in the
12 judicial district in which such person or accrediting
13 entity resides.

14 (2) STANDARD OF REVIEW.—A determination
15 by the Secretary of State under paragraph (1) may
16 be set aside only if the person adversely affected by
17 the Secretary's final determination presents clear
18 and convincing proof of abuse of discretion by the
19 Secretary.

20 (3) PRECLUSION OF JUDICIAL REVIEW OF SEC-
21 RETARY OF STATE DETERMINATIONS.—A determina-
22 tion by the Secretary of State on foreign policy
23 grounds is not subject to judicial review.

1 **TITLE III—RECOGNITION OF**
2 **CONVENTION ADOPTIONS IN**
3 **THE UNITED STATES**

4 **SEC. 301. ADOPTIONS OF CHILDREN IMMIGRATING TO THE**
5 **UNITED STATES.**

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

8 (1) ISSUANCE OF CERTIFICATES BY THE SEC-
9 RETARY OF STATE.—Pursuant to Article 23 of the
10 Convention, the Secretary of State shall, with re-
11 spect to each Convention adoption, issue a certificate
12 to the adoptive citizen parent domiciled in the
13 United States that the adoption has been granted
14 or, in the case of a prospective adoptive citizen par-
15 ent, that legal custody of the child has been granted
16 to the citizen parent for purposes of emigration and
17 adoption, pursuant to the Convention and this Act,
18 if the Secretary—

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

22 (B) has verified that the requirements of
23 this Act have been met.

24 (2) LEGAL EFFECT OF CERTIFICATES.—If ap-
25 pended to an original adoption decree, the certificate

1 described in paragraph (1) shall be treated by Fed-
2 eral and State agencies, courts, and other public and
3 private persons and entities as conclusive evidence of
4 the facts certified therein, except as provided in sec-
5 tion 305, and shall constitute the certification re-
6 quired by section 204(d)(2) of the Immigration and
7 Nationality Act, as amended by this Act.

8 (b) LEGAL EFFECT OF ADOPTIONS FINALIZED IN
9 OTHER CONVENTION COUNTRIES.—The final adoption in
10 any other Convention country, certified by the Secretary
11 of State pursuant to subsection (a) or section 303(d) of
12 this Act, shall be recognized as a final, valid adoption for
13 the purposes of all Federal, State, and local laws of the
14 United States, and shall be accorded the same legal effect
15 as the final adoption of a child in the State where such
16 United States citizens reside or are domiciled.

17 (c) CONDITION ON FINALIZATION OF CONVENTION
18 ADOPTIONS BY STATE COURTS.—In the case of a child
19 who has been admitted to the United States from any
20 other Convention country for the purpose of adoption, a
21 State court shall not have authority to issue an order de-
22 claring the adoption final unless the Secretary of State
23 has issued the certificate described in subsection (b).

1 **SEC. 302. AMENDMENTS OF THE IMMIGRATION AND NA-**
2 **TIONALITY ACT.**

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

6 (1) by striking “or” at the end of subparagraph
7 (E);

8 (2) by striking the period at the end of sub-
9 paragraph (F) and inserting “; or”;

10 (3) in subparagraphs (E) and (F), by inserting
11 “except as provided in subparagraph (G),” before “a
12 child” each place it appears; and

13 (4) by adding after subparagraph (F) the fol-
14 lowing new subparagraph:

15 “(G) a child, under the age of sixteen at
16 the time a petition is filed on the child’s behalf
17 to accord a classification as an immediate rel-
18 ative under section 201(b), who has been adopt-
19 ed in a foreign country that is a party to the
20 Convention on Protection of Children and Co-
21 operation in Respect of Intercountry Adoption,
22 or who is emigrating from such a foreign coun-
23 try to be adopted in the United States by at
24 least one United States citizen and the citizen’s
25 spouse jointly, or by an unmarried United
26 States citizen at least 25 years of age, 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) in a case in which required by
5 the country of the child’s habitual resi-
6 dence, the child’s birth parents, or other
7 persons or institutions that retain legal
8 custody of the child, have freely given their
9 written irrevocable consent to the termi-
10 nation of their relationship with the child,

11 “(iii) in the case of a child who has
12 not been adopted, the competent authority
13 of the foreign State has approved the
14 child’s emigration to the United States for
15 the purpose of adoption by the prospective
16 adoptive parents,

17 “(iv) the child is not the grandchild,
18 niece, nephew, brother, sister, aunt, uncle,
19 or first cousin of any of the adopting par-
20 ents, unless—

21 “(I) the child has no living moth-
22 er because of the death or disappear-
23 ance of, abandonment or desertion by,
24 or separation from or loss of the
25 child’s mother; or

1 “(II) the father is unknown, or
2 was not married to the child’s mother
3 on the date of the child’s birth, or is
4 incapable of providing the proper care
5 for the child and has in writing irrev-
6 ocably released the child for emigra-
7 tion and adoption, and

8 “(v) the prospective adoptive parent
9 or married husband and wife have com-
10 plied with any adoption requirements of
11 the child’s proposed State of residence,

12 except, that no birth parent or former adoptive par-
13 ent of any such adopted child shall thereafter, by
14 virtue of such parentage, be accorded any right,
15 privilege, or status under this Act.”.

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

19 (1) by striking “(d)” and inserting “(d)(1)”;

20 and

21 (2) by adding at the end the following new
22 paragraph:

23 “(2) No petition may be approved under subsection
24 (a) on behalf of an alien child who seeks to be accorded
25 immediate relative status as a child defined under section

1 101(b)(1)(G), unless the Secretary of State has certified
2 to the Attorney General that the central authority of the
3 child's country of origin has notified the United States
4 Central Authority under the Convention on Protection of
5 Children and Co-operation in Respect of Intercountry
6 Adoption done at The Hague on May 29, 1993, that a
7 United States citizen domiciled in the United States has
8 effected final adoption of the child, or has been granted
9 custody of the child for the purpose of emigration and
10 adoption, in accordance with the Convention and the
11 Intercountry Adoption Act.”.

12 (c) CONFORMING AMENDMENT.—Section 101(b)(2)
13 of that Act (8 U.S.C. 1101(b)(2)) is amended by inserting
14 “and paragraph (1)(G) (other than for purposes of the
15 exception therein)” after “second proviso therein”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply with respect to petitions for classi-
18 fication under section 204 of the Immigration and Nation-
19 ality Act filed on or after the date of enactment of this
20 Act.

21 **SEC. 303. ADOPTIONS OF CHILDREN EMIGRATING FROM**
22 **THE UNITED STATES.**

23 (a) COVERED CASES.—This section shall apply in any
24 case in which a child residing in the United States is
25 sought for adoption in any other Convention country.

1 (b) RESPONSIBILITIES OF ACCREDITED PERSONS.—

2 In any case described in subsection (a), the accredited per-
3 son that is providing adoption services in such a case, or
4 the prospective adoptive parents acting on their own be-
5 half, if permitted by the laws of the Convention country
6 in which they reside and the laws of the State in which
7 the child resides, shall have the following responsibilities:

8 (1) Provide a written documentation of the fol-
9 lowing:

10 (A) A background study on the child that
11 meets the standards of the State court with ju-
12 risdiction over the child has been completed.

13 (B) The child will be adopted by a married
14 man and woman.

15 (C) Twelve months have elapsed since the
16 person made efforts to place the child in the
17 United States.

18 (D) A determination has been made, in ac-
19 cordance with section 107 of Public Law 105-
20 89 that the child cannot be placed in the
21 United States.

22 (E) A determination has been made that
23 placement with the prospective parents is in the
24 best interests of the child.

1 (2) Furnish to State courts with the jurisdic-
2 tion over adoption cases described in subsection (a)
3 the following information and documents:

4 (A) Documentation of the matters de-
5 scribed in paragraph (1).

6 (B) The background report (home study)
7 on the prospective adoptive parent or parents
8 prepared in accordance with the laws of the re-
9 ceiving country.

10 (C) A background report compatible with
11 the laws of the State with jurisdiction.

12 (D) A declaration by the central authority
13 (or other competent authority) of the receiving
14 country—

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

19 (ii) that the central authority or other
20 competent authority of the receiving coun-
21 try consents to the adoption, if such con-
22 sent is necessary under its laws.

23 (3) Furnish to the Secretary of State—

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

4 (B) the information and documents de-
5 scribed in paragraph (2); and

6 (C) any other information concerning the
7 case required by the Secretary of State to per-
8 form the functions specified in subsection (d) or
9 otherwise to carry out its responsibilities under
10 the Convention.

11 (c) CONDITIONS ON STATE COURT ORDERS.—An
12 order by a State court certifying an adoption as final or
13 granting custody for the purpose of adoption in a case de-
14 scribed in subsection (a) shall not be recognized by the
15 Secretary of State or the Attorney General for purposes
16 of intercountry adoption unless the court—

17 (1) has received and verified to the extent it
18 may find necessary—

19 (A) the information and documentation
20 specified in section (b)(2); and

21 (B) satisfactory evidence that the require-
22 ments of Article 4 and Articles 15 through 21
23 of the Convention have been satisfied; and

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

1 (d) RESPONSIBILITY OF THE SECRETARY OF
2 STATE.—In each case described in subsection (a), the Sec-
3 retary of State, upon receipt and verification as necessary
4 of the information and documents described in subsection
5 (b)(3), shall issue, as applicable, an official certification
6 that the child has been adopted or a declaration that cus-
7 tody for purposes of adoption has been granted, in accord-
8 ance with the Convention and this Act.

9 (e) REQUIREMENTS UNDER STATE LAW.—In cases
10 described in subsection (a), States may impose additional
11 responsibilities and requirements, not inconsistent with
12 the provisions of this section, upon accredited persons and
13 prospective adoptive parents acting on their own behalf.

14 **SEC. 304. SPECIAL RULES FOR CERTAIN CASES.**

15 To the extent consistent with the Convention, the
16 Secretary of State shall establish by regulation—

17 (1) alternative procedures for the adoption of
18 children by individuals related to them by blood or
19 marriage; and

20 (2) procedures permitting exceptions to applica-
21 ble requirements, and waiving penalties for non-
22 compliance, in the case of unintentional or harmless
23 failures to comply with the requirements of the Con-
24 vention, this Act, or implementing regulations issued
25 under this Act.

1 **SEC. 305. VOIDING OF ADOPTIONS FOR CAUSE.**

2 (a) VOIDING ADOPTIONS BY STATE COURTS.—In ad-
3 dition to any remedies available under State law, a final
4 decree entered with respect to a Convention adoption may
5 be vacated by a State court if—

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

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

9 (A) the consent of a birth parent or, in the
10 absence thereof, the consent of a biological rel-
11 ative if required by State law, to termination of
12 parental rights or to the adoption was not ob-
13 tained, or was obtained as a result of fraud, du-
14 ress, or improper inducement; or

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

19 (3) voiding the adoption is in the best interests
20 of the child, taking into consideration the wishes of
21 the child as appropriate given his or her age;

22 (4) less than two years have passed since the
23 adoptive parents obtained custody of the child; and

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

1 (b) RECOGNITION OF ANY OTHER CONVENTION
2 COUNTRY'S PROCEEDING VACATING ADOPTIONS COV-
3 ERED BY THE CONVENTION.—Whenever the competent
4 authorities of any other Convention country notify the
5 Secretary of State that—

6 (1) the authorities have vacated an adoption de-
7 cree originally made in that country pursuant to the
8 Convention; and

9 (2) the decree has been vacated in accordance
10 with the standards established in paragraphs (2)
11 through (5) of subsection (a),

12 the decision to void such a decree shall be recognized as
13 valid and given full effect in the United States.

14 (c) VOIDING OF ADOPTION NOT VOIDING CHILD'S
15 NATURALIZATION.—If a court of competent jurisdiction
16 voids an adoption decree in accordance with subsection (a)
17 or (b), such action does not void or prohibit the naturaliza-
18 tion of the child as a citizen of the United States. Nothing
19 in this subsection limits the Attorney General's authority
20 under title III of the Immigration and Nationality Act to
21 revoke the naturalization of such a child or to limit the
22 Attorney General's discretion to consider a finding of fact
23 by a State court that is relevant to such a determination.

1 **SEC. 306. RECOGNITION OF CONVENTION ADOPTIONS BE-**
2 **FORE ENTRY INTO FORCE OF CONVENTION**
3 **FOR THE UNITED STATES.**

4 Subject to Article 24 of the Convention, any adoption
5 concluded between two Convention countries that satisfies
6 the requirements of Article 23 of the Convention and that
7 became final before the date of entry into force of the Con-
8 vention for the United States shall be recognized there-
9 after in the United States and given full effect. Such rec-
10 ognition shall include the specific effects described in Arti-
11 cle 26 of the Convention.

12 **TITLE IV—ADMINISTRATION**
13 **AND ENFORCEMENT**

14 **SEC. 401. RECORDS; PRIVACY PROVISIONS.**

15 (a) MAINTENANCE OF CONVENTION ADOPTION
16 RECORDS.—The Secretary of State and the Attorney Gen-
17 eral shall establish procedures consistent with the require-
18 ments of Articles 30 and 31 of the Convention for the
19 retention and identification of Convention adoption
20 records.

21 (b) DISCLOSURE OF AND ACCESS TO IDENTIFYING
22 INFORMATION.—

23 (1) CONSENT REQUIRED.—Except as provided
24 in subsection (d), identifying information contained
25 in Convention adoption records shall not be dis-
26 closed.

1 (2) APPLICATION OF PRIVACY ACT.—

2 (A) An individual, or an individual's parent
3 or guardian, who would otherwise have a right
4 to access any Convention adoption record pur-
5 suant to section 552a of title 5, United States
6 Code, shall have such right with respect to iden-
7 tifying information in such a record only to the
8 extent that such right is not restricted by this
9 section.

10 (B) Disclosure of identifying information
11 in any Convention adoption record shall be sub-
12 ject to any restrictions that may be imposed by
13 section 552a of title 5, United States Code, and
14 shall also be subject to any restrictions imposed
15 by this section.

16 (3) NO DISCLOSURE TO CHILD UNDER 18.—A
17 child who is the subject of a Convention adoption
18 record shall not be afforded access to identifying in-
19 formation in such record, and such information shall
20 not be disclosed to such child, unless the child has
21 reached the age of 18 years.

22 (c) FREEDOM OF INFORMATION ACT EXEMPTION.—
23 Information contained in records of the Department of
24 State and the Immigration and Naturalization Service re-
25 lating to adoption cases subject to the Convention shall

1 not be disclosed to any person pursuant to section 552
2 of title 5, United States Code.

3 (d) DISCLOSURE FOR PURPOSES OF ADMINISTRA-
4 TION OF THE CONVENTION.—Information in Convention
5 adoption records may be disclosed by the Department of
6 State, any official of the United States exercising central
7 authority functions, any accredited person if necessary to
8 administer the Convention or this Act.

9 (e) IDENTIFYING INFORMATION DEFINED.—In this
10 section, the term “identifying information” means any in-
11 formation contained in an adoption record other than in-
12 formation relating to the health, social, or genetic back-
13 ground of the child, and which does not specifically iden-
14 tify the child, as prescribed by the Secretary of State and
15 the Attorney General.

16 **SEC. 402. DOCUMENTS OF OTHER CONVENTION COUN-**
17 **TRIES.**

18 Documents originating in any other Convention coun-
19 try and related to a Convention adoption case shall require
20 no authentication or legalization in order to be admissible
21 in any Federal, State, or local court in the United States,
22 unless a specific and supported claim is made that the doc-
23 uments are false, have been altered, or are otherwise unre-
24 liable.

1 **SEC. 403. AUTHORIZATION OF APPROPRIATIONS; COLLEC-**
2 **TION OF FEES.**

3 (a) AUTHORIZATION OF APPROPRIATIONS.—

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

8 (2) AVAILABILITY OF FUNDS.—Amounts appro-
9 priated pursuant to paragraph (1) are authorized to
10 remain available until expended.

11 (b) ASSESSMENT OF FEES.—

12 (1) The Secretary of State may charge a fee
13 prescribed by regulation to cover the costs of new or
14 enhanced services that will be undertaken by the De-
15 partment of State to meet the requirements of this
16 Act.

17 (2) Fees collected under paragraph (1) shall be
18 deposited as an offsetting collection to any Depart-
19 ment of State appropriation to recover the costs of
20 providing such services.

21 (3) The provisions of the Act of August 18,
22 1856 (Revised Statutes §§ 1726–28; 22 U.S.C.
23 §§ 4212–14), concerning accounting for consular
24 fees, shall not apply to fees collected under this sub-
25 section.

1 (4) Fees authorized under this section shall be
2 collected and available for obligation only to the ex-
3 tent and in the amount provided in advance in ap-
4 propriations Acts.

5 (c) RESTRICTION.—No funds may be made available
6 to an accrediting entity to carry out the purposes of this
7 Act.

8 **SEC. 404. ENFORCEMENT.**

9 (a) CIVIL PENALTIES.—Any person that—

10 (1) provides adoption services in the United
11 States to facilitate a Convention adoption without
12 appropriate accreditation in accordance with title II,

13 (2) makes a false or fraudulent statement or
14 misrepresentation of material fact, or offers, gives,
15 solicits or accepts improper inducement intended to
16 influence or affect—

17 (A) decisions concerning the accreditation
18 of persons to perform adoption services and
19 central authority functions under this Act,

20 (B) the relinquishment of parental rights
21 or parental consent relating to the adoption of
22 a child within the scope of this Act, or

23 (C) the decisions or actions of persons and
24 entities performing central authority functions
25 pursuant to the Convention and this Act,

1 (3) makes a disclosure of information not au-
2 thorized by section 401(d) or to a person not author-
3 ized to receive the information under that section, or

4 (4) engages in coercive action to gain consent
5 to termination of parental rights or to adoption,

6 shall be subject, in addition to any other penalties that
7 may be prescribed by law, to a civil money penalty of not
8 more than \$5,000 for a first violation, and not more than
9 \$10,000 for each succeeding violation.

10 (b) ENFORCEMENT.—

11 (1) COORDINATION WITH ATTORNEY GEN-
12 ERAL.—The Secretary of State may impose a civil
13 money penalty under subsection (a) pursuant to
14 such procedures as may be agreed upon by the Sec-
15 retary and the Attorney General.

16 (2) NOTICE AND HEARING.—No penalty shall
17 be assessed under this section until the person
18 charged has been given written notice and an oppor-
19 tunity to respond.

20 (3) FACTORS CONSIDERED IN IMPOSING PEN-
21 ALTY.—In determining the amount of the penalty,
22 the gravity of the violation, the degree of culpability,
23 and the history of prior violations, if any, shall be
24 considered.

1 (c) CRIMINAL PENALTIES.—Whoever knowingly and
2 willfully commits a violation specified in subsection (a)(2)
3 shall be subject to a fine of not more than \$10,000, or
4 imprisonment for not more than one year, or both.

5 **TITLE V—GENERAL PROVISIONS**

6 **SEC. 501. RELATION TO OTHER LAWS.**

7 (a) LIMITED PREEMPTION.—No provision of Fed-
8 eral, State, or local law shall be considered preempted by
9 the Convention, this Act, or implementing regulations un-
10 less specified in this Act.

11 (b) INDIAN CHILD WELFARE ACT.—Nothing in this
12 Act or in the Convention is inconsistent with or modifies
13 the provisions of the Indian Child Welfare Act (25 U.S.C.
14 1901 et seq.) concerning custody and placement of chil-
15 dren subject to that Act.

16 (c) STATE LICENSING LAWS.—Nothing in the Con-
17 vention or this Act precludes any State from requiring
18 that a person or entity be licensed by the State as a condi-
19 tion of providing adoption-related services.

20 **SEC. 502. NO PRIVATE RIGHT OF ACTION.**

21 Nothing in the Convention or this Act creates a pri-
22 vate right of action to seek administrative or judicial relief,
23 except to the extent specifically provided.

24 **SEC. 503. EFFECTIVE DATE; TRANSITION PROVISIONS.**

25 (a) EFFECTIVE DATE.—

1 (1) PROVISIONS EFFECTIVE UPON ENACT-
2 MENT.—Except as provided in paragraph (2), this
3 Act shall take effect upon its date of enactment.

4 (2) PROVISIONS EFFECTIVE UPON THE CON-
5 VENTION’S ENTRY INTO FORCE.—Subject to the pro-
6 visions of subsection (b), sections 104, 202, 402,
7 and 404 and titles III and IV shall take effect upon
8 the date of entry into force of the Convention for the
9 United States pursuant to Article 46(2)(a) of the
10 Convention, and shall govern Convention adoptions
11 made final thereafter.

12 (b) TRANSITION PROVISIONS.—

13 (1) ADOPTIONS IN PROCESS ON EFFECTIVE
14 DATE.—The Convention and this Act shall not
15 apply—

16 (A) in the case of a child immigrating to
17 the United States, if the application for advance
18 processing of an orphan petition or petition to
19 classify an orphan as an immediate relative for
20 such child is filed before the effective date spec-
21 ified in subsection (a); or

22 (B) in the case of a child emigrating from
23 the United States, if the prospective adoptive
24 parents initiated the adoption process in their
25 country of residence with the filing of an appro-

1 priate application before the effective date of
2 this Act.

○