SEC. 1045. CONSULAR IMMUNITIES.

The Secretary of State, in consultation with the Attorney General, may, on the basis of reciprocity and under such terms and conditions as the Secretary may determine, specify privileges and immunities for a consular post, the members of a consular post and their families which result in more favorable or less favorable treatment than is provided in the Vienna Convention on Consular Relations, of April 24, 1963 (T.I.A.S. 6820), entered into force for the United States December 24, 1969.

Section-by-Section Analysis

Officers and employees at our consular posts, who include not only Department of State employees but other agency employees as well, currently enjoy only immunity for their official acts in both the criminal and civil contexts. Commissioned consular officers enjoy a limited immunity from arrest – that is, they can only be arrested for a grave crime and pursuant to warrant -- but many officers at post, including military and law enforcement personnel, do not enjoy even this limited protection from arrest. Because the decision as to whether an act is official or not is often made by the local court system, U.S. officials at consular posts are at risk of arrest and detention by local authorities until and unless the court determines the act was official. Family members of consular personnel enjoy no immunity and can be arrested or detained at any time. While the vast majority of our consular officials and their families do not encounter law enforcement, consular personnel in certain countries are more vulnerable to harassment through the use of the legal system, either by local law enforcement or the local population. In this respect, it is noted that criminal actions can be initiated by individuals in many legal systems.

The Department does not have a statutory mechanism to act quickly to put in place protections for our consular personnel in response to changing political conditions in a particular country, though there is a statutory mechanism in place to provide appropriate protections for personnel assigned to U .S. embassies and missions covered under the Vienna Convention on Diplomatic Relations. *See* 22 U.S.C. 254c. Thus, in order to obtain necessary privileges and immunities for U.S. personnel and their families at our consulates abroad, the proposed legislation would provide statutory authority for the Secretary of State to afford privileges and immunities to foreign consular employees on a reciprocal basis in order to provide needed protections to U.S. personnel abroad that are more favorable than those set forth in the Vienna Convention on Consular Relations. This provision would also confirm the Secretary's authority to extend less favorable treatment to the consular officers of foreign state where our consular officers are afforded less favorable treatment than set forth in the Vienna Convention.

Unlike 22 U.S.C. § 254c, this proposal also includes a requirement that the Secretary of State consult with the Attorney General because of the Justice Department's jurisdiction over

criminal matters. 22 U.S.C. § 254c pertains to the Vienna Convention on Diplomatic Relations, which provides complete criminal immunity for most accredited personnel.