

# CRS Report for Congress

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## H.R. 2909: Hague Convention Implementation Legislation

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### Summary

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Convention”) establishes uniform standards and procedures for the international adoption of children. The United States became a signatory to the Convention on March 31, 1994. In order to implement the provisions of the Convention, each signatory nation must enact domestic legislation to fulfill the treaty requirements. In the 106<sup>th</sup> Congress, several different bills have been considered: H.R. 2909: the “Intercountry Adoption Act of 1999,” and S. 682 and its companion bill, H.R. 2342: the “Intercountry Adoption Convention Implementation Act of 1999.” This report discusses the Convention and the provisions of H.R. 2909.

### Introduction

H.R. 2909, the “Intercountry Adoption Act of 1999,” (“the bill”)<sup>1</sup> 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 and the Convention was transmitted to the Senate for its advice and consent on June 11, 1998.<sup>2</sup>

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 the 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

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<sup>1</sup> 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999).

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

Central Authority. The Central Authority is to oversee the Convention's implementation in the signatory country.<sup>3</sup> 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.

To implement the provisions of the Convention, each signatory country must enact domestic legislation which will fulfill the treaty requirements. Various versions of implementing legislation have been introduced in the 106<sup>th</sup> Congress.<sup>4</sup> Congressional action has focused on H.R. 2909 ("the bill"). The bill was introduced on September 22, 1999 by Congressman Benjamin Gilman and referred to the Committee on International Relations, and also to the Committees on the Judiciary, and Education and the Workforce. In addition, the bill was referred sequentially to the House Committee on Ways and Means. Following Committee consideration,<sup>5</sup> the House considered and passed the bill on July 18, 2000.<sup>6</sup> The bill was received in the Senate on July 19, 2000 and placed on the Senate Legislative Calendar. On July 27, 2000, an amended text of the bill, S.Amdt. 4023 ("amendment"),<sup>7</sup> was proposed by Senator Campbell for Senator Helms. This amendment provided a substitute text for the bill and was agreed to by the Senate by Unanimous Consent. Hence, the bill, as amended, passed the Senate by Unanimous Consent and a message on the Senate action was sent to the House on July 27. It is anticipated that the House will take up the consideration of the bill with the Senate amendment in the near future.

## Analysis of the Provisions of the Bill

Set out below are a summary and analysis of the provisions of the bill, in its most recent form, as amended by S. Amdt. 4023.

**Section 1** sets out the title and the table of contents of the bill. The bill is to be cited as the "Intercountry Adoption Act of 2000."

**Section 2** states the congressional recognition of the Convention's international character and the need for international implementation of the Convention in the United States and abroad. The purposes of the legislation are discussed: Convention implementation, to protect the rights of the persons involved in the adopting process, and

<sup>3</sup> See, Treaty Doc. 105-51, at v-xv for a summary of the provisions of the Convention.

<sup>4</sup> For a summary and analysis of these bills, see, CRS Report RL30342, *Hague Convention Implementation Legislation: Comparison of H.R. 2909, S. 682, and Administration Draft* (Oct. 18, 1999).

<sup>5</sup> The bill was reported (amended) by the Committee on International Relations on June 22, 2000, H.Rept. No. 91, Part I, 106<sup>th</sup> Cong., 2d Sess. (2000).

<sup>6</sup> Specifically, Mr. Gilman moved to suspend the rules and pass the bill, as amended. The bill was considered under the suspension of rules. The motion to suspend the rules and pass the bill, as amended, was agreed to by voice vote. A motion to reconsider was laid on the table and agreed to without objection.

<sup>7</sup> 106<sup>th</sup> Cong., 2d Sess. (2000).

to improve the Federal Government's ability to assist American citizens adopting abroad and residents of Convention countries seeking to adopt American children.

**Section 3** provides an extensive definitional section which gives meanings for the various terms used in the bill. Among the terms defined are accredited agency, accrediting entity, adoption service, agency, approved person, attorney general, central authority, central authority function, Convention, Convention Adoption, Convention Record, Convention Country, other Convention Country, person, person with an ownership interest, Secretary, and State.

## **Title I — United States Central Authority**

**Section 101** deals with the designation of the Department of State as the United States central authority and the Secretary of State ("Secretary") as the head of the central authority.

**Section 102** sets forth the responsibilities of the Secretary which include liaison responsibilities, information exchange, agency accreditation and approval responsibilities, and certain other responsibilities. The Secretary and the Attorney General are to establish an international adoption registry, regardless of whether such adoptions occur under the Convention or not.

**Section 103** deals with the responsibilities of the Attorney General. In addition to the responsibilities conferred on the Attorney General by the bill, the central authority functions relating to the filing of applications by prospective adoptive parents to the central authority of their country of residence (as specified in Article 14 of the Convention) are to be performed by the Attorney General.

**Section 104** sets forth requirements for an annual report on intercountry adoptions, to be prepared by the Secretary, in consultation with the Attorney General and other appropriate agencies. Such a report will describe the activities of the United States central authority during the preceding year. The report is to be made to various Committees of the House and the Senate. Elements of the report are described: number of adoptions involving immigration to the United States; number of adoptions involving emigration from the United States; number of placements for adoptions in the United States that were disrupted; average time required for a Convention adoption; listing of accredited agencies; names of debarred persons or agencies; adoption fees charged with Convention adoptions involving immigration to the United States; and range of fees charged for accreditation of agencies and the approval of persons in the United States providing adoption services under the Convention.

## **Title II — Provisions Relating to Accreditation and Approval**

Section 201 sets out requirements for the accreditation or approval of agencies or persons required in order to provide adoption services in cases subject to the Convention. Adoption services in connection with a Convention adoption may only be offered by persons accredited or approved in accordance with the provisions of the bill. Certain limited exceptions are made for certain background studies and home studies, child

welfare services, legal services, and prospective adoptive parents acting on their own behalf.

**Section 202** deals with the process for accreditation and approval and the role of the accrediting entities. This section deals with the process of designating accrediting entities, the duties of such accrediting entities, and remedies for adverse action by accrediting entities. Fees assessed by accrediting entities are subject to the approval of the Secretary.

**Section 203** sets out the standards and procedures for regulations governing the accreditation of agencies or the approval of persons to provide adoption services in the United States in Convention adoptions. Minimum requirements for accreditation are set forth which include specific requirements;<sup>8</sup> the capacity to provide adoption services; the use of social service professionals; records, reports and information matters; liability insurance; compliance with applicable rules; and nonprofit organizations providing adoption services. Standards for approval of adoption providers are given and standards for the renewal of accreditation or approval are given. Provision is made for the temporary registration of community-based agencies.

**Section 204** provides for Secretarial oversight of the accreditation and approval procedures. The Secretary must provide for the oversight of accrediting entities. Provision is made for the suspension or the cancellation of accreditation or approval for noncompliance. Persons/agencies who have been subject to the suspension or cancellation provisions may correct their deficiencies and re-apply for accreditation or approval. In addition to suspension or cancellation, the Secretary is authorized to temporarily or permanently debar an agency from accreditation or a person from approval. An appeals procedure for the debarred person/entity is provided. The section provides for situations where a complete home study is not undertaken prior to adoption.

**Section 205** provides that Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) is amended to provide that States must report certain requirements regarding international adoption, as part of their state plan under the Federal Child Welfare Services Program.

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<sup>8</sup> The accreditation of an agency may not be provided or continued unless the agency has met the following specific requirements: 1) adoption agency provides adoptive parents child's medical records (in English translation) prior to adoption; 2) agency ensures that background report (home study) on prospective adoptive parent(s) is completed in accordance with applicable requirements and transmitted to the Attorney General with respect to each Convention adoption; 3) agency provides prospective adoption parents a training program that includes counseling and guidance for a successful adoption; 4) agency employs personnel providing intercountry adoption services on a fee for service basis rather than on a contingent fee basis; and 5) agency fully discloses its policies and practices, disruption rates of intercountry placements, and all fees charged by such agency for intercountry adoption.

## **Title III — Recognition of Convention Adoption in the United States**

**Section 301** deals with the legal aspects of children immigrating to the United States. The section deals with the issuance and the legal effect of certain certificates which are to be issued by the Secretary with respect to each Convention adoption. The section deals with the legal effect of a Convention adoption finalized in another Convention country. The certificate issued by the Secretary is a condition precedent for the finalization of a Convention adoption by a State court.

**Section 302** concerns Immigration and Nationality Act Amendments relating to children adopted from Convention countries. Specifically, the definition of child under the Immigration and Nationality Act (“Act”) (8 U.S.C. 1101(b)(1)), is amended to take into account Convention adoptions. The section also amends the Act concerning the approval of adoption petitions (8 U.S.C. 1154(d)) and the definition of parent (8 U.S.C. 1101(b)(2)).

**Section 303** concerns the adoptions of children emigrating from the United States. Set forth are the duties of the accredited agency or the approved person, the conditions on State court orders, the duties of the Secretary, and filing concerning nonconvention adoptions with the adoption registry.

## **Title IV — Administration and Enforcement**

**Section 401** is concerned with the access to Convention records. Issues dealt with in this section are the preservation of Convention records, the access to Convention records, and the access to non-Convention records.

**Section 402** provides that documents originating in any other Convention country and relating to a Convention adoption will not require authentication to be admissible in a Federal, State, or local court in the United States, unless a claim is made that the documents are false, altered, or unreliable.

**Section 403** provides for the authorization of appropriations to federal agencies implementing the Convention and this legislation. The Secretary is authorized to assess a fee for new or enhanced services that will be undertaken by the Department of State to meet the requirements of the bill concerning Convention adoptions. None of these fees are to be made available to an accrediting entity to carry forth the purposes of the legislation.

**Section 404** deals with enforcement of the provisions of the legislation. Civil penalties are provided concerning fraud, false statements, and other wrongful acts. Persons subject to such penalties may be subject in addition to any other penalty prescribed by law, to a civil money penalty of not more than \$50,000 for a first violation, and not more than \$100,000 for each subsequent violation. Specific provision is made for civil enforcement. Criminal penalties are also imposed. Persons in violation of the legislative provisions shall be subject to a fine of not more than \$250,000, imprisonment for not more than five years, or both.

## **Title V — General Provisions**

**Section 501** concerns the recognition of Convention Adoptions between two other Convention countries that become final before the date of entry into force of the Convention for the United States. Such adoptions shall be recognized in the United States and given full effect.

**Section 502** provides for special rules for certain cases of adoption of children. The Secretary is authorized to establish alternative procedures for the adoption of children by relatives. Under specific circumstances the Secretary is authorized to waive certain requirements of the legislation or the regulations in the interest of justice or to prevent grave physical harm to the child.

**Section 503** concerns the relationship of this legislation with other laws. The Convention and the implementing legislation shall not preempt any provisions of State or local law, or prevent a State or local authority from enacting any provision of law with respect to the subject matter of the Convention or this legislation, except to the extent that such provision of State law is inconsistent with the Convention or this legislation, and then only to the extent of the inconsistency. The Convention and this legislation shall not affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 *et seq.*).

**Section 504** provides that the Convention and this legislation shall not create a private right of action to seek administrative or judicial relief, except as provided by the legislation.

**Section 505** concerns the effective dates of the legislation. Certain provisions become effective upon the date of enactment and other provisions take effect upon entry into force of the Convention for the United States. Certain transitional rules apply in certain circumstances.

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