

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 Convention, 4 and

## 7 SEC. 3. DEFINITIONS.

8            In this Act:

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

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;

(D) making determinations of the best interests of the child and the appropriateness of 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.

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.

(11) CONVENTION ADOPTION RECORD.—The term “Convention adoption record” means any item, collection, or grouping of information, including any index, contained in an electronic or physical document, an electronic collection of data, a photograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective Convention adoption (regardless of whether a final adoption resulted) and that has been identified and retained in accordance with section 401(a) 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;

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

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;

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

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 ADOPTIONS.  
23

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.

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

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 ADOPTION 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

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

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.—

23 (A) have experience and expertise in developing and administering international adoption

24

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.

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

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.

#### 4 SEC. 203. ELIGIBILITY FOR ACCREDITATION.

5 (a) ESTABLISHMENT OF STANDARDS.—

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.—

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

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.

(B) CAPACITY TO PERFORM ALL ASSIGNED FUNCTIONS.—To have, either directly or through arrangements with other qualified persons, qualified personnel, financial resources, an organizational structure, and appropriate procedures sufficient to enable it to perform, in a manner consistent with applicable standards, all functions under the Convention which it is seeking authority to perform in accordance with this Act (including the counseling of individuals involved in intercountry adoptions and the assumption of custodial and financial responsibility for children in cases where a placement disrupts before final adoption).

24 (C) UTILIZATION OF SOCIAL SERVICE PRO-  
25 FESSINALS.—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 appropriate  
4 qualifications and credentials.

5 (D) RECORDS, REPORTS, AND INFORMATION MATTERS.—To provide for the maintenance of such records and to make such reports  
6 as may be required by the Secretary of State and the designated accrediting entity; to cooperate with reviews, inspections, and audits; to safeguard sensitive individual information; and to comply with other requirements concerning information management necessary to ensure compliance with the Convention, this Act, and any other applicable laws.

16 (E) COMPLIANCE WITH CONVENTION.—To establish adequate measures to comply (and to ensure compliance of their agents and clients) with the Convention, this Act, and all other applicable laws, particularly with provisions concerning fraud, improper inducement, and similarly egregious acts.

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

1       ganized 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;

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.

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) 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.

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—

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 press, 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

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.

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.—

## 11 (b) ASSESSMENT OF FEES.—

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,

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

(B) the relinquishment of parental rights  
or parental consent relating to the adoption of  
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.

10 (b) ENFORCEMENT.—

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.—

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.—

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-

○