

Legislative Bulletin.....March 12, 2002

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H.R. 2175 — Born-Alive Infants Protection Act of 2002 (Chabot)

Order of Business: The bill will be considered on Tuesday, March 12, 2002, under a motion to suspend the rules and pass the bill.

Note: The Born Alive Infant Protection Act was first introduced in the 106th Congress by Rep. Charles Canady (R-FL). It passed the House as H.R. 4292 on September 26, 2000, 380-15, with 3 Members voting Present (Roll no. 495).(<http://clerkweb.house.gov/cgi-bin/vote.exe?year=2000&rollnumber=495>). The Senate failed to take up the bill. In the 1st session of the 107th Congress, similar born-alive language was included in both the House- and the Senate-passed Patients Bill of Rights (H.R. 2563/S. 1052), but the bill has stalled for other reasons in the conference committee.

Summary: H.R. 2175 amends the U.S. Code by clarifying that newborns fall under the definitions of “person,” “human being,” “child,” and “individual” as they are used in any act of the Congress or any administrative ruling, regulation, or interpretation. The bill specifically states, “Nothing in this section shall be construed to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being ‘born alive’ as defined in this section.”

H.R. 2175 states:

“In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words ‘person,’ ‘human being,’ ‘child,’ and ‘individual,’ **shall include every infant member of the species homo sapiens who is born alive at any stage of development**”(emphasis added).

H.R. 2175 definition of “born alive:”

“[T]he complete expulsion or extraction from his or her mother of that member [of the species homo sapiens], at any stage of development, who after such

expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.”

Additional Background:

H.R.2175 was introduced partly in response to testimony that “live-birth abortions” are performed around the country. A registered nurse from Illinois testified before Congress that she witnessed pregnant mothers being prematurely induced and delivering living premature infants that were then left to die without any medical attention. The hospital where this occurred defended its actions by saying that the newborns were intended for abortion.

In other instances, babies whose lungs are insufficiently developed to permit sustained survival are often spontaneously delivered alive, and may live for hours or days, while some are born alive following deliveries induced for medical reasons. The Born Alive Infant Protection Act would ensure that any infant born alive is treated with the dignity and respect of a human being and given appropriate medical attention regardless of whether he or she was slated for death by abortion.

Early Opposition: In a July 2000 press release, the National Abortion and Reproductive Rights Action League (NARAL) declared the Born-Alive bill “attempts to inject Congress into what should be personal and private decisions about medical treatment in difficult and painful situations where a fetus has no chance for survival.” NARAL also stated, “The Act would effectively grant legal personhood to a pre-viable fetus—in direct conflict with *Roe*—and would inappropriately inject prosecutors and lawmakers in to the medical decision-making process.” [Note: the bill refers only to newborns, and it appears from NARAL’s release that the group equates “newborn” with “fetus”]
http://www.nrlc.org/Federal/Born_Alive_Infants/naralbornalive.PDF. In June of last year, NARAL reversed course and released a statement saying, “NARAL does not oppose passage of the Born Alive Infants Protection Act.”

Additional Information can be found at http://www.nrlc.org/Federal/Born_Alive_Infants/index.html and a copy of a George Will column entitled, “Does a Woman Having an Abortion Have a Right to a Dead Baby, Even if it is Born Alive?” can be found at <http://www.house.gov/burton/RSC/born-ali.htm>

Cost to Taxpayers : CBO estimates that the effect of H.R. 2175 on the federal budget would be negligible. CBO assumes that the bill would have no effect on trust and estate law, negligible effect on federal tort law, and a limited effect in the area of criminal law (since the bill is confined to federal jurisdictions). Anyone prosecuted and convicted under H.R. 2175 could be subject to criminal fines and the fines would be deposited in the federal Crime Victims Fund and spent in subsequent years. CBO expects, however, that collections would be negligible because it is not likely that the federal government would pursue many cases under H.R. 2175.

Does the Bill Create New Federal Programs or Rules?: The bill clarifies that living newborns are included in the federal definitions of “person,” “human being,” “child,” and “individual.”

Constitutional Authority: The Judiciary Committee, in Report #107-186, finds Constitutional Authority under Article I, Section 8, Clause 18 (all laws necessary and proper).

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H.R. 1885—Section 245(i) Extension Act (Gekas)

Concur in Senate Amendment with an Amendment

Order of Business: The bill is scheduled to be considered today, March 12, 2002, under a motion to suspend the rules and pass the bill.

Additional Information: The border security portions of this bill have already passed the House by voice vote on December 2001 as H.R. 3525. On May 21, 2001, the House passed H.R. 1885 (245(i) Extension) by a vote of 336 to 43.

<http://clerkweb.house.gov/cgi-bin/vote.exe?year=2001&rollnumber=127>

Summary:

245(i) Provision: Extends until November 30, 2002 the time in which illegal immigrants may apply for legal residence while remaining in the U.S. Illegal immigrants would be eligible for permanent residence only on the basis of familial relationship (marriage to a U.S. citizen) or labor certification established prior to August 15, 2001. In addition, such illegal immigrants would be required to pay a \$1,000 fine. Under current law, illegal immigrants would be required to return to their own country while they applied for legal residence.

Border Security Provisions:

Funding

- Directs the Attorney General, during each of FY 2002 through 2006, to increase the number of Immigration and Naturalization (INS) investigators and inspectors by at least 200 full-time employees (for each category) over the number authorized by the USA PATRIOT ACT
- Waives INS personnel limits
- Authorizes “such sums as may be necessary” to increase INS staff
- Authorizes “such sums as may be necessary” to increase the annual rate of basic pay for certain INS staffers

- Authorizes “such sums as may be necessary” to train INS staffers on an ongoing basis
- Authorizes “such sums as may be necessary” for the State Department to implement enhanced security measures for the review of visa applicants
- Authorizes an additional \$150 million to the INS for improvements in technology and infrastructure for border security
- Allows an increase in land border fees to help offset technology costs
- Authorizes “such sums as may be necessary” for facility improvements and expansions for the INS and the State Department
- Sets machine-readable visa fees charged by the State Department and allows additional service fees to be charged. Collected fees would be credited as an offset to State Department appropriations.

Interagency Information Sharing

- Directs U.S. law enforcement and intelligence entities to share alien admissibility- and deportation-related information with the INS and the Department of State until implementation of the new information-sharing plan (described below)
- Directs the President to: (1) issue a report on admission- and deportation-related law enforcement and intelligence information needed by the INS and the State Department, and (2) develop a related information-sharing plan within one year of enactment of the USA PATRIOT ACT
- Requires such plan to provide source and privacy protections and provides criminal penalties for information misuse
- Directs the INS to fully integrate its databases and data systems
- Directs the President to develop and implement an “interoperable law enforcement and intelligence electronic data system” (with name-matching and linguistic capacity, including at least four priority languages) for visa, admissibility, or deportation determination purposes, which shall include the INS integrated system.
- Authorizes appropriations of “such sums as are necessary” for the name-matching, linguistic, and reporting activities in this section
- Directs the President to establish the Commission on Interoperable Data Sharing, which shall: (1) monitor information misuse protections under the alien screening plan; (2) provide oversight of the interoperable data sharing system; and (3) report annually to Congress
- Authorizes appropriations of “such sums as may be necessary” for the Commission

Visa Issuance

- Requires the Secretary of State, upon issuance of an alien visa, to provide the INS with an electronic version of the alien's visa file prior to the alien's U.S. entry
- Sets forth technology standards and interoperability requirements respecting the development and implementation of the integrated entry and exit data system (as required by Public Law 106-215) and related tamper-resistant, machine-readable documents containing biometric identifiers (operational by October 26, 2003)

- Requires a visa-waiver country, in order to maintain program participation, to certify by October 26, 2003, that it has a program to issue to its nationals qualifying machine-readable passports that are tamper-proof and contain biometric identifiers
- Authorizes appropriations of “such sums as may be necessary” to carry out these visa-issuance requirements, “including reimbursement to international and domestic standards organizations”
- Authorizes “such sums as may be necessary” for the Secretary of State to: (1) establish a Terrorist Lookout Committee at each U.S. mission; (2) provide consular staff with visa screening training; and (3) provide for the use of terrorist-related intelligence in such activities' performance
- Prohibits the admission of an alien from a country designated to be a state sponsor of international terrorism unless the Secretary has determined that such individual does not pose a risk or security threat to the United States
- Conditions participation in the visa waiver program upon a country's timely reporting to the United States of its stolen blank passports.
- Requires the INS to perform a check of lookout databases prior to permitting an alien's U.S. admission
- Directs the Secretary and the Attorney General, as appropriate, within 72 hours of notification of a lost or stolen U.S. or foreign passport, to enter such passport's identification number into the interoperable data system. Provides for similar procedures for previous lost or stolen passports and for the transition period to the new interoperable data system.
- Directs the Attorney General to ensure that refugees and aliens being granted asylum are issued work authorizations that contain fingerprint and photo identification

Admission and Inspection of Aliens

- Authorizes “such sums as may be necessary” for the President to study the feasibility of establishing a North American National Security Program (among United States, Canada, Mexico), including consideration of alien pre-clearance and pre-inspection.
- Requires commercial aircraft or vessels arriving at, or departing from, the United States to provide immigration officers with specified passenger, other occupant, and crew manifest information
- Prohibits air carrier entry until such information has been provided
- Provides monetary and non-entry penalties for noncompliance
- Requires electronic manifest transmission beginning January 1, 2003;
- Allows the Attorney General the ability to waive the manifest requirements
- Directs the President to conduct a feasibility study regarding such provisions' extension to commercial land carriers
- Directs INS to adequately staff ports of entry (so that no passenger waits more than 45 minutes for inspection).

Foreign Students and Exchange Visitors

- Instructs the Attorney General to develop an electronic means of verifying and monitoring the foreign student and exchange visitor information program, including aspects of: (1) documentation and visa issuance, (2) U.S. admission, (3) institution notification, (4) documentation transmittal, and (5) registration and enrollment
- Requires an institution to notify the INS of the failure of a foreign student or exchange visitor to enroll within 30 days of the registration deadline
- Increases student data collection requirements
- Sets forth transitional foreign student monitoring requirements, including: (1) restrictions on visa issuance, (2) INS notification of visa issuance, (3) institution notification of U.S. entry, and (4) INS notification (by the institution) of failure to enroll
- Directs the Attorney General to provide the Secretary of State with a list of institutions approved to accept foreign students or exchange visitors
- Authorizes appropriations of “such sums as may be necessary” for the new requirements for foreign students and exchange visitors
- Provides for INS and Department of State review of institutions authorized to enroll or sponsor foreign students and exchange visitors and establishes punishments for failure to comply with requirements

Miscellaneous Provisions

- Amends the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to extend by one year the deadline for presentation of biometric border crossing identification cards
- Directs the Comptroller General to determine the feasibility of requiring each nonimmigrant alien to report annually his or her address and employer's address to the INS
- Directs the Secretary of State and the INS to study various approaches for encouraging or requiring Mexico, Canada, and visa waiver countries to develop an intergovernmental network of interoperable international electronic data systems
- Maintains that this bill shall not be construed to impose requirements that are inconsistent with the North American Free Trade Agreement, or to require additional documents for certain nonimmigrant emergency or in-transit-alien for whom documentary requirements are waived
- Directs the Attorney General to report annually respecting aliens who fail to appear at removal proceedings after release on their own recognizance
- Directs the Department of State to retain every nonimmigrant visa application in judicially and administratively admissible form for a period of seven years from the date of application
- Directs the appropriate authorities to study and report to Congress on several matters addressed in this bill

Possible RSC Concerns: Some RSC Members have raised concerns regarding the 245(i) provisions. Some Members believe that allowing illegal aliens to remain in the U.S. while applying for permanent residency:

- Encourages and rewards those who enter the country illegally; and
- Endangers national security by eliminating the face-to-face interviews and background checks conducted in the immigrant's home country where expertise in the local language, knowledge of local extremist groups and access to local records provides for more effective screening.

Cost to Taxpayers: Mr. Shadegg requested a cost estimate from CBO back in December 2001 for the border security provisions of this bill (passed by the House as H.R. 3525) but has not received the cost estimate yet.

Does the Bill Create New Federal Programs or Rules?: Yes, as detailed above.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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H.R. 1499 —To amend the District of Columbia College Access Act of 1999 to permit individuals who graduated from a secondary school prior to 1998 and individuals who enroll in an institution of higher education more than 3 years after graduating from a secondary school to participate in the tuition assistance programs under such Act, and for other purposes. (Norton)

Concur in the Senate Amendment with an Amendment

Order of Business: The bill will be considered under suspension of the rules on Tuesday, March 12, 2002.

Additional Information: The House considered H.R. 1499 under suspension of the rules on July 30, 2001. The bill passed by voice vote. Link to RSC Legislative Bulletin: <http://www.house.gov/burton/RSC/LB73001.PDF>

Summary: This bill expands upon a law passed in 1999, sponsored by Rep. Tom Davis (R-VA). The 1999 law (HR 974) was voice voted twice in the House (5/24/99 and 11/1/99). The bill established the D.C. Tuition Assistance Program to provide taxpayer-funded scholarships for undergraduate education to D.C. residents attending state colleges and universities anywhere in the country. The scholarships are equal to the

lesser of the difference between in-state and out-of-state tuition or \$10,000 a year. Eligible students attending private schools in D.C., Maryland, or Virginia, may also receive a scholarship of \$2,500 a year. The only students eligible for the program are those graduating or receiving GEDs since January 1, 1998, who begin undergraduate studies within 3 years of graduation, and who have resided in D.C. for 12 consecutive months prior to beginning undergraduate studies. There are no income eligibility requirements. In 2000, 3,200 D.C. students applied for funding.

H.R. 1499 as amended will change the law to:

1. Permit individuals who begin undergraduate studies within three years of graduating high school or receiving their GED (irrespective of the year of graduation) to participate provided they lived in D.C. for at least the previous 12 months;
2. Permit individuals who begin undergraduate studies beyond three years of graduating high school or receiving their GED to participate provided they lived in D.C. for at least the previous 5 years;
3. Prohibits foreign nationals from participating in the program;
4. Make all private historically black colleges eligible institutions (currently only private historically black colleges in Virginia and Maryland are eligible);
5. Require the DC government to establish a dedicated account for the program;
6. Cap the authorization for federal funding at \$17 million a year (currently the program is authorized to receive such sums as may be necessary).

Cost to Taxpayers: CBO has estimated that fully funding current law would cost \$34 million in 2003 rising to \$48 million in 2005. The eligibility expansions proposed in H.R. 1499 would raise the cost to \$44 million in 2003 rising to \$56 million in 2005. However, the House amendment to the Senate bill caps the appropriation authorization at \$17 million a year. In order to fully fund the program, D.C. will be required to provide local funds.

Constitutional Authority: A committee report citing Constitutional Authority is unavailable.

Does the Bill Create New Federal Programs or Rules: YES, it expands eligibility for residents of D.C. to qualify for federal grants for undergraduate tuition.

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**H.Con.Res. 339—Expressing the sense of the Congress regarding the
Bureau of the Census on the 100th anniversary of its establishment
(Miller, Dan)**

Order of Business: The resolution is scheduled to be considered on Tuesday, March 12th, under a motion to suspend the rules and pass the bill.

Summary: The resolution states that Congress recognizes the 100th anniversary of the establishment of the Bureau of the Census and “acknowledges the achievements and contributions of the Bureau of the Census, and of its current and former employees, to the United States.”

The resolution also states that:

- “Federal, State, and local governments use data collected by the Bureau of the Census in the distribution of funds and in the formulation of public policy in such areas as education, health and veterans' services, nutrition, crime prevention, and economic development, among others.”
- “The Bureau of the Census supplies statistical data to the Bureau of Labor Statistics, the Bureau of Economic Analysis, the Board of Governors of the Federal Reserve System, and other Government agencies charged with measuring and reporting on the health of the Nation's economy.”
- “The Bureau of the Census is the Nation's largest data collection agency, collecting data used by other Government agencies, tribal governments, institutions, universities, and nonprofit organizations, and supplying information on poverty, unemployment, crime, education, marriage and family, and transportation.”

Additional Background: Regarding the decennial census, Article I, Section 2, Clause 3 of the U.S. Constitution states that “the actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten years, in such Manner as they shall by Law direct.”

According to the resolution, Congress established a permanent “Census Office” within the Department of the Interior on March 6, 1902, and, in 1903, transferred that office to what was then the newly established Department of Commerce and Labor (now the Department of Commerce). Over 500,000 paid employees took part in the 2000 census.

According to the Census Bureau, its mission is “To be the preeminent collector and provider of timely, relevant, and quality data about the people and economy of the United States.” (<http://www.census.gov/main/www/aboutus.html>)

Possible RSC Concerns: Several RSC Members have expressed serious concerns about this resolution. These Members believe that since the Founding Fathers established the decennial census for the sole purpose of apportioning congressional representatives among the states, Congress should not praise a Census Bureau that has clearly gone beyond this constitutional mandate by collecting additional, often personal information on American citizens for use in government social programs.

The Census Bureau provides a defense of this expansion of the census on its website (<http://www.census.gov/acsd/www/history.html>):

Down through the years, the Nation's needs and interests became more complex. This meant that there had to be statistics to help

people understand what was happening and have a basis for planning. The content of the decennial census changed accordingly. In 1810 the first inquiry on manufactures, quantity and value of products; in 1840 on fisheries were added, and in 1850, the census included inquiries on social issues, such as taxation, churches, pauperism, and crime. The censuses also spread geographically, to new States and Territories added to the Union, as well as to other areas under U.S. sovereignty or jurisdiction. There were so many more inquiries of all kinds in the censuses of 1880 and 1890 that almost a full decade was needed to publish all the results.

Cost to Taxpayers : The resolution would authorize no expenditure.

Does the Bill Create New Federal Programs or Rules?: No.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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