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INTERNATIONAL ADOPTION SIMPLIFICATION ACT

JULY 14, 2010.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 1376]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 1376), to restore immunization and sibling age exemptions for children adopted by United States citizens under the Hague Convention on Intercountry Adoption to allow their admission into the United States, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

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I. BACKGROUND AND PURPOSE OF THE INTERNATIONAL ADOPTION SIMPLIFICATION ACT

A. BACKGROUND

1. Immunization

In November, 1997, the Immigration and Nationality Act (INA) was amended to exempt adoptees to the United States from the immunization ineligibility provision for immigrants in the Act. This

exemption allowed such orphans adopted by American citizens to provide certain vaccination documentation up to 30 days after entering the United States. This ensured that these orphans could receive safe and sanitary immunizations in American medical facilities as part of their adoption process.

In October, 2000, the INA was amended again by the Intercountry Adoption Act (IAA), which set forth a new policy for adoptions of children from foreign countries that are signatories to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Convention) or who are emigrating from such a country for U.S. adoption. Unfortunately, the IAA neglected to specify that the immunization ineligibility exemption which had applied to all adoptees previously should also apply to adoptees adopted from foreign states that are signatories to the Hague Convention. As a result, when the Hague Convention entered into force on April 1, 2008, adoptees adopted within foreign states that are signatories to the Hague Convention were not exempted from the immunization ineligibility provision.

As a result, unlike other orphan adoptees exempted from the immunization ineligibility provision for immigrants as discussed above, adoptees adopted from foreign states that are signatories to the Hague Convention are required to receive their immunizations under potentially unsafe and unsanitary conditions in a foreign host country before entering the United States. This unintentional and harmful inequity between the two types of adoptees in the INA persists to this day.

2. Siblings

In December, 1999, the INA was amended to permit the adoption of a child aged 16 or 17 when the child's natural (birth) sibling had been adopted by a U.S. citizen. This amendment allowed U.S. citizens to adopt sibling pairs even if one of the adoptees was over the age of 15 and under the age of 18.

However, as happened with the immunization provision discussed above, when the IAA was signed into law in 2000, it also neglected to specify that the provision concerning sibling adoption should also apply to adoptees adopted from foreign countries that are signatories to the Hague Convention. As a result, when the Hague Convention entered into force on April 1, 2008, the older siblings of children adopted by American families from Hague compliant countries were not adoptable once they turned 16. Hence, another inequity between the two types of adoptees was created unintentionally.

B. PURPOSE

The purpose of the International Adoption Simplification Act is to equalize requirements and exemptions for all foreign adoptees by correcting the unintentional inequities created by the October, 2000, passage of the Intercountry Adoption Act. The International Adoption Simplification Act would both exempt adoptees adopted from foreign states that are signatories to the Hague Convention from the immunization ineligibility provision and allow for the adoption of sibling pairs from countries that are signatories to the Hague Convention, even if one of the adoptees is aged 16 or 17. In

this manner, all categories of adoptees would be subject to the same requirements and exemptions.

The provisions in the International Adoption Simplification Act would apply retroactively as if enacted on April 1, 2008, the date the Hague Convention went into force. This means that upon passage of the bill, any older sibling that was under the age of 18 on April 1, 2008 but could not be adopted with younger siblings because of his/her residence in a Hague-compliant country, would now be adoptable.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

On June 25, 2009 Senator Klobuchar introduced the International Adoption Simplification Act. Senators Landrieu, Inhofe, Feingold, and Durbin were original cosponsors. The bill was referred to the Committee on the Judiciary. On October 14, 2009, Senators Leahy and Lugar joined as cosponsors of the bill.

The Committee considered S. 1376 on December 17, 2009. In Senator Klobuchar's absence, Senator Leahy offered on Senator Klobuchar's behalf an amendment in the nature of a substitute which made technical edits to the bill. The amendment in the nature of a substitute clarified the definition of "child" under current immigration law for the process for sibling adoptions and added an effective date of April 1, 2008. The amendment was accepted by a voice vote.

The Committee then voted to report the International Adoption Simplification Act, with an amendment in the nature of a substitute, favorably to the Senate by unanimous consent.

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title

This section provides that the legislation may be cited as the "International Adoption Simplification Act."

Section 2. Exemption from vaccination documentation requirement

This section amends the definition of "child" in the INA to include within the exemption from required admissions vaccination documentation those children who have been adopted from any foreign country that is a signatory to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Convention) or who are emigrating from such a country for U.S. adoption.

Section 3. Sibling adoptions

This section amends the definition of "child" in the INA to exempt from required admissions vaccination documentation any child who is under the age of 18 at the time an immediate relative status petition is filed on his or her behalf, if that child has been adopted abroad or is coming for U.S. adoption, where that child is the natural sibling of:

- An adopted child from a Hague Convention signatory country.
- A child adopted under the age of 16 who has lived with the adoptive parents for at least two years, or a child who has been abused.

- An orphan who was under the age of 16 at the time an immediate relative status petition was filed on his or her behalf.

Section 4. Effective date

This section ensures that the amendments made by this Act shall take effect as if enacted on April 1, 2008. This provision ensures that any older sibling that was under the age of 18 on April 1, 2008 but could not be adopted with younger siblings because of his/her residence in a Hague-compliant country would now be adoptable.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MAY 14, 2010.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1376, the International Adoption Simplification Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1376—International Adoption Simplification Act

S. 1376 would exempt certain children being adopted from foreign countries and their siblings from the requirement that they be immunized before they enter the United States. The bill would apply to adoptions on or after April 1, 2008.

Enacting this legislation could affect direct spending of immigration fees by the Departments of State and Homeland Security and the cost of certain federal assistance programs. Because the bill could affect direct spending and revenues, pay-as-you-go procedures would apply. However, based on information from the Department of State, CBO expects the bill would affect few people and we estimate that enacting S. 1376 would have no significant budgetary impact.

S. 1376 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

The passage of S. 1376 may require the Department of Homeland Security to promulgate regulations governing the retroactive processing of certain adoptions.

VI. CONCLUSION

The International Adoption Simplification Act (S. 1376) corrects two critical, unintended inequities in policy for adoption of children from Hague Convention signatory and non-Hague Convention sig-

natory countries. The physical health, as well as the emotional well-being of foreign adoptees to the United States from non-Hague-compliant countries, is jeopardized by the current inequities in immigration law. It is imperative that the amendments in S. 1376 take effect to ensure that all types of adoptees are subject to the same requirements and exemptions.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1376, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 8—ALIENS AND NATIONALITY

* * * * *

CHAPTER 12—IMMIGRATION AND NATIONALITY

Subchapter II—Immigration

* * * * *

§ 1182. Inadmissible Aliens

* * * * *

(C) Exception from immunization requirement for adopted children 10 years of age or younger.—Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,

(ii) is described in **section 101(b)(1)(F)** *subparagraph (F) or (G) of section 101(b)(1)*; of this title, and

* * * * *

Subchapter I—General Provisions

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§ 1101. Definitions

* * * * *

[(G)] a child, under the age of sixteen at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 1151(b) of this title, who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States, by a United States citizen and spouse jointly, or by an unmarried United States citizen at least 25 years of age—

[(i) if—

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

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

【(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

【(IV) the Attorney General is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Attorney General may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

【(V) in the case of a child who has not been adopted

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

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

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

(G)(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, Provided, That—

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

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because

of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

(IV) the Attorney General is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Attorney General may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

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

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

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

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

(iii) subject to the same provisos as in clauses (i) and (ii), a child who

(I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);

(II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and

(III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 201(b).