

S. 2994

At the request of Ms. SNOWE, the names of the Senator from Florida (Mr. NELSON) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 2994, a bill to provide that funds received as universal service contributions under section 254 of the Communications Act of 1934 and the universal service support programs established pursuant thereto are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act, for a period of time.

S. 3002

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 3002, a bill to amend title 10, United States Code, to direct the Secretary of Defense to carry out a program to provide a support system for members of the Armed Forces who incur severe disabilities.

S. 3026

At the request of Mr. INHOFE, his name was added as a cosponsor of S. 3026, a bill to support the Boy Scouts of America and the Girl Scouts of the United States of America.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SMITH (for himself and Mr. CONRAD):

S. 3029. A bill to amend the Internal Revenue Code of 1986 to encourage guaranteed lifetime income payments from annuities and similar payments of life insurance proceeds at dates later than death by excluding from income a portion of such payments; to the Committee on Finance.

Mr. SMITH. Mr. President, with over 77 million baby boomers beginning to retire in 2008, a serious retirement challenge is looming in our country. Moreover, with Americans living longer and a growing numbers of retirees facing the challenge of managing their own retirement savings, we need to provide them with better retirement options. In response, I rise today to offer legislation aimed at assisting people to maintain their financial independence and their standard of living throughout their retirement by making it easier for them to secure a steady income for life.

In recent years, the focus of the "retirement security" debate in Congress has almost entirely been on the need to accumulate a nest egg to fund retirement. Congress is doing much to encourage personal saving and employer-provided retirement plans. I am proud of both our successes and our continuing efforts in these areas. Encouraging greater savings is an important step; however, it is not enough.

Unfortunately, there has been little attention paid to the retirement income or "payout" phase of the retirement security equation. The risk of outliving one's savings is one of the biggest problems facing retirees. I have

heard it said that Americans perceive the retirement savings "finish line" to be the point of retirement. But retirement is just the beginning of a very different kind of race, one of unknown duration. If Americans are going to fully enjoy their retirement years, we need to ensure that as many Americans as possible will have a stream of income they cannot outlive. We have some control over when we retire. However, we have very little control over how long we will live.

For most Americans, a "secure retirement" means maintaining their standard of living through retirement and the means to deal with life's challenges from the first day of retirement to the very last. For the majority of Americans, that requires a steady stream of income that, combined with Social Security or other retirement income, covers basic living expenses— from housing expenses to medical bills, taxes to transportation, food to clothing. Yet, Americans today are facing a serious and growing challenge to retirement security.

At the same time Americans are living longer, the future of private and public retirement programs, as well as financial markets, is increasingly uncertain. Fewer Americans are covered by traditional pension plans, and Social Security currently replaces on average only about 42 percent of earnings. This means it's increasingly up to each individual to manage their retirement savings to last their lifetime. And exactly how long will that period in retirement be? It depends. Of course none of us know how long we will live; research shows most Americans vastly underestimate their longevity.

According to the Society of Actuaries, a male age 65 has a 50 percent chance of living beyond age 85 and a 25 percent chance of living beyond age 92. Indeed, the biggest risk we face in retirement is the longevity risk—that is, living longer than our retirement savings lasts. In order to meet this challenge, Senator CONRAD and I are introducing legislation to encourage the use of retirement vehicles that pay a guaranteed lifetime income.

Under the Retirement Security for Life Act that Senator CONRAD and I are introducing today, a tax incentive would be enacted that encourages retirees to provide themselves with a guaranteed lifetime income that they can't outlive. Specifically, the proposal would exclude from Federal taxes one-half of the income payments from an annuity purchased with after tax dollars (a so-called non-qualified annuity). Importantly, we have proposed a cap on the exclusion so that no more than \$20,000 could be excluded in a year. For a typical American in the 25 percent tax bracket, this would provide an annual maximum tax savings of up to \$5,000. I believed that this modest tax incentive will enable some retirees to consider annuitizing a portion of their nest egg so that they have a guaranteed lifetime of income.

This legislation has a wide range of support from organizations representing women, minorities, farmers and small businesses. Many in these groups do not have access to traditional employer provided pension. As we tackle the challenges of retirement policy, we need to ensure that all Americans have adequate financial security to meet their basic needs during retirement. Personal savings and responsibility are the keys to a balanced national retirement security policy. Please join me in supporting our proposal as a crucial step in providing a secure retirement for all Americans. I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3029

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Retirement Security for Life Act of 2004".

#### SEC. 2. EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.

(a) LIFETIME ANNUITY PAYMENTS UNDER ANNUITY CONTRACTS.—Section 72(b) of the Internal Revenue Code of 1986 (relating to exclusion ratio) is amended by adding at the end the following new paragraph:

"(5) EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.—

"(A) IN GENERAL.—In the case of lifetime annuity payments received under one or more annuity contracts in any taxable year, gross income shall not include 50 percent of the portion of lifetime annuity payments otherwise includible (without regard to this paragraph) in gross income under this section. For purposes of the preceding sentence, the amount excludible from gross income in any taxable year shall not exceed \$20,000.

"(B) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 2005, the \$20,000 amount in subparagraph (A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$500, such amount shall be rounded to the next lower multiple of \$500.

"(C) APPLICATION OF PARAGRAPH.—Subparagraph (A) shall not apply to—

"(i) any amount received under an eligible deferred compensation plan (as defined in section 457(b)) or under a qualified retirement plan (as defined in section 4974(c)),

"(ii) any amount paid under an annuity contract that is received by the beneficiary under the contract—

"(I) after the death of the annuitant in the case of payments described in subsection (c)(5)(A)(ii)(III), unless the beneficiary is the surviving spouse of the annuitant, or

"(II) after the death of the annuitant and joint annuitant in the case of payments described in subsection (c)(5)(A)(ii)(IV), unless the beneficiary is the surviving spouse of the last to die of the annuitant and the joint annuitant, or

"(iii) any annuity contract that is a qualified funding asset (as defined in section

130(d)), but without regard to whether there is a qualified assignment.

“(D) INVESTMENT IN THE CONTRACT.—For purposes of this section, the investment in the contract shall be determined without regard to this paragraph.”

(b) DEFINITIONS.—Subsection (c) of section 72 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(5) LIFETIME ANNUITY PAYMENT.—

“(A) IN GENERAL.—For purposes of subsection (b)(5), the term ‘lifetime annuity payment’ means any amount received as an annuity under any portion of an annuity contract, but only if—

“(i) the only person (or persons in the case of payments described in subclause (II) or (IV) of clause (ii)) legally entitled (by operation of the contract, a trust, or other legally enforceable means) to receive such amount during the life of the annuitant or joint annuitant is such annuitant or joint annuitant, and

“(ii) such amount is part of a series of substantially equal periodic payments made not less frequently than annually over—

“(I) the life of the annuitant,

“(II) the lives of the annuitant and a joint annuitant, but only if the annuitant is the spouse of the joint annuitant as of the annuity starting date or the difference in age between the annuitant and joint annuitant is 15 years or less,

“(III) the life of the annuitant with a minimum period of payments or with a minimum amount that must be paid in any event, or

“(IV) the lives of the annuitant and a joint annuitant with a minimum period of payments or with a minimum amount that must be paid in any event, but only if the annuitant is the spouse of the joint annuitant as of the annuity starting date or the difference in age between the annuitant and joint annuitant is 15 years or less.

“(iii) EXCEPTIONS.—For purposes of clause (ii), annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments—

“(I) because the amount of the periodic payments may vary in accordance with investment experience, reallocations among investment options, actuarial gains or losses, cost of living indices, a constant percentage applied not less frequently than annually, or similar fluctuating criteria,

“(II) due to the existence of, or modification of the duration of, a provision in the contract permitting a lump sum withdrawal after the annuity starting date, or

“(III) because the period between each such payment is lengthened or shortened, but only if at all times such period is no longer than one calendar year.

“(B) ANNUITY CONTRACT.—For purposes of subparagraph (A) and subsections (b)(5) and (w), the term ‘annuity contract’ means a commercial annuity (as defined by section 3405(e)(6)), other than an endowment or life insurance contract.

“(C) MINIMUM PERIOD OF PAYMENTS.—For purposes of subparagraph (A), the term ‘minimum period of payments’ means a guaranteed term of payments that does not exceed the greater of 10 years or—

“(i) the life expectancy of the annuitant as of the annuity starting date, in the case of lifetime annuity payments described in subparagraph (A)(ii)(III), or

“(ii) the life expectancy of the annuitant and joint annuitant as of the annuity starting date, in the case of lifetime annuity payments described in subparagraph (A)(ii)(IV).

For purposes of this subparagraph, life expectancy shall be computed with reference to the tables prescribed by the Secretary

under paragraph (3). For purposes of subsection (w)(1)(C)(ii), the permissible minimum period of payments shall be determined as of the annuity starting date and reduced by one for each subsequent year.

“(D) MINIMUM AMOUNT THAT MUST BE PAID IN ANY EVENT.—For purposes of subparagraph (A), the term ‘minimum amount that must be paid in any event’ means an amount payable to the designated beneficiary under an annuity contract that is in the nature of a refund and does not exceed the greater of the amount applied to produce the lifetime annuity payments under the contract or the amount, if any, available for withdrawal under the contract on the date of death.”

(c) RECAPTURE TAX FOR LIFETIME ANNUITY PAYMENTS.—Section 72 of the Internal Revenue Code of 1986 is amended by redesignating subsection (w) as subsection (x) and by inserting after subsection (v) the following new subsection:

“(w) RECAPTURE TAX FOR MODIFICATIONS TO OR REDUCTIONS IN LIFETIME ANNUITY PAYMENTS.—

“(1) IN GENERAL.—If any amount received under an annuity contract is excluded from income by reason of subsection (b)(5) (relating to lifetime annuity payments), and—

“(A) the series of payments under such contract is subsequently modified so any future payments are not lifetime annuity payments,

“(B) after the date of receipt of the first lifetime annuity payment under the contract an annuitant receives a lump sum and thereafter is to receive annuity payments in a reduced amount under the contract, or

“(C) after the date of receipt of the first lifetime annuity payment under the contract the dollar amount of any subsequent annuity payment is reduced and a lump sum is not paid in connection with the reduction, unless such reduction is—

“(i) due to an event described in subsection (c)(5)(A)(iii), or

“(ii) due to the addition of, or increase in, a minimum period of payments within the meaning of subsection (c)(5)(C) or a minimum amount that must be paid in any event (within the meaning of subsection (c)(5)(D)),

then gross income for the first taxable year in which such modification or reduction occurs shall be increased by the recapture amount.

“(2) RECAPTURE AMOUNT.—

“(A) IN GENERAL.—For purposes of this subsection, the recapture amount shall be the amount, determined under rules prescribed by the Secretary, equal to the amount that (but for subsection (b)(5)) would have been includible in the taxpayer’s gross income if the modification or reduction described in paragraph (1) had been in effect at all times, plus interest for the deferral period at the underpayment rate established by section 6621.

“(B) DEFERRAL PERIOD.—For purposes of this subsection, the term ‘deferral period’ means the period beginning with the taxable year in which (without regard to subsection (b)(5)) the payment would have been includible in gross income and ending with the taxable year in which the modification described in paragraph (1) occurs.

“(3) EXCEPTIONS TO RECAPTURE TAX.—Paragraph (1) shall not apply in the case of any modification or reduction that occurs because an annuitant—

“(A) dies or becomes disabled (within the meaning of subsection (m)(7)),

“(B) becomes a chronically ill individual within the meaning of section 7702B(c)(2), or

“(C) encounters hardship.”

(d) LIFETIME DISTRIBUTIONS OF LIFE INSURANCE DEATH BENEFITS.—

(1) IN GENERAL.—Section 101(d) of the Internal Revenue Code of 1986 (relating to payment of life insurance proceeds at a date later than death) is amended by adding at the end the following new paragraph:

“(4) EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.—

“(A) IN GENERAL.—In the case of amounts to which this subsection applies, gross income shall not include the lesser of—

“(i) 50 percent of the portion of lifetime annuity payments otherwise includible in gross income under this section (determined without regard to this paragraph), or

“(ii) the amount in effect under section 72(b)(5).

“(B) RULES OF SECTION 72(B)(5) TO APPLY.—For purposes of this paragraph, rules similar to the rules of section 72(b)(5) and section 72(w) shall apply, substituting the term ‘beneficiary of the life insurance contract’ for the term ‘annuitant’ wherever it appears, and substituting the term ‘life insurance contract’ for the term ‘annuity contract’ wherever it appears.”

(2) CONFORMING AMENDMENT.—Section 101(d)(1) of such Code is amended by inserting “or paragraph (4)” after “to the extent not excluded by the preceding sentence”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts received in calendar years beginning after the date of the enactment of this Act.

(2) SPECIAL RULE FOR EXISTING CONTRACTS.—In the case of a contract in force on the date of the enactment of this Act that does not satisfy the requirements of section 72(c)(5)(A) of the Internal Revenue Code of 1986 (as added by this section), or requirements similar to such section 72(c)(5)(A) in the case of a life insurance contract, any modification to such contract (including a change in ownership) or to the payments thereunder that is made to satisfy the requirements of such section (or similar requirements) shall not result in the recognition of any gain or loss, any amount being included in gross income, or any addition to tax that otherwise might result from such modification, but only if the modification is completed prior to the date that is 2 years after the date of the enactment of this Act.

Mr. CONRAD. Mr. President, I am pleased to join my friend and colleague, Senator GORDON SMITH from Oregon, in introducing legislation that can help seniors enjoy a more secure retirement. The good news is that Americans are living longer but it also means that people have to plan for a longer period of retirement. A successful retirement income plan is a challenge even for the savvy investor. How much more difficult is this task for the millions of Americans with limited investment experience?

For years Congress has encouraged people to save for their retirement. Through the tax code, we encourage asset building through home ownership. We provide significant tax incentives for employer-based pension plans and for dedicated retirement savings programs by individuals, such as IRAs and 401(k) plans.

One of the biggest threats to retirement income security for baby boomers is their own longevity. It will not be easy to manage their accumulated assets so that they will last a lifetime. Unprecedented numbers of Americans are now living into their 90s and even past 100. Today, actuaries tell us that

about one in six 65-year-old men and one out of three 65-year-old women can expect to live into their 90s.

Consequently, people are going to spend more time in retirement than previous generations. Over the course of the 20th century, the percentage of men in the workforce aged 65 years or older dropped from about 66 percent to less than 20 percent. Now our society confronts the impending retirement of 77 million baby boomers. Many of them will not have the guaranteed monthly retirement checks that many of their parents enjoyed as a result of employer-based pension plans. Traditional defined-benefit pension plans have given way to defined contribution plans, which have shifted the retirement income security risk from the employer to the individual.

Of course, there are still many Americans who have no access at all to employer-provided pension plans. Some have never been in the traditional workforce; others work in seasonal jobs or part time. In my state of North Dakota, as well as in rural and farming communities across America, there is an acute need for retirement vehicles that will provide a secure lifetime payout. Others who could face difficulty in securing retirement income are widowed individuals—both men and women—who suddenly find themselves having to make a life insurance benefit or proceeds from the sale of a business or family home last a lifetime.

The proposal we are introducing today will provide a valuable tool for helping people avoid the risk of outliving their assets. Specifically, we are proposing a tax incentive to encourage Americans to available a portion of their assets annuitize for retirement. If they annuitize—in other words, elect to receive their money from an annuity in a series of payments for the rest of their lives, no matter how long that may be—they would be able to exclude from income a portion of the annuity benefit that represents the accumulation in the annuity above and beyond the original investment. The tax benefit is capped to ensure that tax sheltering activity is not encouraged and that the incentive will be effective for people who would benefit most from securing a lifetime income stream.

This proposal we offer today would apply only to life-contingent, non-qualified annuities. A life-contingent annuity that is subsequently modified to a fixed-term payout would be subject to a recapture tax.

Baby boomers represent an unprecedented challenge to our retirement security policies. They should have a wide range of options available for responsible retirement planning. Our proposal focuses on non-qualified annuities because it is important to have this option considered as part of the larger retirement income security debate that Congress should have before baby boomers begin retiring in large numbers. Options for making qualified plans more secure should be part of that debate as well.

I hope that the 109th Congress will tackle this matter promptly because time is short. That first wave of baby boomer retirees begins in 2008—just over 36 months from today.

By Mr. NELSON of Florida:

S. 3030. A bill to establish an Office of Consumer Advocacy and Outreach within the Federal Trade Commission to protect consumers from certain unfair or deceptive acts or practices, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. NELSON of Florida. Mr. President, today I rise to introduce a bill to create a new government reward hotline designed to solicit tips from Spanish-speaking immigrants and other groups that are more likely to be the silent victims of consumer fraud.

The hotline will allow anyone with knowledge of a fraud scheme involving deceptive advertising to get a reward for reporting it directly to the experts who work at the Federal Trade Commission.

This legislation addresses the unscrupulous businesses that target certain communities because they know the victims are less likely to report crimes. It will further the efforts of the Federal Trade Commission to combat this problem by creating an Office of Consumer Advocacy and Outreach within the Federal Trade Commission which will administer programs and services that make it easier for victims in these communities to hold wrongdoers accountable.

A Federal Trade Commission survey from earlier this year revealed that nearly 25 million adults in the United States, or 11.2 percent of the adult population, were victims of fraud, and that certain communities were more likely to fall prey to fraudulent schemes. For example, the survey found that Hispanics are twice as likely to be victims of fraud as non-Hispanic whites. A study conducted by the National Institute of Justice concluded that immigrant victims report crimes less frequently than other victims. The factors cited as contributing to this underreporting included language barriers, cultural differences, and a limited understanding of the United States Justice system.

During this past year the Federal Trade Commission has levied an increasing number of complaints against deceptive Spanish-language advertisements, including fraudulent driving permits and junk computers. Two of these complaints were filed against businesses in South Florida that targeted Spanish speakers with advertisements for “scientifically unfeasible” weight-loss pills.

The Office of Consumer Advocacy and Outreach created by this bill will provide information to targeted consumers in these communities on how to protect themselves against fraudulent schemes and where to seek redress if they become a victim. The Office will

work with law enforcement to track and investigate fraud schemes that target immigrants, the elderly, minorities and other communities.

One of the ways the Office will work to increase reporting of fraud by Spanish-speakers, for example, will be to publicize the reward program through a Spanish-language public service advertising campaign produced by the Federal Trade Commission that warns against consumer fraud and provides the number for this newly created anonymous hotline.

Additionally, the Office will work with law enforcement to increase their level of participation in the Consumer Sentinel database system. This database, currently in existence, collects information from local, State and Federal agencies on consumer complaints to assist in the tracking and investigating of consumer fraud issues.

By Mr. NICKLES (for himself, Ms. LANDRIEU, Mr. CRAIG, and Mr. INHOFE): S. 3031. A bill to provide for the reform of intercountry adoption, and for other purposes; to the Committee on the Judiciary.

Mr. NICKLES. Mr. President, last month we celebrated National Adoption Month. In 2003, Americans opened their hearts and homes to over 20,000 orphaned children born overseas. In order to adopt these children the families had to submit extensive paperwork and work with three federal agencies in order to be approved to adopt a foreign born child and to be able to bring that child home to America. The Intercountry Adoption Reform Act that I am introducing today along with Senators LANDRIEU, CRAIG, and INHOFE streamlines the process families go through to adopt a child from overseas by eliminating unnecessary paperwork and consolidating the federal functions into one office.

Last November, I introduced the first version of the Intercountry Adoption Reform Act, known simply as the ICARE Act, along with Senators LANDRIEU, CRAIG, INHOFE, BINGAMAN, and SMITH. Over the last year we have received many comments about the bill from groups representing adoption professionals as well as comments from the administration. In response to these comments, we have revised our original bill to incorporate many of the suggestions provided to us and to address some of the concerns expressed.

Two major changes have been made. First, we have added enforcement provisions. We revised the bill to make clear that the new Office of Intercountry Adoption (OIA) will have the ability to protect children, birth families and adoptive families from fraud and abuse through enforcement provisions. It also clarifies that the OIA can work with the Department of Homeland Security and the Department of Justice to enforce the provisions of the Act. Second, we added provisions to provide a smooth transition from the

current adoption process to the new and improved process. These provisions ensure that all adoption cases filed prior to the opening of the OIA would be processed under the current rules. Any cases filed after the opening of the OIA would be processed under the provisions of ICARE.

There were many other technical and minor changes made to clarify and perfect the original language. I believe that these changes have significantly improved the bill and address many, if not all of the concerns that were raised.

Since 1998, I have been working to improve the foreign adoption process. It was in that year that I introduced the first version of the Child Citizenship Act which became law in 2000. This Act provides for automatic U.S. citizenship for foreign born children adopted by American citizens. When that bill took effect on February 27, 2001, over 150,000 foreign adopted children became U.S. citizens automatically.

In the fall of 2001, and the first half of 2002, I helped work on the crisis that ensued when the INS suspended American adoptions from Cambodia. Four hundred and fifty families who were in the process of adopting from Cambodia were left stranded, unable to bring their adopted children home to America. Although there was evidence that fraudulent players were involved in adoptions in Cambodia and that there is a need for a fraud free, transparent adoption process, the suspension impacted many American families and the Cambodian orphans they hoped to adopt. The children and families stuck in the process when the suspension was announced needed to be able to complete the adoption process they had started prior to the suspension. I worked with the Administration to develop a plan to process those adoptions where it was determined that no fraud was involved. I worked closely with Senator LANDRIEU and other members of Congress on both the House and Senate side to ensure that these Cambodian orphans could come home to their American families.

I have also been working since 2002, to develop the ICARE Act. ICARE has two main goals. First, and most importantly, this bill acknowledges and affirms that foreign adopted children of American citizens are to be treated in all respects the same as children born abroad to an American citizen. Under existing law, foreign adopted children are treated as immigrants to the United States. They have to apply for, and be granted immigrant visas to enter the United States. Once they enter the United States, citizenship is acquired automatically. Had these children been born abroad to American citizens, they would have traveled back to the United States with a U.S. passport and entered as citizens. This bill provides for equal treatment for foreign adopted children.

The second goal is to consolidate the existing functions of the federal gov-

ernment relating to foreign adoption into one centralized office. The office would be located within the Department of State. Currently, these functions are performed by offices within the Department of Homeland Security and the Department of State. Consolidation of these functions into one office will result in focused attention on the needs of families seeking to adopt overseas and on the children they are hoping to make part of their families.

Although I have not been able to see this bill through to completion during my tenure in the Senate, it is my hope and desire that my colleagues who have cosponsored this bill with me will continue to press forward until the goals of this bill are accomplished.

I introduce this revised version of the ICARE Act and hope that it will be reintroduced and acted upon in the next Congress. Passage of this bill will significantly improve the foreign adoption process so that more children worldwide can find loving, permanent homes. It is my prayer that someday, adoption will not be needed. That all children will be born into stable, loving homes to parents who want them and are able to care for them. However, until that day comes, the foreign adoption process can be improved and should be improved. Foreign adopted children of American citizens should be treated as children of U.S. citizens, not as immigrants, and should be accorded all the same rights as biological children of U.S. citizens. To that end, I introduce this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3031

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Inter-country Adoption Reform Act of 2004" or the "ICARE Act".

#### SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) That a child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding.

(2) That intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her country of origin.

(3) There has been a significant growth in intercountry adoptions. In 1990, Americans adopted 7,093 children from abroad. In 2001, they adopted 19,237 children from abroad.

(4) Americans increasingly seek to create or enlarge their families through intercountry adoptions.

(5) There are many children worldwide that are without permanent homes.

(6) In the interest of children without a permanent family and the United States citizens who are waiting to bring them into their families, reforms are needed in the intercountry adoption process used by United States citizens.

(7) Before adoption, each child should have the benefit of measures taken to ensure that intercountry adoption is in his or her best interests and prevents the abduction, selling, or trafficking of children.

(8) In addition, Congress recognizes that foreign born adopted children do not make the decision whether to immigrate to the United States. They are being chosen by Americans to become part of their immediate families.

(9) As such these children should not be classified as immigrants in the traditional sense. Once fully and finally adopted, they should be treated as children of United States citizens.

(10) Since a child who is fully and finally adopted is entitled to the same rights, duties, and responsibilities as a biological child, the law should reflect such equality.

(11) Therefore, foreign born adopted children of United States citizens should be accorded the same procedural treatment as biological children born abroad to a United States citizen.

(12) If a United States citizen can confer citizenship to a biological child born abroad, then the same citizen is entitled to confer such citizenship to their legally and fully adopted foreign born child immediately upon final adoption.

(13) If a United States citizen cannot confer citizenship to a biological child born abroad, then such citizen cannot confer citizenship to their legally and fully adopted foreign born child, except through the naturalization process.

(b) PURPOSES.—The purposes of this Act are—

(1) to ensure that intercountry adoptions take place in the best interests of the child;

(2) to ensure that foreign born children adopted by United States citizens will be treated identically to a biological child born abroad to the same citizen parent; and

(3) to improve the intercountry adoption process by making it more citizen friendly and focused on the protection of the child.

#### SEC. 3. DEFINITIONS.

In this Act:

(1) ADOPTABLE CHILD.—The term "adoptable child" has the same meaning given such term in section 101(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(c)(3)), as added by section 204(a) of this Act.

(2) AMBASSADOR AT LARGE.—The term "Ambassador at Large" means the Ambassador at Large for Intercountry Adoptions appointed to head the Office pursuant to section 101(b).

(3) COMPETENT AUTHORITY.—The term "competent authority" means the entity or entities authorized by the law of the child's country of residence to engage in permanent placement of children who are no longer in the legal or physical custody of their biological parents.

(4) CONVENTION.—The term "Convention" means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993.

(5) FULL AND FINAL ADOPTION.—The term "full and final adoption" means an adoption—

(A) that is completed according to the laws of the child's country of residence or the State law of the parent's residence;

(B) under which a person is granted full and legal custody of the adopted child;

(C) that has the force and effect of severing the child's legal ties to the child's biological parents;

(D) under which the adoptive parents meet the requirements of section 205; and

(E) under which the child has been adjudicated to be an adoptable child in accordance with section 206.

(6) OFFICE.—The term “Office” means the Office of Intercountry Adoptions established under section 101(a).

(7) READILY APPROVABLE.—A petition or certification is considered “readily approvable” if the documentary support provided demonstrates that the petitioner satisfies the eligibility requirements and no additional information or investigation is necessary.

## TITLE I—ADMINISTRATION OF INTERCOUNTRY ADOPTIONS

### Subtitle A—In General

#### SEC. 101. OFFICE OF INTERCOUNTRY ADOPTIONS.

(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, there is to be established within the Department of State, an Office of Intercountry Adoptions which shall be headed by the Ambassador at Large for Intercountry Adoptions who shall be appointed pursuant to subsection (b).

(b) AMBASSADOR AT LARGE.—

(1) APPOINTMENT.—The Ambassador at Large shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who have background, experience, and training in intercountry adoptions, taking care to ensure that the individual who serves as Ambassador is free from any conflicts of interest that might inhibit such individual’s ability to serve as Ambassador.

(2) AUTHORITY.—The Ambassador at Large shall report directly to the Secretary of State, in consultation with the Assistant Secretary for Consular Affairs. The Ambassador at Large has no independent regulatory authority.

(3) DUTIES OF THE AMBASSADOR AT LARGE.—In carrying out the functions of the Office, the Ambassador at Large shall have the following responsibilities:

(A) IN GENERAL.—The primary responsibilities of the Ambassador at Large shall be—

(i) to ensure that intercountry adoptions take place in the best interests of the child; and

(ii) to assist the Secretary of State in fulfilling the responsibilities designated to the central authority under title I of the Intercountry Adoption Act of 2000 (42 U.S.C. 14911 et seq.).

(B) ADVISORY ROLE.—The Ambassador at Large shall be a principal advisor to the President and the Secretary of State regarding matters affecting intercountry adoption and the general welfare of children abroad and shall make recommendations regarding—

(i) the policies of the United States with respect to the establishment of a system of cooperation among the parties to the Convention;

(ii) the policies to prevent abandonment, strengthen families, and to advance the placement of children in permanent families; and

(iii) policies that promote the protection and well-being of children.

(C) DIPLOMATIC REPRESENTATION.—Subject to the direction of the President and the Secretary of State, the Ambassador at Large may represent the United States in matters and cases relevant to international adoption in—

(i) fulfillment of the responsibilities designated to the central authority under title I of the Intercountry Adoption Act of 2000 (42 U.S.C. 14911 et seq.);

(ii) contacts with foreign governments, intergovernmental organizations, and specialized agencies of the United Nations and other international organizations of which the United States is a member; and

(iii) multilateral conferences and meetings relevant to international adoption.

(D) INTERNATIONAL POLICY DEVELOPMENT.—The Ambassador at Large shall advise and support the Secretary of State and other relevant Bureaus of the Department of State in the development of sound policy regarding child protection and intercountry adoption.

(E) REPORTING RESPONSIBILITIES.—The Ambassador at Large shall have the following reporting responsibilities:

(i) IN GENERAL.—The Ambassador at Large shall assist the Secretary of State and other relevant Bureaus in preparing those portions of the Human Rights Reports that relate to the abduction, sale, and trafficking of children.

(ii) ANNUAL REPORT ON INTERCOUNTRY ADOPTION.—On September 1 of each year, the Secretary of State, with the assistance of the Ambassador at Large, shall prepare and transmit to Congress an annual report on intercountry adoption. Each annual report shall include—

(I) a description of the status of child protection and adoption in each foreign country, including—

(aa) trends toward improvement in the welfare and protection of children and families;

(bb) trends in family reunification, domestic adoption, and intercountry adoption;

(cc) movement toward ratification and implementation of the Convention; and

(dd) census information on the number of children in orphanages, foster homes, and other types of nonpermanent residential care as reported by the foreign country;

(II) the number of intercountry adoptions by United States citizens, including the country from which each child emigrated, the State in which each child resides, and the country in which the adoption was finalized;

(III) the number of intercountry adoptions involving emigration from the United States, including the country where each child now resides and the State from which each child emigrated;

(IV) the number of placements for adoption in the United States that were disrupted, including the country from which the child emigrated, the age of the child, the date of the placement for adoption, the reasons for the disruption, the resolution of the disruption, the agencies that handled the placement for adoption, and the plans for the child, and in addition, any information regarding disruption or dissolution of adoptions of children from other countries received pursuant to section 422(b)(14) of the Social Security Act (42 U.S.C. 622(b)(14));

(V) the average time required for completion of an adoption, set forth by the country from which the child emigrated;

(VI) the current list of agencies accredited and persons approved under the Intercountry Adoption Act of 2000 (42 U.S.C. 14901 et seq.) to provide adoption services;

(VII) the names of the agencies and persons temporarily or permanently debarred under the Intercountry Adoption Act of 2000 (42 U.S.C. 14901 et seq.), and the reasons for the debarment;

(VIII) the range of adoption fees involving adoptions by United States citizens and the median of such fees set forth by the country of origin;

(IX) the range of fees charged for accreditation of agencies and the approval of persons in the United States engaged in providing adoption services under the Convention; and

(X) recommendations of ways the United States might act to improve the welfare and protection of children and families in each foreign country.

(c) FUNCTIONS OF OFFICE.—The Office shall have the following 7 functions:

(1) APPROVAL OF A FAMILY TO ADOPT.—To approve or disapprove the eligibility of United States citizens to adopt foreign born children.

(2) CHILD ADJUDICATION.—To investigate and adjudicate the status of a child born abroad to determine their eligibility as an adoptable child.

(3) FAMILY SERVICES.—To provide assistance to United States citizens engaged in the intercountry adoption process in resolving problems with respect to that process and to track intercountry adoption cases so as to ensure that all such adoptions are processed in a timely manner.

(4) INTERNATIONAL POLICY DEVELOPMENT.—To advise and support the Ambassador at Large and other relevant Bureaus in the development of sound policy regarding child protection and intercountry adoption.

(5) CENTRAL AUTHORITY.—To assist the Secretary of State in carrying out duties of the central authority as defined in section 3 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14902).

(6) ENFORCEMENT.—To investigate, either directly or in cooperation with other appropriate international, Federal, State, or local entities, improprieties relating to adoption, including issues of child protection, birth family protection, and consumer fraud.

(7) ADMINISTRATION.—To perform administrative functions related to the functions performed under paragraphs (1) through (6), including legal functions and congressional liaison and public affairs functions.

(d) ORGANIZATION.—

(1) IN GENERAL.—All functions of the Office shall be performed by officers housed in a centralized office located in Washington, D.C. Within the Washington, D.C. office, there shall be 7 divisions corresponding to the 7 functions of the Office. All 7 divisions and their respective directors shall report directly to the Ambassador at Large.

(2) APPROVAL TO ADOPT.—The division responsible for approving parents to adopt shall be divided into regions of the United States as follows:

- (A) Northwest.
- (B) Northeast.
- (C) Southwest.
- (D) Southeast.
- (E) Midwest.
- (F) West.

(3) CHILD ADJUDICATION.—To the extent practicable, the division responsible for the adjudication of foreign born children as adoptable shall be divided by world regions which correspond to those currently used by other divisions within the Department of State.

(4) USE OF INTERNATIONAL FIELD OFFICERS.—Nothing in this section shall be construed to prohibit the use of international field officers posted abroad, as necessary, to fulfill the requirements of this Act.

(5) USE OF EXISTING SYSTEMS.—Whenever possible, the Office shall utilize systems currently in place that ensure protections against child trafficking.

(e) QUALIFICATIONS AND TRAINING.—In addition to meeting the employment requirements of the Department of State, officers employed in any of the 7 divisions of the Office shall undergo extensive and specialized training in the laws and processes of intercountry adoption as well as understanding the cultural, medical, emotional, and social issues surrounding intercountry adoption and adoptive families. The Ambassador at Large shall, whenever possible, recruit and hire individuals with background and experience in intercountry adoptions, taking care to ensure that such individuals do not have any conflicts of interest that might inhibit their ability to serve.

(f) USE OF ELECTRONIC DATABASES AND FILING.—To the extent possible, the Office shall make use of centralized, electronic databases and electronic form filing.

**SEC. 102. RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES.**

Section 505(a)(1) of the Intercountry Adoption Act of 2000 (42 U.S.C. 14901 note) is amended by inserting “301, 302,” after “205.”

**SEC. 103. TECHNICAL AND CONFORMING AMENDMENT.**

Section 104 of the Intercountry Adoption Act of 2000 (42 U.S.C. 14914) is repealed.

**Subtitle B—Transition Provisions**

**SEC. 111. TRANSFER OF FUNCTIONS.**

(a) IN GENERAL.—Subject to subsection (c), all functions under the immigration laws of the United States with respect to the adoption of foreign born children by United States citizens and their admission to the United States that have been vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization, the Immigration and Naturalization Service (or any officer, employee, or component thereof), of the Department of Homeland Security (or any officer, employee, or component thereof) immediately prior to the effective date of this title, are transferred to the Office on the effective date of this title for exercise by the Ambassador at Large in accordance with applicable laws and title II of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Ambassador at Large may, for purposes of performing any function transferred to the Ambassador at Large under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function pursuant to this title.

(c) LIMITATION ON TRANSFER OF PENDING ADOPTIONS.—If an individual has filed a petition with the Immigration and Naturalization Service or the Department of Homeland Security with respect to the adoption of a foreign born child prior to the date of enactment of this title, the Secretary of Homeland Security shall have the authority to make the final determination on such petition and such petition shall not be transferred to the Office.

**SEC. 112. TRANSFER OF RESOURCES.**

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Ambassador at Large for appropriate allocation in accordance with section 115, the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service or the Department of Homeland Security in connection with the functions transferred pursuant to this title.

**SEC. 113. INCIDENTAL TRANSFERS.**

The Ambassador at Large may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out this title. The Ambassador at Large shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

**SEC. 114. SAVINGS PROVISIONS.**

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits,

grants, loans, contracts, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Ambassador at Large, the former Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under section 111 shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of State, the Immigration and Naturalization Service, or the Department of Homeland Security, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this title shall apply to the exercise of such function by the head of the office, and other officers of the office,

to which such function is transferred pursuant to such provision.

**Subtitle C—Effective Date**

**SEC. 121. EFFECTIVE DATE.**

This title shall take effect 180 days after the date of enactment of this Act.

**TITLE II—REFORM OF UNITED STATES LAWS GOVERNING INTERCOUNTRY ADOPTIONS**

**SEC. 201. AUTOMATIC ACQUISITION OF CITIZENSHIP FOR ADOPTED CHILDREN BORN OUTSIDE THE UNITED STATES.**

(a) AMENDMENTS OF AUTOMATIC CITIZENSHIP PROVISIONS.—Section 320 of the Immigration and Nationality Act (8 U.S.C. 1431) is amended—

(1) by amending the section heading to read as follows: “CHILDREN BORN OUTSIDE THE UNITED STATES; CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED”; and

(2) in subsection (a), by striking paragraphs (1) through (3) and inserting the following:

“(1) Upon the date the adoption becomes full and final, at least 1 parent of the child is a citizen of the United States, whether by birth or naturalization, who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years. Any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person—

“(A) honorably serving with the Armed Forces of the United States; or

“(B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act (22 U.S.C. 288); may be included in order to satisfy the physical presence requirement of this paragraph.

“(2) The child is an adoptable child described in section 101(c)(3).

“(3) The child is the beneficiary of a full and final adoption decree entered by a foreign government or a court in the United States.

“(4) For purposes of this subsection, the term ‘full and final adoption’ means an adoption—

“(A) that is completed under the laws of the child’s country of residence or the State law of the parent’s residence;

“(B) under which a person is granted full and legal custody of the adopted child;

“(C) that has the force and effect of severing the child’s legal ties to the child’s biological parents;

“(D) under which the adoptive parents meet the requirements of section 205 of the Intercountry Adoption Reform Act of 2004; and

“(E) under which the child has been adjudicated to be an adoptable child in accordance with section 206 of the Intercountry Adoption Reform Act of 2004.”

(b) EFFECTIVE DATE.—This section shall take effect as if enacted on January 1, 1950.

**SEC. 202. REVISED PROCEDURES.**

Notwithstanding any other provision of law, the following requirements shall apply with respect to the adoption of foreign born children by United States citizens:

(1) Upon completion of a full and final adoption, the Secretary of State shall issue a

United States passport and a Consular Report of Birth for a child who satisfies the requirements of section 320 of the Immigration and Nationality Act (8 U.S.C. 1431), as amended by section 201 of this Act, upon application by a United States citizen parent.

(2) An adopted child described in paragraph (1) shall not require the issuance of a visa for travel and admission to the United States but shall be admitted to the United States upon presentation of a valid, unexpired United States passport.

(3) No affidavit of support under section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) shall be required in the case of any adoptable child.

(4)(A) The Secretary of State shall require that agencies provide prospective adoptive parents an opportunity to conduct an independent medical exam and a copy of any medical records of the child known to exist (to the greatest extent practicable, these documents shall include an English translation) on a date that is not later than the earlier of the date that is 2 weeks before the adoption, or the date on which prospective adoptive parents travel to such a foreign country to complete all procedures in such country relating to adoption.

(B) The Secretary of State shall not require an adopted child described in paragraph (1) to undergo a medical exam for the purpose of excluding the child's immigration to the United States.

(5) The Secretary of State shall take necessary measures to ensure that all prospective adoptive parents adopting internationally are provided with training that includes counseling and guidance for the purpose of promoting a successful intercountry adoption before such parents travel to adopt the child or the child is placed with such parents for adoption.

(6) The Secretary of State shall take necessary measures to ensure that—

(A) prospective adoptive parents are given full disclosure of all direct and indirect costs of intercountry adoption before they are matched with child for adoption;

(B) fees charged in relation to the intercountry adoption be on a fee for service basis not on a contingent fee basis; and

(C) that the transmission of fees between the adoption agency, the country of origin, and the prospective adoptive parents is carried out in a transparent and efficient manner.

(7) The Secretary of State shall take all measures necessary to ensure that all documents provided to a country of origin on behalf of a prospective adoptive parent are truthful and accurate.

**SEC. 203. NONIMMIGRANT VISAS FOR CHILDREN TRAVELING TO THE UNITED STATES TO BE ADOPTED BY A UNITED STATES CITIZEN.**

(a) IN GENERAL.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) by striking “or” at the end of subparagraph (U);

(2) by striking the period at the end of subparagraph (V) and inserting “; or”; and

(3) by adding at the end the following:

“(W) an adoptable child who is coming into the United States for adoption by a United States citizen and a spouse jointly or by an unmarried United States citizen at least 25 years of age, who has been approved to adopt.”.

(b) TERMINATION OF PERIOD OF AUTHORIZED ADMISSION.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

“(s) In the case of a nonimmigrant described in section 101(a)(15)(W), the period of authorized admission shall terminate on the earlier of—

“(1) the date on which the adoption of the nonimmigrant is completed by the courts of the State where the parents reside; or

“(2) the date that is 4 years after the date of admission of the nonimmigrant into the United States, unless a petitioner is able to show cause as to why the adoption could not be completed prior to such date and the Secretary extends such period for the period necessary to complete the adoption.”.

(c) TEMPORARY TREATMENT AS LEGAL PERMANENT RESIDENT.—Notwithstanding any other law, all benefits and protections that apply to a legal permanent resident shall apply to a nonimmigrant described in section 101(a)(15)(W) of the Immigration and Nationality Act, as added by subsection (a), pending a full and final adoption.

(d) EXCEPTION FROM IMMUNIZATION REQUIREMENT FOR CERTAIN ADOPTED CHILDREN.—Section 212(a)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(1)(C)) is amended—

(1) in the heading by striking “10 YEARS” and inserting “18 YEARS”; and

(2) in clause (i), by striking “10 years” and inserting “18 years”.

(e) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of State shall prescribe such regulations as may be necessary to carry out this section.

**SEC. 204. DEFINITION OF ADOPTABLE CHILD.**

(a) IN GENERAL.—Section 101(c) of the Immigration and Nationality Act (8 U.S.C. 1101(c)) is amended by adding at the end the following:

“(3) The term ‘adoptable child’ means an unmarried person under the age of 18—

“(A)(i) whose biological parents (or parent, in the case of a child who has one sole or surviving parent) or other persons or institutions that retain legal custody of the child—

“(I) have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption and that such consent has not been induced by payment or compensation of any kind and has not been given prior to the birth of the child;

“(II) are unable to provide proper care for the child, as determined by the competent authority of the child's residence; or

“(III) have voluntarily relinquished the child to the competent authorities pursuant to the law of the child's residence; or

“(ii) who, as determined by the competent authority of the child's residence—

“(I) has been abandoned or deserted by their biological parent, parents, or legal guardians; or

“(II) has been orphaned due to the death or disappearance of their biological parent, parents, or legal guardians;

“(B) with respect to whom the Secretary of State is satisfied that the proper care will be furnished the child if admitted to the United States;

“(C) with respect to whom the Secretary of State is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship and that the parent-child relationship of the child and the biological parents has been terminated (and in carrying out both obligations under this subparagraph the Secretary of State, in consultation with the Secretary of Homeland Security, may consider whether there is a petition pending to confer immigrant status on one or both of the biological parents);

“(D) with respect to whom the Secretary of State, is satisfied that there has been no inducement, financial or otherwise, offered to obtain the consent nor was it given before the birth of the child;

“(E) with respect to whom the Secretary of State, in consultation with the Secretary of

Homeland Security, is satisfied that the person is not a security risk; and

“(F) whose eligibility for adoption and emigration to the United States has been certified by the competent authority of the country of the child's place of birth or residence.”.

(b) CONFORMING AMENDMENT.—Section 204(d) of the Immigration and Nationality Act (8 U.S.C. 1154(d)) is amended by inserting “and an adoptable child as defined in section 101(c)(3)” before “unless a valid home-study”.

**SEC. 205. APPROVAL TO ADOPT.**

(a) IN GENERAL.—Prior to the issuance of a visa under section 101(a)(15)(W) of the Immigration and Nationality Act, as added by section 203(a) of this Act, or the issuance of a full and final adoption decree, the United States citizen adoptive parent shall have approved by the Office a petition to adopt. Such petition shall be subject to the same terms and conditions as are applicable to petitions for classification under section 204.3 of title 8 of the Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.

(b) EXPIRATION OF APPROVAL.—Approval to adopt under this Act is valid for 24 months from the date of approval. Nothing in this section may prevent the Secretary of Homeland Security from periodically updating the fingerprints of an individual who has filed a petition for adoption.

(c) EXPEDITED REAPPROVAL PROCESS OF FAMILIES PREVIOUSLY APPROVED TO ADOPT.—The Secretary of State shall prescribe such regulations as may be necessary to provide for an expedited and streamlined process for families who have been previously approved to adopt and whose approval has expired, so long as not more than 3 years have lapsed since the original application.

(d) DENIAL OF PETITION.—

(1) NOTICE OF INTENT.—If the officer adjudicating the petition to adopt finds that it is not readily approvable, the officer shall notify the petitioner, in writing, of the officer's intent to deny the petition. Such notice shall include the specific reasons why the petition is not readily approvable.

(2) PETITIONERS RIGHT TO RESPOND.—Upon receiving a notice of intent to deny, the petitioner has 30 days to respond to such notice.

(3) DECISION.—Within 30 days of receipt of the petitioner's response the Office must reach a final decision regarding the eligibility of the petitioner to adopt. Notice of a formal decision must be delivered in writing.

(4) RIGHT TO AN APPEAL.—Unfavorable decisions may be appealed to the Department of State and, after the exhaustion of the appropriate appeals process of the Department, to a United States district court.

(5) REGULATIONS REGARDING APPEALS.—Not later than 6 months after the date of enactment of this Act, the Secretary of State shall promulgate formal regulations regarding the process for appealing the denial of a petition.

**SEC. 206. ADJUDICATION OF CHILD STATUS.**

(a) IN GENERAL.—Prior to the issuance of a full and final adoption decree or a visa under section 101(a)(15)(W) of the Immigration and Nationality Act, as added by section 203(a) of this Act—

(1) the Office shall obtain from the competent authority of the country of the child's residence a certification, together with documentary support, that the child sought to be adopted meets the description of an adoptable child; and

(2) not later than 15 days after the date of the receipt of the certification referred to in paragraph (1), the Office shall make a final determination on whether the certification and the documentary support are sufficient

to meet the requirements of this section or whether additional investigation or information is required.

(b) **PROCESS FOR DETERMINATION.**—

(1) **IN GENERAL.**—The Ambassador at Large shall work with the competent authorities of the child's country of residence to establish a uniform, transparent, and efficient process for the exchange and approval of the certification and documentary support required under subsection (a).

(2) **NOTICE OF INTENT.**—If the Office finds that the certification submitted by the competent authority of the child's country of origin is not readily approvable, the Office shall—

(A) notify the competent authority and the prospective adoptive parents, in writing, of the specific reasons why the certification is not sufficient; and

(B) provide the competent authority and the prospective adoptive parents the opportunity to address the stated insufficiencies.

(3) **PETITIONERS RIGHT TO RESPOND.**—Upon receiving a notice of intent to find that a certification is not readily approvable, the prospective adoptive parents shall have 30 days to respond to such notice.

(4) **DECISION.**—Not later than 30 days after the date of receipt of a response submitted under paragraph (3), the Office must reach a final decision regarding the child's eligibility as an adoptable child. Notice of such decision must be in writing.

(5) **RIGHT TO AN APPEAL.**—Unfavorable decisions on a certification may be appealed to the Department of State and, after the exhaustion of the appropriate appeals process of the Department, to a United States district court.

### TITLE III—FUNDING

#### SEC. 301. FUNDS.

The Secretary of State shall provide the Ambassador at Large with such funds as may be necessary for—

- (1) the hiring of staff for the Office;
- (2) investigations conducted by the Office; and
- (3) travel and other expenses necessary to carry out this Act.

### TITLE IV—ENFORCEMENT

#### SEC. 401. ENFORCEMENT.

(a) **CIVIL PENALTIES.**—A person shall be subject, in addition to any other penalty that may be 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 succeeding violation if such person—

- (1) violates a provision of this Act or an amendment made by this Act;
- (2) makes a false or fraudulent statement, or misrepresentation, with respect to a material fact, or offers, gives, solicits, or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country—

(A) a decision for an approval under title II;

(B) the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child; or

(C) a decision or action of any entity performing a central authority function; or

(3) engages another person as an agent, whether in the United States or in a foreign country, who in the course of that agency takes any of the actions described in paragraph (1) or (2).

(b) **CIVIL ENFORCEMENT.**—

(1) **AUTHORITY OF ATTORNEY GENERAL.**—The Attorney General may bring a civil action to enforce subsection (a) against any person in any United States district court.

(2) **FACTORS TO BE CONSIDERED IN IMPOSING PENALTIES.**—In imposing penalties the court shall consider the gravity of the violation,

the degree of culpability of the defendant, and any history of prior violations by the defendant.

(c) **CRIMINAL PENALTIES.**—Whoever knowingly and willfully commits a violation described in paragraph (1) or (2) of subsection (a) shall be subject to a fine of not more than \$250,000, imprisonment for not more than 5 years, or both.

### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 483—EX-PRESSING THE SENSE OF THE SENATE REGARDING THE DETENTION OF TIBETAN POLITICAL PRISONERS BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

Mr. BROWNBACK (for himself and Mr. DURBIN) submitted the following resolution; which was considered and agreed to:

##### S. RES. 483

Whereas, according to the Department of State and international human rights organizations, the Government of the People's Republic of China continues to commit widespread and well-documented human rights abuses in Tibet;

Whereas the People's Republic of China has yet to demonstrate its willingness to abide by internationally accepted standards of freedom of belief, expression, and association by repealing or amending laws and decrees that restrict those freedoms;

Whereas the Government of the People's Republic of China has detained hundreds of Tibetan nuns, monks, and lay persons as political prisoners for speaking out against China's occupation of Tibet and for their efforts to preserve Tibet's distinct national identity;

Whereas Phuntsog Nyidron was arrested on October 14, 1989, together with 5 other nuns, for participating in a peaceful protest against China's occupation of Tibet;

Whereas, on February 26, 2004, following a sustained international campaign on her behalf, the Government of the People's Republic of China released Phuntsog Nyidron from detention after she served more than 14 years of her 16-year sentence;

Whereas Tenzin Delek, a prominent Tibetan religious leader, and 3 other monks were arrested on April 7, 2002, during a nighttime raid on Jamyang Choekhorling monastery in Nyagchu County, Tibetan Autonomous Prefecture;

Whereas, following a closed trial and more than 8 months of incommunicado detention, Tenzin Delek and another Tibetan, Lobsang Dhondup, were convicted of inciting separatism and for their alleged involvement in a series of bombings on December 2, 2002;

Whereas Lobsang Dhondup was sentenced to death and Tenzin Delek was sentenced to death with a 2-year suspension;

Whereas the Government of the People's Republic of China told senior officials of the United States and other governments that the cases of Lobsang Dhondup and Tenzin Delek would be subjected to a "lengthy review" by the Supreme People's Court prior to the death sentences being carried out;

Whereas the Supreme People's Court never carried out this review, and Lobsang Dhondup was executed on January 26, 2003;

Whereas the Government of the People's Republic of China has failed to produce any evidence that either Lobsang Dhondup or Tenzin Delek were involved in the crimes for which they were convicted, despite repeated

requests from officials of the United States and other governments;

Whereas the Government of the People's Republic of China continues to imprison Tibetans for engaging in peaceful efforts to protest China's repression of Tibetans and preserve the Tibetan identity;

Whereas Tibetan political prisoners are routinely subjected to beatings, electric shock, solitary confinement, and other forms of torture and inhumane treatment while in Chinese custody;

Whereas the Government of the People's Republic of China continues to exert control over religious and cultural institutions in Tibet, abusing human rights through the torture, arbitrary arrest, and detention without fair or public trial of Tibetans who peacefully express their political or religious views or attempt to preserve the unique Tibetan identity; and

Whereas the Government of the People's Republic of China has paroled individual political prisoners for good behavior or for medical reasons in the face of strong international pressure, but has failed to make the systemic changes necessary to provide minimum standards of due process or protections for basic civil and political rights: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) the Government of the People's Republic of China is in violation of international human rights standards by detaining and mistreating Tibetans who engage in peaceful activities to protest China's repression of Tibetans or promote the preservation of a distinct Tibetan identity;

(2) sustained international pressure on the Government of the People's Republic of China is essential to improve the human rights situation in Tibet and secure the release of Tibetan political prisoners;

(3) the Government of the United States should—

(A) raise the cases of Tenzin Delek and other political prisoners at every opportunity with officials from the People's Republic of China; and

(B) work with other governments concerned about human rights in China, including the Tibet Autonomous Region and other Tibetan areas, to encourage the release of political prisoners and promote systemic improvement of human rights in China; and

(4) the Government of the People's Republic of China should, as a gesture of goodwill and in order to promote human rights, immediately release all political prisoners, including Tenzin Delek.

#### SENATE RESOLUTION 484—TO HONOR AND THANK ROBERT RAY HOWE

Mr. FRIST submitted the following resolution; which was considered and agreed to:

##### S. RES. 484

Whereas Assistant Chief Robert Ray Howe, a native of the State of Wyoming, was appointed as a United States Capitol Police Private on March 4, 1971;

Whereas Assistant Chief Howe, throughout his career, has distinguished himself through countless commendations and recognition for professionalism and extraordinary service for the United States Capitol Police;

Whereas Assistant Chief Howe, through extraordinary efforts and dedication during his outstanding career of over thirty (30) years, rose from the rank of private to the position of Assistant Chief of Police, the second in command of the United States Capitol Police;

*Resolved*, That the Senate hereby honors and thanks Robert Ray Howe and his family