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INTERCOUNTRY ADOPTION ACT OF 2000

APRIL 27, 2000.—Ordered to be printed

Mr. HELMS, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 682]

The Committee on Foreign Relations having had under consideration S. 682, a bill to implement the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

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I. PURPOSE

The bill to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (hereinafter, the Intercountry Adoption bill) is intended to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children's best interests. It is also intended to improve the ability of the United States to assist its citizens seeking to adopt children from abroad.

The Convention, also reported favorably this day by the Committee, is designed to establish a international legal framework for

ensuring that intercountry adoptions follow standard procedures and provide sufficient protections to adoptive parents and children. The Convention and the implementing legislation will not cover all intercountry adoptions, but only those involving nations that are both party to the Convention. But it is hoped that the nations with significant involvement in intercountry adoptions will join the Convention, thereby creating a uniform international standard for most such adoptions.

II. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the Intercountry Adoption bill on October 5, 1999. At the hearing, Assistant Secretary of State for Consular Affairs Mary Ryan testified in support of legislation to implement the Convention. The hearing also included testimony from a private panel of experts in the field of international adoption and child health. The Committee considered the Intercountry Adoption bill on April 13, 2000. There was one amendment in the nature of a substitute by Senator Helms that was approved during the mark-up. The Committee ordered the bill favorably reported by a voice vote, with Senator Brownback voting in the negative.

III. SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; Table of Contents

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

Sec. 2. Findings and Purposes

This section describes the purposes of the legislation.

Sec. 3. Definitions

This section defines various terms used in the Act.

TITLE I—UNITED STATES CENTRAL AUTHORITY

Sec. 101. Authority of the Department of State

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

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

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

Sec. 102. Responsibilities of the Secretary of State

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

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

Subsection (c) provides that the Secretary of State shall carry out the functions prescribed by the Convention with respect to the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention. It also provides that the Secretary of State may not delegate this authority to any Federal agency. Currently, the Federal Government does not have any responsibility or capacity in the area of accreditation of adoption agencies. Because the Department of State was already the primary Federal agency with regard to intercountry adoption, the Committee believes that the assignment of responsibilities under this Act to the Departments of State and Justice (as opposed to additional Federal agencies) will create a relatively streamlined interagency coordination process.

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

Subsection (e) provides that the Secretary of State and the Attorney General shall jointly establish a case registry to track all adoptions involving immigration of the child into the United States and all adoptions involving emigration of the child from the United States to any other Convention country, regardless of whether the adoption occurs under the Convention. Although this case registry, particularly of non-Convention adoptions, is not required by the Convention, the Committee believes it will be a useful means of gathering data regarding all intercountry adoptions.

Subsection (f) provides that the Secretary of State may authorize public or private entities to perform appropriate central authority functions for which the Secretary is responsible, pursuant to regulations or under agreements published in the Federal Register, and may carry out such functions through grants to, or contracts with, such entities. However, this authority needs to be read in conjunction with subsection (c), which prohibits the delegation of any authorities regarding that subsection to any Federal agency. The Committee does not intend subsection (f) to permit delegation of the authorities described in subsection (c) to any Federal agency.

Sec. 103. Responsibilities of the Attorney General

This section provides that the Attorney General shall perform the central authority functions specified in Article 14 of the Convention, which requires prospective adoptive parents wishing to adopt a child habitually resident in another Contracting State to apply to the central authority of their country of residence.

Sec. 104. Annual Report on Intercountry Adoptions

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

TITLE II—PROVISIONS RELATING TO ACCREDITATION AND APPROVAL

Sec. 201. Accreditation or Approval Required in Order to Provide Adoption Services in Cases Subject to the Convention

This section bars any person from offering or providing adoption services in connection with a Convention adoption in the United States unless that person is accredited or approved under this title, or is providing the services through or under the supervision and responsibility of an agency or person so accredited or approved. The latter phrase (providing adoption services "through or under the supervision and responsibility" of an accredited agency or approved person) is intended to apply broadly, and includes people acting as agents (including contractors) of adoption agencies or approved persons.

The provisions of this section do not apply to (1) a social work professional or organization that provides only the background or home study, or the report on such a study, as long as the background or home study is approved by an accredited agency; (2) an entity that provides only child welfare services in connection with a case subject to the Convention; (3) a person who provides only legal services (rather than adoption services) in connection with a case subject to the Convention; or (4) U.S. prospective adoptive parents acting on their own behalf, to the extent permitted by the law of the State in which they reside.

The Committee does not intend to alter the current practice followed by some prospective adoptive parents of obtaining a home or background study prior to the actual selection of a placing agency. However, at the point where a placing agency is selected and a placement is imminent, such a home or background study must be approved by an accredited agency.

Sec. 202. Process for Accreditation and Approval; Role of Accrediting Entities

Subsection (a) provides that the Secretary of State shall designate one or more qualified private, nonprofit entities as accrediting entities responsible for the accreditation of agencies and approval of persons who may provide adoption services under the Convention. This is a critical responsibility under the Convention and this Act, and this section provides that the Secretary may find the best private or public entity (or entities) for this purpose. The Committee understands that an accrediting entity designated by the Secretary pursuant to this section may also be involved in the accreditation of agencies for services other than intercountry adoptions. The Committee believes that an accrediting entity should not use the substantial power granted pursuant to this section to, in effect, require or coerce an agency or person seeking accreditation or approval to use the accrediting entity's other services if the agency is not seeking such services. The Secretary of State should ensure that no such coercive pressure or leverage is used. The Committee intends to review carefully the practices of the accrediting entity or entities in this regard.

Subsection (b) sets forth the responsibilities of accrediting entities, including accreditation and approval, monitoring of the compliance of accredited agencies and approved persons with applicable requirements (including review of complaints), the taking of adverse actions for noncompliance, and record keeping and reporting. The Committee expects that the Secretary of State will provide guidance in regulations for the exercise of the enforcement authorities provided in this subsection. Such regulations should set out clear guidance for accrediting entities to ensure that agencies and persons affected by enforcement decisions are afforded due process.

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

Subsection (d) requires that fees set by the accredited agencies and approved persons, must be approved by the Secretary of State, may not exceed the costs of accreditation, and must take into account the relationship of the relative size of, the geographic location of, and the number of Convention adoption cases managed by the agency or approved person. The Committee understands that certain accrediting entities which provide accreditation services currently in other contexts have a sliding fee scale, predicated on the revenue base of the agency being accredited. The Committee

believes that the Secretary should carefully review the fees of any qualified accrediting entity designated under this section to ensure that smaller, well-run agencies are not charged fees that will have the effect of ending their provision of intercountry adoption services.

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

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

To ensure that some degree of competition exists so that the costs of accreditation remain reasonable and strong services are maintained by accrediting entities, this provision allows for the designation of more than one accrediting entity to accredit agencies and approve persons. The Committee is concerned, however, that if an agency or person fails to obtain accreditation or approval it may seek accreditation or approval from another accrediting entity. The Committee believes that the regulations issued by the Secretary should make clear that if an agency is denied accreditation, or believes it will be denied accreditation after having begun the process of accreditation with one accrediting entity, it should not be permitted to seek accreditation from another accrediting entity.

Sec. 203. Standards and Procedures for Providing Accreditation or Approval

Subsection (a) requires the Secretary of State to establish by regulation standards and procedures to be used by accrediting entities in accrediting agencies and approving persons to provide adoption services in the United States in cases subject to the Convention. In developing the regulations, the Secretary of State shall consider standards and procedures developed by outside experts, must provide the opportunity for notice and comment (consistent with 5 U.S.C. § 553), and must consider the views of individuals and entities with interest and expertise in international adoptions and family social services.

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

The standards require that an accredited agency or approved person: (1) provide medical records (in English if practicable) of the child in advance of travel to finalize an adoption; (2) provide prospective adoptive parents with a training program that includes counseling and guidance to promote a successful intercountry adop-

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

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

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

Subsection (c) authorizes the Secretary to establish through regulations issued under this section a temporary registration system for small community based agencies. An agency that is registered under such a system can provide adoption services for a period of up to two years even if it does not meet the standards in subsection (b) as long as it satisfies the following criteria: (1) it is a non-profit agency licensed in the State where it is located; (2) it has been providing intercountry adoption services for at least five years; (3) it has demonstrated that it will be able to provide all information related to the annual report required under section 104; (4) it has initiated the process of becoming accredited and is taking steps to become accredited; and (5) it has not been found to be involved in any improper conduct relating to intercountry adoptions. This provision is intended to ensure that for two years after the Convention enters into force, established, small community based agencies can continue to provide services with respect to Convention adoptions even if they do not meet the standards in subsection (b). This provision may also have the salutary effect of permitting the President to ratify the Convention more quickly.

Sec. 204. Secretarial Oversight of Accreditation and Approval

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

Subsection (b) requires the Secretary of State to suspend or cancel the accreditation or approval granted by an accrediting entity if the Secretary finds that the agency or person is substantially out of compliance with applicable requirements and the accrediting entity has failed or refused, after consultation with the Secretary, to

take appropriate enforcement action. In other words, the Secretary may take enforcement actions against agencies and person only after the established avenue of enforcement—that is, by the accrediting entity—has been found wanting. In those cases where the Secretary does take enforcement action, the affected agency or person may be reinstated or re-apply for accreditation or approval once the Secretary is satisfied that the deficiencies have been corrected.

Subsection (c) authorizes the Secretary of State to debar an agency from accreditation or a person from approval, either temporarily (for a minimum of three years, after which time the agency or person may apply to the Secretary for withdrawal of the debarment) or permanently. Debarment—whether temporary or permanent—requires (1) substantial evidence that the agency or person is out of compliance with applicable requirements and (2) a pattern of serious, willful, or grossly negligent failures to comply or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned.

Subsection (d) provides for judicial review of final actions of suspension, cancellation and debarment by the Secretary in either the U.S. District Court in the District of Columbia or the Federal district court in which the person or agencies resides. The court shall review the action in accordance with the standards of the Administrative Procedure Act.

Sec. 205. State Plan Requirement

This section amends Part B of Title IV of the Social Security Act to add to State plans under that title a requirement that States describe activities undertaken for children adopted from other countries including the provision of adoption and post adoption services. This amendment also requires States to collect and report information on children who are adopted from other countries and who enter State custody as a result of a dissolution or disruption of an adoption. Information on disrupted and dissolved adoptions should include the aggregate number of children, special needs status, the reason for placement into State custody, the age of the child, the agency that made adoption arrangements, the country from which the child emigrated, and the plans for the child. This is a new section that was not included in S. 682 prior to amendment.

TITLE III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

Sec. 301. Adoptions of Children Immigrating to the United States

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

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

Subsection (c) provides that no adoption of a child who has entered the United States from another Convention country for purposes of adoption shall be final unless the Secretary of State has issued the certificate required under subsection (a).

Sec. 302. Immigration and Nationality Act Amendments Relating to Children Adopted From Convention Countries

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

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

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

Sec. 303. Adoptions of Children Emigrating From the United States

Subsection (a) requires, in regard to a U.S. resident child emigrating to another Convention country for purposes of adoption, that the accredited agency or approved person providing adoption services, or the prospective adoptive parents acting on their own behalf, ensure that (1) a background study on the child is completed; (2) the accredited agency or approved person has made reasonable efforts to actively recruit and make a diligent search for adoptive parents in the United States, but despite such efforts, has not been able to place the child for placement in the United States in a timely manner; and (3) a determination is made that the placement is in the best interests of the child. The subsection also requires the agency or person to furnish the necessary documentation to the State court with jurisdiction over the case and the U.S. central authority. The Committee expects that the requirements to make reasonable efforts to locate a family within the United States

will result in a small number of U.S. children being adopted by citizens of other countries.

The provision also requires the background report to include a criminal background check. While the Committee understands that police records in foreign countries may vary widely, every effort should be made to investigate criminal histories of the prospective adoptive parent or parents. The central authorities should work together to improve the quality of such checks.

Subsection (b) provides that an adoption or grant of custody for the purpose of adoption in the case of a U.S. resident child emigrating to another Convention country for purposes of adoption may not proceed unless the court has received and verified the documents required under the Convention, made the determinations required of the country of origin by the Convention, and determined that the placement is in the best interests of the child. For children emigrating from the United States, the State courts and other appropriate authorities should review closely the background and home study, including criminal background reviews, to be sure it meets acceptable standards. State courts should also obtain a child's consent when the child is at appropriate age and maturity level.

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

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

TITLE IV—ADMINISTRATION AND ENFORCEMENT

Sec. 401. Access to Convention Records

Subsection (a) requires the Secretary of State, in consultation with the Attorney General, to issue regulations, following notice and comment, that establish procedures and requirements for the preservation of Convention records (defined in Section 3(11) as information about a Convention adoption that has been preserved by the Secretary of State or the Attorney General).

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

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

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

In recent years, the issue of access to adoption records has been extensively debated in the States, with ballot initiatives and court cases providing the battleground. The Committee takes no position with respect to that debate, and the Committee does not intend this legislation to affect the scope of access to adoption records under existing Federal or State law. Under current law, Federal records that contain information regarding intercountry adoptions are subject to Federal laws regarding disclosure and access to information maintained by the Federal Government (primarily the Privacy Act and the Freedom of Information Act). Records regarding intercountry adoptions held by States or in the files of adoption agencies are governed by any State law that may apply to such records. Applicable State laws vary: some States have a restrictive regime with respect to adoption records, others have an open regime, and still others take a variety of approaches in between. Under section 401, Federal records will continue to be governed by applicable Federal law, while non-Federal records, including records of adoption proceedings conducted in the United States, will continue to be governed by applicable State law. No State is required by this provision to change its laws regarding access to, and disclosure of, adoption records.

Sec. 402. Documents of Other Convention Countries

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

Sec. 403. Authorization of Appropriations; Collection of Fees

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

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

Subsection (c) restricts the funds provided in this section from being made available to an accrediting entity to carry out the purposes of this Act.

Sec. 404. Enforcement

This section provides for the Attorney General, through the Civil Division of the Department of Justice, to seek civil money penalties of not more than $50,000 for a first violation and not more than $100,000 for each subsequent violation, against any person who (1) provides adoption services in the United States in connection with Convention adoptions without proper accreditation or approval; (2) with regard to a material fact, provides false statements or fraudulent statements or misrepresentations; (3) gives, solicits, or accepts inducement by way of compensation to obtain consent to adoption or the relinquishment of parental rights or to influence a decision

of an accrediting entity or any entity performing a central authority function; or (4) engages another person as an agent in the United States or abroad who takes any of the actions described in (1), (2) or (3) above. The Committee believes that the Attorney General should not seek to obtain civil money penalties in the case of unintentional or harmless failures to comply with the requirements of this Act, or the implementing regulations issued under this Act. The section also provides for criminal penalties of not more than $250,000, imprisonment for up to five years, or both, for knowing and willful violations of paragraph (1) or (2) of subsection (a).

TITLE V—GENERAL PROVISIONS

Sec. 501. Recognition of Convention Adoptions

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

Sec. 502. Special Rules for Certain Cases

Subsection (a) authorizes the Secretary of State to establish by regulation alternative procedures for the adoption of children in Convention cases by individuals related to them by blood, marriage or adoption. The inclusion of adoption in this list reflects that family relationships are established through the act of adoption and these individuals are as much a part of the family as a relation by blood or marriage.

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

Sec. 503. Relationship to Other Laws

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

Subsection (b) provides that nothing in the Act shall be construed to affect the application of the Indian Child Welfare Act, which gives tribal authorities exclusive jurisdiction with respect to adoptions of children with tribal affiliations.

Subsection (c) provides an exemption from the Paperwork Reduction Act with regard to the collection of data, maintenance of records, reporting to the Secretary, the U.S. central authority, State courts, and other entities, and the collection of information for Convention records as defined by this Act.

Sec. 504. No Private Right of Action

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

Sec. 505. Effective Dates; Transition Rule

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

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

The resolution of ratification for the Convention, as approved by the Committee (and also reported this day), provides that the President may not deposit the instrument of ratification for the Convention "until such time as the Federal law implementing the Convention is enacted and the United States is able to carry out all the obligations of the Convention, as required by its implementing legislation." This condition is consistent with the position taken by the Executive Branch in submitting the Convention to the Senate. In other words, the Convention—and therefore many provisions of this Act—will not take effect for the United States until the Federal Government is in a position to carry out the duties under the Convention.

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

IV. COST ESTIMATE

In accordance with rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the following estimate of the cost of this legislation prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 14, 2000.

Hon. JESSE HELMS
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 682, the Intercountry Adoption Act of 2000.

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

Sincerely,

STEVEN M. LIEBERMAN
(for DAN L. CRIPPEN, *Director)*

[Enclosure.]

S. 682—INTERCOUNTRY ADOPTION ACT OF 2000

SUMMARY

S. 682 would authorize the United States to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and would authorize appropriations for that purpose. CBO estimates that those discretionary costs would be less than $500,000 a year over the 2001–2005 period, assuming appropriation of the necessary amounts. The bill has other provisions that would affect governmental receipts (revenues) and direct spending, but CBO estimates that those effects would be insignificant. Because enactment of S. 682 would affect receipts and direct spending, pay-as-you-go procedures would apply.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from application of that act bills that would be necessary for the ratification or implementation of international treaty obligations. CBO has determined that the provisions of S. 682 would implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and would thus fall within that exclusion.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

For purposes of this estimate, CBO assumes that the initial appropriations for S. 682 would be provided in fiscal year 2001 and that outlays would follow historical spending patterns. The costs of this legislation fall within budget function 150 (international relations) and 750 (administration of justice).

SPENDING SUBJECT TO APPROPRIATION

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

Department of State.—S. 682 would designate the State Department as the central authority responsible for coordinating and implementing international adoptions under the convention. Under current law, the State Department has no routine role in international adoptions. When it does act, it is usually in response to requests from the adopters. The bill would establish an official role for the Department and require it to:

- Enter into agreements with nonprofit organizations that would accredit and monitor adoption agencies that would provide services under the convention,

- Monitor the performance of accreditation agencies,
- Monitor and facilitate individual cases of adoption under the convention,
- Provide the Congress with an annual report on international adoptions and the implementation of the convention,
- Establish a registry of all international adoptions, and
- Issue certificates when an adoption under the convention has been finalized.

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

Civil and Criminal Prosecutions.—Violators of the provisions of S. 682 would be subject to civil penalties and criminal prosecution. As a result, the Federal Government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in Federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved.

DIRECT SPENDING AND REVENUES

Because violators of the provisions of S. 682 could be subject to criminal and civil fines, the Federal Government might collect additional fines if the bill is enacted. Collections of criminal fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. Civil fines are recorded as receipts and deposited into the general fund of the Treasury. CBO expects that any additional receipts and direct spending would be less than $500,000 each year.

PAY-AS-YOU-GO CONSIDERATIONS

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

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Section 4 of UMRA excludes from application of that act bills that would be necessary for the ratification or implementation of international treaty obligations. CBO has determined that the provisions of S. 682 would implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and would thus fall within that exclusion.

PREVIOUS CBO ESTIMATE

On April 7, 2000, CBO prepared a cost estimate for H.R. 2909 as ordered reported by the House Committee on International Relations. The bills are identical except for two additional subsections in S. 682, which do not change the estimated costs.

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

Estimate Approved By: Robert A. Sunshine, Assistant Director for Budget Analysis.

V. Evaluation of Regulatory Impact

In accordance with rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee has concluded that there will be minimal regulatory impact from this legislation because many of the agencies providing intercountry adoption services already have undertaken many of the requirements of the legislation. In addition, the legislation provides for delayed implementation of all requirements for smaller agencies currently providing adoption services. The State Department estimates that 200–300 adoption agencies will seek to attain accreditation to provide intercountry adoption services.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 422 OF THE SOCIAL SECURITY ACT

STATE PLANS FOR CHILD WELFARE SERVICES

SEC. 422. (a) * * *

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

(1) * * *

* * * * * * *

(11) contain a description, developed after consultation with tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act; [and]

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

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

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

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IMMIGRATION AND NATIONALITY ACT

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) * * *

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(b) As used in titles I and II—

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

(A) * * *

* * * * * * *

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

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

(F)(i) * * *

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)**[**.**]***; or*

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

(i) if—

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

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

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

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

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

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

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

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

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

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

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TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

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PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a) * * *

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

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

been granted custody of the child for the purpose of emigration and adoption, in accordance with such convention and the Intercountry Adoption Act of 2000.

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