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*INTERCOUNTRY ADOPTION CONVENTION
IMPLEMENTATION ACT OF 1999: SUMMARY AND
ANALYSIS OF S. 682*

Douglas Reid Weimer, American Law Division

Updated September 14, 1999

Abstract. This report summarizes and analyzes the provisions of S. 682, 106th Congress, 1st Session (1999), the proposed "Intercountry Adoption Act of 1999." If enacted, S. 682 would implement certain requirements of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption ("Convention"), of which the United States is a signatory. To implement the provisions of the Convention, each signatory country must enact domestic legislation to fulfill its treaty requirements.

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Intercountry Adoption Convention Implementation Act of 1999: Summary and Analysis of S. 682

Summary

S. 682, 106th Cong., 1st Sess. (1999), the proposed “Intercountry Adoption Act of 1999” would implement certain requirements of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Convention”). The United States became a signatory to the Convention on March 31, 1994. The Senate treaty ratification process has not yet occurred. In order to implement the provisions of the Convention, each signatory country must enact domestic legislation to fulfill treaty requirements. To this end, the bill is drafted so as to amend U.S. law in order to comply with the requirements of the Convention.

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Intercountry Adoption Convention Implementation Act of 1999: Summary and Analysis of S. 682

Introduction

Interest has focused on S. 682,¹ the proposed “Intercountry Adoption Act of 1999” (“bill”). The bill would implement certain requirements of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Convention”). The bill was introduced on March 23, 1999 by Senator Helms and cosponsored by Senator Landrieu. On the same day the bill was referred to the Senate Committee on Foreign Relations (“Committee”). The bill has not emerged from the Committee. The Committee has scheduled hearings on the bill on September 15, 1999.

The United States became a signatory to the Convention on March 31, 1994. The Convention was transmitted to the Senate for its advice and consent on June 11, 1998.² The purpose of the Convention is to establish uniform standards and procedures for the international adoption of children. Through the establishment of such uniform procedures, the Convention will attempt to protect the rights and interests of the adoptive children, the birth parents, and the adoptive parents involved in intercountry adoptions. The Convention mandates that each signatory country establish a national Central Authority. The Central Authority is to oversee the Convention’s implementation in the signatory country.³ The Convention has three primary features. First, it reinforces the protection of children’s rights concerning international adoption. Second, it establishes a mechanism for the cooperation of signatory countries in the areas of international adoption. Third, it ensures the recognition of adoptions undertaken and certified through the Convention provisions.

In order to implement the provisions of the Convention, each signatory country must enact domestic legislation which will fulfill the treaty requirements. To this end, the bill is drafted so as to amend U.S. law in order to comply with the

¹ 106th Cong., 1st Sess. (1999).

² On June 11, 1998, the Convention was read for the first time in the Senate, and together with the accompanying papers, was transferred to the Senate Committee on Foreign Relations. *See*, S. Treaty Doc. 105-51, 105th Cong., 2d Sess. (1998). The Senate did not take action on the Convention in the 105th Congress. It is anticipated that the Convention ratification process will occur simultaneously with the congressional consideration of the bill in the fall of 1999.

³ *See*, S. Treaty Doc. 105-51 at v — xv for a summary of the provisions of the Convention.

requirements of the Convention. A summary and analysis of the bill's provisions follows.

Summary and Analysis of the Provisions of S. 682

For ease in locating the discussion of certain sections of the bill, this summary and analysis is divided into sections that follow the organization of the bill.

Section 1. Short Title; Table of Contents

If enacted, the bill would be cited as the "Intercountry Adoption Convention Implementation Act of 1999."⁴ The bill's table of contents is set out.

Section 2. Findings

The bill sets forth congressional recognition of the Convention's international character and the need for uniform interpretation and implementation of the Convention in the United States and abroad. It also determines that the enactment of a federal law governing intercountry adoptions is necessary.⁵

Section 3. Definitions

An extensive definitional section provides the meanings for the various terms used in the Act.⁶ Among the terms defined are: accredited person; accrediting entity; adoption services; agency; Attorney General; birth parent; central authority; central authority function; Convention; Convention adoption; Convention adoption record; Convention country; other Convention country; person; person with an ownership or control interest; and State.⁷

⁴ Bill, Sec. 1.

⁵ *Id.* Sec. 2

⁶ *Id.* Sec. 3.

⁷ *Id.*

Title I — United States Central Authority

Section 101. Performance of Central Authority Functions

The bill specifies that the Department of State and other specified officials of the United States are to carry out all of the central authority functions of the United States.⁸ The Department of State is solely responsible for implementing the provisions of this legislation.⁹

Section 102. Authority of the Department of State

The bill provides that the Secretary of State (“Secretary”) shall serve as the head of the central authority of the United States. The bill further provides that all State Department personnel performing central authority functions in a professional capacity are required to have three to five years of personal or professional experience in international adoptions. The bill authorizes the Secretary to proscribe such regulations as may be necessary to carry out the central authority functions of the United States.¹⁰

Section 103. Responsibilities of the Secretary of State

Specific responsibilities of the Secretary are enumerated in the bill. The Secretary is to liaison with the central authorities of other Convention countries and to coordinate Convention activities with persons subject to American jurisdiction. The Secretary is required to provide relevant information concerning accredited persons, Federal and State laws, and other necessary matters to the central authorities of other Convention countries.¹¹ The Secretary is required to provide Federal agencies, State courts, and accredited persons with an identification of Convention countries and persons authorized to perform functions under the Convention in each country; to facilitate the transmittal of appropriate information among the central authorities and the relevant persons; and to take appropriate actions necessary to implement the Convention.¹²

The Secretary is vested with additional responsibilities. The Secretary is required to monitor individual Convention adoption cases involving United States citizens. The Secretary may facilitate interactions between citizens and officials of other Convention countries on matters relating to the Convention in cases in which

⁸ *Id.* Sec. 101.

⁹ However, it should be noted that the Attorney General and the Immigration and Naturalization Service have certain functions to perform under the provisions of the bill.

¹⁰ Bill, Sec. 102.

¹¹ *Id.* Sec. 103(b).

¹² *Id.*

an accredited person is unwilling or unable to provide such facilitation; and may provide other appropriate assistance.¹³

The Secretary and the Attorney General are required to jointly establish a case registry on all adoptions involving immigration into the United States, whether the adoption occurs under the Convention or not; and all adoptions involving emigration of the child from the United States to another Convention country. The registry is to permit the tracking of pending cases and the retrieval of information on both pending and closed cases.¹⁴

Section 104. Responsibilities of the Attorney General

The bill also vests the Attorney General with the central authority functions which are specified in Article 14 of the Convention which relate to the filing of applications by prospective adoptive parents to the central authority of the country of their residence.¹⁵

Section 105. Annual Report on Intercountry Adoptions

One year after the date of the enactment of the bill and every following year, the Secretary is required to submit a report to Congress which describes the activities of the central authority of the United States during the preceding year.¹⁶ The report is to comprise various elements: number of adoptions involving immigration to the United States; number of Convention adoptions, including country of origin; number of intercountry adoptions that were disrupted with the details of the disruption; names of persons accredited to perform intercountry adoptions; names of persons debarred from performing intercountry adoptions and reasons for debarment; average time required for intercountry adoption; number of intercountry adoptions completed in the United States and the number of adoptions completed in each foreign country from which children subject to such adoptions emigrated; number of intercountry adoptions to the United States that were found to be fraudulent; average adoption fee for intercountry adoptions from the United States set forth by country; and the average fee for accreditation of persons engaging in intercountry adoption services.¹⁷

¹³ *Id.* Sec. 103(c).

¹⁴ *Id.* Sec. 103(d).

¹⁵ *Id.* Sec. 104.

¹⁶ *Id.* Sec. 105(a).

¹⁷ *Id.* Sec. 105.

Title II — Accreditation of Persons Providing Intercountry Adoption Services

Section 201. Eligibility to Provide Intercountry Adoption Services

Title II of the bill deals with the accreditation of the persons who provide intercountry adoption services. Except as otherwise provided, no person may provide adoption services relating to a Convention adoption unless that person is accredited by an accrediting entity as provided by this title; or is providing such services through or under the supervision and responsibility of an accredited person.¹⁸ Certain exceptions exist as to the provision of services relating to a Convention adoption. These include certain social work professionals and organizations performing background studies and related activities; entities providing child welfare services, but not arranging the adoption; attorneys providing legal services; and prospective adoptive parents acting on their own behalf.¹⁹

Section 202. Accrediting Entities

The bill directs the Secretary to designate as accrediting entities, and to enter into agreements with, no more than five nonprofit entities that have experience and expertise in developing and administering international adoption services and standards for entities providing child welfare services and whatever other criteria that the Secretary may establish by regulation. The accrediting entity may undertake an accreditation only for intercountry adoption unless a person seeks additional program accreditation.²⁰ Responsibilities of accrediting entities include accreditation of persons to perform functions under the Convention; oversight of the compliance by accredited persons with applicable requirements; enforcement, including the imposition of remedies, corrective action, noncompliance sanctions, and other means; and collection of data, maintenance of records, and making reports to the Secretary, State courts, and other entities.²¹ Remedies are provided for an accrediting entity's denial, suspension, or cancellation of the accreditation of a person. The person subject to adverse action is allowed to reapply for accreditation upon the demonstration that the deficiencies have been corrected. The person subject to the adverse action may petition the U.S. district court to set aside the action, but only upon proof that the action was not supported by substantial evidence or that the accrediting entity abused its discretion. An adverse action by the accrediting entity shall not be reviewable by the Secretary of State or any other Federal agency or administrative entity.²²

¹⁸ *Id.* Sec. 201(a).

¹⁹ *Id.* Sec. 201(b).

²⁰ *Id.* Sec. 202(a).

²¹ *Id.* Sec. 202(b).

²² *Id.* Sec. 202(c).

Accrediting entities are authorized to assess fees in amounts approved by the Secretary against persons seeking or maintaining accreditation. The Secretary may approve fees that do not exceed the amount estimated to be necessary to cover all direct or indirect costs of accreditation and ongoing oversight by the accrediting entity. Fees are to reflect the extent to which overall costs of accrediting persons vary in relation to the volume of Convention adoption cases a person handles. An accrediting entity is not permitted to provide discounted fees for certain persons for accreditation.²³

Section 203. Eligibility for Accreditation

The eligibility for accreditation is set out. The Secretary shall establish by regulation standards and procedures to be used by accrediting entities for the accreditation of persons for arranging Convention adoptions. The Secretary shall consider views of individuals and entities with interest in and knowledge of international adoptions and family social services, including public and private entities experienced in licensing and accrediting adoption agencies and the Secretary may adopt, following public comment opportunities, all or part of any standards or procedures developed or proposed by such individuals or entities.²⁴

The bill sets forth a number of conditions for accreditation, unless the Secretary provides otherwise by regulation. Specific requirements include 1) provision to prospective adoptive parents of a copy in English of the child's medical records not later than the earlier of two weeks before adoption or the date on which the persons travel to a foreign country to finalize the adoption; 2) a training program for the adoptive parents that includes at least six weeks of counseling and guidance before they travel to a foreign country to finalize the adoption; 3) employment of personnel providing intercountry adoption services on a fee-for-service basis rather than on a contingent-arrangement basis; 4) have in force adequate liability insurance for professional negligence and any other insurance required by the Secretary; and 5) permit open examination of the person's practices, including disruption rates of intercountry adoptions facilitated by the person and the fees charged by the person for intercountry adoptions.²⁵ Other requirements include the specific capacity to perform all of the assigned functions related to the adoption procedures; to utilize social service professionals; to maintain records, reports, and information materials; and to comply with the provisions of this bill, the Convention, and other applicable laws concerning fraud, improper inducement, and other egregious acts.²⁶ No person may be accredited unless the person is a private organization, not organized for profit, and licensed to provide adoption services in at least one State.

²³ *Id.* Sec. 202(d).

²⁴ *Id.* Sec. 203(a).

²⁵ *Id.* Sec. 203(b)(1)(A).

²⁶ *Id.* Sec. 203(b).

Section 204. Oversight of Accreditation

The Secretary is required to monitor each accredited entity's performance of its functions and its compliance with the requirements of the Convention, the bill, regulations, and other applicable laws. The Secretary must suspend or cancel the designation of any entity found to be substantially out of compliance with the requirements of the Convention, the bill, regulations, and other applicable laws.²⁷

The Secretary may, on his/her own initiative or upon the request of an accrediting entity, order the temporary or permanent debarment of a person from accreditation for purposes of intercountry adoption if there is no possibility for timely mediation and there is substantial evidence that the person is out of compliance with applicable requirements; there has been a pattern of serious, willful, or grossly negligent failures to comply, or other circumstances that indicate that application renewal would not be in the best interest of the interested children and families, or actions by a person that adversely impact important national interests of the United States. The debarment order shall state whether it is temporary or permanent. If temporary, the Secretary shall specify a date, not earlier than three years after the date of the order, on which date the person may apply to the Secretary for the withdrawal of the debarment. When a person has been debarred, the accrediting entity may take the circumstances of such debarment into account in considering any subsequent application for accreditation "of the person or of any other person [entity] in which the person has an ownership or control interest, notwithstanding that the period of debarment has elapsed."²⁸

A person, other than a prospective adoptive parent, person, or accrediting entity adversely affected by a final determination regarding the designation of an accrediting entity or the accreditation of a person, may obtain judicial review by the U.S. District Court for the District of Columbia, or in the U.S. district court in the judicial district in which such person or accrediting entity resides. The Secretary's determination may be set aside only if the person adversely affected presents clear and convincing proof of abuse of discretion by the Secretary. A determination by the Secretary upon the basis of foreign policy grounds is not subject to judicial review.²⁹

²⁷ *Id.* Sec. 204(a).

²⁸ *Id.* Sec. 204(b)(3). Although "person" is defined in Sec. 3(14) and "person with an ownership or control interest" is defined in Sec. 3(15), the precise meaning of this provision is not entirely clear.

²⁹ *Id.* Sec. 204(c).

Title III — Recognition of Convention Adoptions in the United States

Section 301. Adoptions of Children Immigrating to the United States

Title III of the bill provides for the recognition of Convention adoptions in the United States. The Secretary, pursuant to Article 23 of the Convention, shall with each Convention adoption, issue a certificate to the adoptive citizen parent domiciled in the United States that the adoption has been granted, or in the case of a prospective adoptive citizen parent, that the legal custody of the child has been granted to the citizen parent for the purpose of emigration and adoption, pursuant to the Convention and this legislation, if the Secretary receives appropriate notification from the central authority of such child's country of origin, and has verified that the requirements of this legislation have been met. If this certificate is appended to an original adoption decree, it shall be treated by Federal and State agencies, courts, and other public and private persons and entities as conclusive evidence of the facts certified, except under certain circumstances, and shall constitute the certification required by the Immigration and Nationality Act.³⁰

The final adoption in any other Convention country, certified by the Secretary, shall be recognized as a final valid adoption for the purposes of all Federal, State, and local laws of the United States, and shall be accorded the same legal effect as the final adoption of a child in the State where such United States citizens reside or are domiciled.³¹ In the case of a child that has been admitted to the United States from any other Convention country for the purpose of adoption, a State court shall not have the authority to issue an order declaring the adoption final unless the Secretary has issued the certificate described above.³²

Section 302. Amendments of the Immigration and Nationality Act

The bill makes certain amendments to the Immigration and Nationality Act (8 U.S.C. 1101)(“INA”). The definition of “child” in section 101(b)(1) of the INA is amended by adding a new subparagraph (G) which describes a child under the age of sixteen at the time a petition is filed on the child's behalf to grant a classification as an immediate relative to the adoptive parent, from a foreign country that is a party to the Convention, or who is emigrating from such a foreign country to be adopted in the United States, by at least one United States citizen and the citizen's spouse jointly, or by an unmarried United States citizen at least twenty-five years old, if: 1) the Attorney General is satisfied that proper care will be furnished the child in the United States; 2) in a case in which required by the country of the child's habitual residence, the child's birth parents, or other person or institutions that retain legal

³⁰ *Id.* Sec. 301(a).

³¹ *Id.* Sec. 301(b).

³² *Id.* Sec. 301(c).

custody of the child, have freely given their written irrevocable consent of the termination of their relationship with the child; 3) in the case of a child who has not been adopted, the competent authority of the foreign State has approved the child's emigration to the United States for the purposes of adoption by the prospective adoptive parents; 4) the child is not the grandchild, niece, nephew, brother, sister, aunt, uncle, or first cousin of any of the adopting parents, unless, under specific circumstances, the child has no living mother or the father is unknown; and (5) the prospective adoptive parent or married husband and wife have complied with any adoption requirements of the child's proposed State of residence. It is further provided that no birth or former adopted parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status.³³

It could be inferred that the bill language in effect defines potential adoptive parent(s) as a single parent or a married husband and wife. However, questions may arise as to whether this provision would include a single adoptive parent cohabiting with another person of the same or different sex. There appears to be uncertainty as to precisely what adoptive parents (marital status and gender) are covered by the definition. The bill does not specifically address how its requirements may impact (either narrowing or broadening) the adoption requirements which are set by the individual States.

Section 204(d) of the INA (8 U.S.C. 1154(d)) would be amended by adding a new provision which states that no petition may be approved on behalf of an alien child who seeks to be accorded immediate relative status as a child, unless the Secretary has certified to the Attorney General that the central authority of the child's country of origin has notified the United States Central Authority under the Convention that a United States citizen domiciled in the United States has effected final adoption of the child, or has been granted custody of the child for the purposes of emigration and adoption, in accordance with the Convention and this legislation.³⁴ These amendments shall apply to petitions for classification under the INA filed on or after the date of enactment of this legislation.³⁵

³³ *Id.* Sec. 302(a).

³⁴ *Id.* Sec. 302(b).

³⁵ *Id.* Sec. 302(d).

Section 303. Adoption of Children Emigrating from the United States

Specific standards are set for adoptions of children emigrating from the United States for adoption in any other Convention country.³⁶ In these adoptions, the accredited person providing adoption services or the prospective parents acting on their own behalf, if permitted by the laws of the Convention country in which they reside and the laws of the State in which the child resides, shall have various responsibilities. Written documentation must be provided concerning: 1) background study on the child that meets the standards of the State court with jurisdiction over the child; 2) child will be adopted by a married man and woman;³⁷ 3) twelve months have elapsed since the person made efforts to place the child in the United States; 4) a determination has been made that the child cannot be placed in the United States;³⁸ and 5) a determination has been made that the placement with the prospective parents is in the best interests of the child.³⁹

Prospective adoptive parents must furnish to State courts with the jurisdiction over adoption cases the following: 1) documentation of the five factors described above; 2) background report (home study) on the prospective adoptive parent or parents⁴⁰ prepared in accordance with the laws of the receiving country; 3) a background report compatible with the laws of the State with jurisdiction; 4) a declaration by the central authority or other competent authority of the receiving country that the child will be permitted to enter and reside permanently or on the same basis as the adoptive parent in the receiving country; and that the central authority or other authority of the receiving country consents to the adoption, if consent is necessary under its laws.⁴¹ The prospective adoptive parents must furnish to the Secretary of State: 1) official copies of State court orders certifying the final adoption or grant of custody for the purpose of adoption; 2) documentation of the four factors described in this paragraph; and 3) any other information concerning the

³⁶ *Id.* Sec. 303(a).

³⁷ *See*, discussion below.

³⁸ The bill specifically requires that a determination has been made “in accordance with section 107 of Public Law 105-89” that the child cannot be placed in the United States. However, Section 107 of Public Law 105-89 does not require such determinations. Rather, Section 107 amends the Federal foster care program, authorized under Title IV-E of the Social Security Act, and requires State child welfare agencies to document their efforts to place children for adoption or other permanent arrangements if reunification with their families is not determined appropriate. The provision applies only to children who are in foster care under State supervision.

³⁹ *Id.* Sec. 303(b)(1).

⁴⁰ There may an inconsistency in the use of certain terms used in this section. The introductory language of Section 303(b) refers to “prospective adoptive parents” and requires that children be adopted by a married man and woman, while Section 303(b)(2)(B) makes reference to the “prospective adoptive parent or parents.”

⁴¹ Bill, Sec. 303(b)(2).

case required by the Secretary to perform certification functions or otherwise to carry out its responsibilities under the Convention.⁴²

A State court certifying an adoption as final or granting custody for the purposes of adoption of a child emigrating abroad will not be recognized by the Secretary or the Attorney General for purposes of intercountry adoption unless the court: 1) has received and verified to the extent it may find necessary the required information and documentation described above and evidence that the Convention requirements have been satisfied; and 2) determined that the adoptive placement is in the child's best interests.⁴³ In these cases of a child emigrating abroad, the Secretary, upon the receipt and verification of the requisite documents and information, shall issue, as applicable, an official certification that the child has been adopted or a declaration that the custody for purposes of adoption has been granted, in accordance with the Convention and with this legislation.⁴⁴ In adoption cases involving children emigrating from the United States, States may impose additional responsibilities and requirements, not inconsistent with the provisions of this section, upon accredited persons and prospective adoptive parents acting on their own behalf.⁴⁵

Two of these requirements are examined. The first of these is that in cases of children emigrating from the United States, the child will be "adopted by a married man and woman."⁴⁶ This requirement appears to provide a limit on the pool of eligible adoptive parents to specifically a married man and woman.⁴⁷ It should also be noted that this language differs from the language used earlier in the bill for prospective adoptive parents for children immigrating to the United States. This language in Section 302 was: "the prospective adoptive parent or married husband and wife." The second limiting requirement in the bill is that twelve months have elapsed since the person made efforts to place the child in the United States.⁴⁸ This one year wait would extend the period of adoption completion for those American children who are to be adopted abroad.

⁴² *Id.* Sec. 303(b)(3).

⁴³ *Id.* Sec. 303(c).

⁴⁴ *Id.* Sec. 303(d).

⁴⁵ *Id.* Sec. 303(e).

⁴⁶ *Id.* Sec. 303(b)(1)(B).

⁴⁷ The presumption is that the "married man" is married to the "woman" in this section. However, an alternative interpretation could conceivably be made that the adoptive man is married and the other adoptive parent is a woman, not necessarily married to the "married man." Alternative legislative drafting might be used, such as: "a married husband and wife."

⁴⁸ Bill, Sec. 303(b)(1)(C).

Section 304. Special Rules for Certain Cases

The Secretary is required, to the extent consistent with the Convention, to establish by regulation, alternative procedures for the adoption of children by individuals related to them by blood or marriage and procedures permitting exception to applicable requirements, and waiving penalties for noncompliance, in the case of unintentional or harmless failures to comply with the requirements of the Convention, this legislation, or implementing regulations.⁴⁹

Section 305. Voiding of Adoptions for Cause

Provision is made for the voiding of adoptions for cause. The bill permits a U.S. State court, in addition to any remedies available under State law, to vacate a final adoption decree in a case subject to the Convention only if the decree was granted by a U.S. court and there is clear and convincing evidence that 1) consent was obtained by fraud or other specified egregious act; 2) voiding the adoption is in the child's best interests; 3) less than two years have passed since custody was granted; and 4) the adoptive parents have an opportunity to participate in the proceeding.⁵⁰ Authorities in the United States are required to recognize the action of another Convention country vacating a final adoption, provided that the adoption was made in that country and that the decision to vacate was made for the reasons stated above for voiding a Convention adoption made in the United States.⁵¹ If a court of competent jurisdiction voids an adoption decree, such an action does not void or prohibit the naturalization of the child as a citizen of the United States. The bill does not limit the authority of the Attorney General under the INA to revoke the naturalization of such a child or to limit the Attorney General's discretion to consider a finding of fact by a State court that is relevant to such a determination.⁵²

Section 306. Recognition of Convention Adoptions Before Entry into Force of Convention for the United States

An adoption concluded between two Convention countries that satisfied the requirements of the Convention and that became final before the date of entry into force of the Convention for the United States shall be recognized thereafter in the United States and given full effect.⁵³

⁴⁹ *Id.* Sec. 304.

⁵⁰ *Id.* Sec. 305(a).

⁵¹ *Id.* Sec. 305(b).

⁵² *Id.* Sec. 305(c).

⁵³ *Id.* Sec. 306.

Title IV — Administration and Enforcement

Section 401. Records; Privacy Provisions

Requirements are provided for maintenance of Convention adoption records. The Secretary of State and the Attorney General are to establish procedures for the retention and the identification of Convention adoption records.⁵⁴ Except under very specific circumstances, identifying information contained in Convention adoption records shall not be disclosed. An individual or an individual's parent or guardian who would otherwise have a right to access any Convention adoption record through the Privacy Act (5 U.S.C. § 552a) shall have such right with respect to identifying information in such a record only to the extent that such right is not restricted by this legislation. Disclosure of identifying information in any Convention adoption record shall be subject to any restriction imposed by the Privacy Act and shall also be subject to any restriction in this legislation. A child who is the subject of a Convention adoption record shall not be afforded access to identifying information in such record, and such information shall not be disclosed to such child, unless the child has reached age eighteen.⁵⁵ Information contained in the records of the Department of State and the Immigration and Naturalization Service relating to adoption cases subject to the Convention shall not be disclosed to any person pursuant to the Freedom of Information Act (5 U.S.C. § 552).⁵⁶ Information in Convention adoption records may be disclosed by the State Department, any official of the United States exercising central authority functions, and any accredited person, if necessary to administer the Convention or this legislation.⁵⁷ For the purpose of this section, "identifying information" means any information contained in an adoption record other than information relating to health, social, or genetic background of the child, and which does not specifically identify the child, as prescribed by the Secretary of Health and Human Services, in consultation with the Secretary of State and the Attorney General.⁵⁸

Section 402. Documents of Other Convention Countries

Documents that may originate in any other Convention country and which are related to a Convention adoption case shall require no authentication or legalization in order to be admissible in any Federal, State, or local court in the United States, unless a specific and supported claim is made that the documents are false, have been altered, or are otherwise unreliable.⁵⁹

⁵⁴ *Id.* Sec. 401(a).

⁵⁵ *Id.* Sec. 401(b).

⁵⁶ *Id.* Sec. 401(c).

⁵⁷ *Id.* Sec. 401(d).

⁵⁸ *Id.* Sec. 401(e).

⁵⁹ *Id.* Sec. 402.

Section 403. Authorization of Appropriations; Collection of Fees

Funds are authorized for appropriation as may be necessary to the Federal agencies implementing the Convention and the provisions of this legislation. Such appropriated funds are authorized to remain available until expended.⁶⁰ The Secretary is authorized to charge a fee as prescribed by regulation to cover the costs of new or enhanced services undertaken by the Department to fulfill the requirements of the legislation. Such fees collected shall be deposited as an offsetting collection to any Department of State appropriation to recover the costs of providing such services. No funds may be made available to an accrediting entity to carry out the purposes of the legislation.⁶¹

Section 404. Enforcement

Civil penalties are provided by the bill which may be in addition to any other penalties that may be prescribed by law. Civil money penalties of up to \$5,000 for the first violation and \$10,000 per subsequent violation are provided for: 1) provision of adoption services in the United States in Convention cases without proper approval or accreditation; 2) false or fraudulent statements or misrepresentation of fact or improper inducement concerning accreditation decisions, relinquishment of parental rights or parental consent, or to influence accreditation related or the decisions or actions of persons performing central authority functions; 3) disclosure of unauthorized information; or 4) coercive action to gain consent to termination of parental rights or to adoption.⁶²

Enforcement procedures are set out. The Secretary may impose a civil money penalty as described above pursuant to procedures as agreed upon by the Secretary and the Attorney General. No penalty can be assessed until the person charged has been given written notice and an opportunity to respond. Various factors are to be considered in determining the amount of the penalty: gravity of the violation; degree of culpability; and history of prior violations, if any.⁶³

Criminal penalties are also provided. Whoever knowingly and willfully commits a violation concerning fraudulent statement, misrepresentation, as described above, shall be subject to a fine of not more than \$10,000, or imprisonment for not more than one year, or both.⁶⁴

⁶⁰ *Id.* Sec. 403(a).

⁶¹ *Id.* Sec. 403(c).

⁶² *Id.* Sec. 404(a).

⁶³ *Id.* Sec. 404(b).

⁶⁴ *Id.* Sec. 404(c).

Title V — General Provisions

Section 501. Relation to Other Laws

The bill deals with the issue of preemption. It states that the Convention, the legislation, and any implementing regulations do not preempt other Federal, State, or local law unless such laws are clearly inconsistent with either the Convention or the Act.⁶⁵ The bill further provides that nothing in the Convention or the bill is to be construed as inconsistent with or modifying the Indian Child Welfare Act.⁶⁶ Neither the Convention nor the bill would preclude a State from requiring licensing as a condition of providing adoption related services.⁶⁷

Section 502. No Private Right of Action

Nothing in the Convention or the bill shall be construed so as to create a private right of action, except as specifically provided.⁶⁸

Section 503. Effective Date; Transition Provisions

With certain exceptions described below, the provisions of the bill are effective upon enactment. Certain provisions of the bill (sections 104, 202, 402, and 404 and titles III and IV) shall take effect upon the date of entry into force of the Convention for the United States and shall govern Convention adoptions thereafter.⁶⁹ The Convention and the bill will not apply to: 1) a child immigrating to the United States, if the application for advance processing of an orphan petition or petition to classify an orphan as an immediate relative for such child is filed before the effective date; or 2) a child emigrating from the United States, if the prospective adoptive parents initiated the adoption process in their country of residence with the filing of an appropriate application before the effective date.⁷⁰

Conclusion

This report has provided a summary and analysis of the provisions contained in S. 862, the Intercountry Adoption Convention Implementation Act of 1999. In order to implement the provisions of the Convention, each signatory country must enact domestic legislation which will fulfill the treaty requirements. This legislation would create an entirely new body of Federal law which would provide a framework for the implementation of the Hague Convention

⁶⁵ *Id.* Sec. 501(a).

⁶⁶ *Id.* Sec. 501(b).

⁶⁷ *Id.* Sec. 501(c).

⁶⁸ *Id.* Sec. 502.

⁶⁹ *Id.* Sec. 503(a).

⁷⁰ *Id.* Sec. 503(b).