

104TH CONGRESS
2D SESSION

H. R. 4000

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 1996

Received

AN ACT

To amend title 10, United States Code, to restore the provisions of chapter 76 of that title (relating to missing persons) as in effect before the amendments made by the National Defense Authorization Act for Fiscal Year 1997.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. RESTORATION OF MISSING PERSONS AUTHORI-**
2 **TIES APPLICABLE TO DEPARTMENT OF DE-**
3 **FENSE AS IN EFFECT BEFORE ENACTMENT**
4 **OF NATIONAL DEFENSE AUTHORIZATION ACT**
5 **FOR FISCAL YEAR 1997.**

6 (a) APPLICABILITY TO DEPARTMENT OF DEFENSE
7 CIVILIAN EMPLOYEES AND CONTRACTOR EMPLOYEES.—

8 (1) Section 1501 of title 10, United States Code, is
9 amended—

10 (A) by striking out subsection (c) and inserting
11 in lieu thereof the following:

12 “(c) COVERED PERSONS.—Section 1502 of this title
13 applies in the case of the following persons:

14 “(1) Any member of the armed forces on active
15 duty who becomes involuntarily absent as a result of
16 a hostile action, or under circumstances suggesting
17 that the involuntary absence is a result of a hostile
18 action, and whose status is undetermined or who is
19 unaccounted for.

20 “(2) Any civilian employee of the Department
21 of Defense, and any employee of a contractor of the
22 Department of Defense, who serves with or accom-
23 panies the armed forces in the field under orders
24 who becomes involuntarily absent as a result of a
25 hostile action, or under circumstances suggesting
26 that the involuntary absence is a result of a hostile

1 action, and whose status is undetermined or who is
2 unaccounted for.”; and

3 (B) by adding at the end the following new sub-
4 section:

5 “(f) SECRETARY CONCERNED.—In this chapter, the
6 term ‘Secretary concerned’ includes, in the case of a civil-
7 ian employee of the Department of Defense or contractor
8 of the Department of Defense, the Secretary of the mili-
9 tary department or head of the element of the Department
10 of Defense employing the employee or contracting with the
11 contractor, as the case may be.”.

12 (2) Section 1503(c) of such title is amended—

13 (A) in paragraph (1), by striking out “one mili-
14 tary officer” and inserting in lieu thereof “one indi-
15 vidual described in paragraph (2)”;

16 (B) by redesignating paragraphs (2) and (3) as
17 paragraphs (3) and (4), respectively; and

18 (C) by inserting after paragraph (1) the follow-
19 ing new paragraph (2):

20 “(2) An individual referred to in paragraph (1) is the
21 following:

22 “(A) A military officer, in the case of an in-
23 quiry with respect to a member of the armed forces.

24 “(B) A civilian, in the case of an inquiry with
25 respect to a civilian employee of the Department of

1 Defense or of a contractor of the Department of De-
2 fense.”.

3 (3) Section 1504(d) of such title is amended—

4 (A) in paragraph (1), by striking out “who are”
5 and all that follows in that paragraph and inserting
6 in lieu thereof “as follows:

7 “(A) In the case of a board that will inquire
8 into the whereabouts and status of one or more
9 members of the armed forces (and no civilians de-
10 scribed in subparagraph (B)), the board shall be
11 composed of officers having the grade of major or
12 lieutenant commander or above.

13 “(B) In the case of a board that will inquire
14 into the whereabouts and status of one or more civil-
15 ian employees of the Department of Defense or con-
16 tractors of the Department of Defense (and no
17 members of the armed forces), the board shall be
18 composed of—

19 “(i) not less than three employees of the
20 Department of Defense whose rate of annual
21 pay is equal to or greater than the rate of an-
22 nual pay payable for grade GS–13 of the Gen-
23 eral Schedule under section 5332 of title 5; and

24 “(ii) such members of the armed forces as
25 the Secretary considers advisable.

1 “(C) In the case of a board that will inquire
2 into the whereabouts and status of both one or more
3 members of the armed forces and one or more civil-
4 ians described in subparagraph (B)—

5 “(i) the board shall include at least one of-
6 ficer described in subparagraph (A) and at least
7 one employee of the Department of Defense de-
8 scribed in subparagraph (B)(i); and

9 “(ii) the ratio of such officers to such em-
10 ployees on the board shall be roughly propor-
11 tional to the ratio of the number of members of
12 the armed forces who are subjects of the
13 board’s inquiry to the number of civilians who
14 are subjects of the board’s inquiry.”; and

15 (B) in paragraph (4), by striking out “section
16 1503(c)(3)” and inserting in lieu thereof “section
17 1503(c)(4)”.

18 (4) Paragraph (1) of section 1513 of such title is
19 amended to read as follows:

20 “(1) The term ‘missing person’ means—

21 “(A) a member of the armed forces on ac-
22 tive duty who is in a missing status; or

23 “(B) a civilian employee of the Depart-
24 ment of Defense or an employee of a contractor
25 of the Department of Defense who serves with

1 or accompanies the armed forces in the field
2 under orders and who is in a missing status.”.

3 (b) REPORT ON PRELIMINARY ASSESSMENT OF STA-
4 TUS.—(1) Section 1502 of such title is amended—

5 (A) in subsection (a)(2)—

6 (i) by striking out “10 days” and inserting
7 in lieu thereof “48 hours”; and

8 (ii) by striking out “Secretary concerned”
9 and inserting in lieu thereof “theater compo-
10 nent commander with jurisdiction over the
11 missing person”;

12 (B) in subsection (a), as amended by subpara-
13 graph (A)—

14 (i) by redesignating paragraphs (1) and
15 (2) as subparagraphs (A) and (B), respectively;

16 (ii) by inserting “(1)” after “COM-
17 MANDER.—”; and

18 (iii) by adding at the end the following new
19 paragraph:

20 “(2) However, if the commander determines that
21 operational conditions resulting from hostile action or
22 combat constitute an emergency that prevents timely re-
23 porting under paragraph (1)(B), the initial report should
24 be made as soon as possible, but in no case later than

1 ten days after the date on which the commander receives
2 such information under paragraph (1).”;

3 (C) by redesignating subsection (b) as sub-
4 section (c);

5 (D) by inserting after subsection (a), as amend-
6 ed by subparagraphs (A) and (B), the following new
7 subsection (b):

8 “(b) TRANSMISSION THROUGH THEATER COMPO-
9 NENT COMMANDER.—Upon reviewing a report under sub-
10 section (a) recommending that a person be placed in a
11 missing status, the theater component commander shall
12 ensure that all necessary actions are being taken, and all
13 appropriate assets are being used, to resolve the status
14 of the missing person. Not later than 14 days after receiv-
15 ing the report, the theater component commander shall
16 forward the report to the Secretary of Defense or the Sec-
17 retary concerned in accordance with procedures prescribed
18 under section 1501(b) of this title. The theater component
19 commander shall include with such report a certification
20 that all necessary actions are being taken, and all appro-
21 priate assets are being used, to resolve the status of the
22 missing person.”; and

23 (E) in subsection (c), as redesignated by sub-
24 paragraph (C), by adding at the end the following
25 new sentence: “The theater component commander

1 through whom the report with respect to the missing
2 person is transmitted under subsection (b) shall en-
3 sure that all pertinent information relating to the
4 whereabouts and status of the missing person that
5 results from the preliminary assessment or from ac-
6 tions taken to locate the person is properly safe-
7 guarded to avoid loss, damage, or modification.”.

8 (2) Section 1503(a) of such title is amended by strik-
9 ing out “section 1502(a)” and inserting in lieu thereof
10 “section 1502(b)”.

11 (3) Section 1504 of such title is amended by striking
12 out “section 1502(a)(2)” in subsections (a), (b), and
13 (e)(1) and inserting in lieu thereof “section 1502(a)”.

14 (4) Section 1513 of such title is amended by adding
15 at the end the following new paragraph:

16 “(8) The term ‘theater component commander’
17 means, with respect to any of the combatant com-
18 mands, an officer of any of the armed forces who
19 (A) is commander of all forces of that armed force
20 assigned to that combatant command, and (B) is di-
21 rectly subordinate to the commander of the combat-
22 ant command.”.

23 (c) FREQUENCY OF SUBSEQUENT REVIEWS.—Sub-
24 section (b) of section 1505 of such title is amended to read
25 as follows:

1 “(b) FREQUENCY OF SUBSEQUENT REVIEWS.—(1)

2 In the case of a missing person who was last known to
3 be alive or who was last suspected of being alive, the Sec-
4 retary shall appoint a board to conduct an inquiry with
5 respect to a person under this subsection—

6 “(A) on or about three years after the date of
7 the initial report of the disappearance of the person
8 under section 1502(a) of this title; and

9 “(B) not later than every three years there-
10 after.

11 “(2) In addition to appointment of boards under
12 paragraph (1), the Secretary shall appoint a board to con-
13 duct an inquiry with respect to a missing person under
14 this subsection upon receipt of information that could re-
15 sult in a change of status of the missing person. When
16 the Secretary appoints a board under this paragraph, the
17 time for subsequent appointments of a board under para-
18 graph (1)(B) shall be determined from the date of the re-
19 ceipt of such information.

20 “(3) The Secretary is not required to appoint a board
21 under paragraph (1) with respect to the disappearance of
22 any person—

23 “(A) more than 30 years after the initial report
24 of the disappearance of the missing person required
25 by section 1502(a) of this title; or

1 “(B) if, before the end of such 30-year period,
2 the missing person is accounted for.”.

3 (d) PENALTIES FOR WRONGFUL WITHHOLDING OF
4 INFORMATION.—Section 1506 of such title is amended—

5 (1) by redesignating subsection (e) as sub-
6 section (f); and

7 (2) by inserting after subsection (d) the follow-
8 ing new subsection (e):

9 “(e) WRONGFUL WITHHOLDING.—Except as pro-
10 vided in subsections (a) through (d), any person who
11 knowingly and willfully withholds from the personnel file
12 of a missing person any information relating to the dis-
13 appearance or whereabouts and status of a missing person
14 shall be fined as provided in title 18 or imprisoned not
15 more than one year, or both.”.

16 (e) INFORMATION TO ACCOMPANY RECOMMENDA-
17 TION OF STATUS OF DEATH.—Section 1507(b) of such
18 title is amended adding at the end the following new para-
19 graphs:

20 “(3) A description of the location of the body,
21 if recovered.

22 “(4) If the body has been recovered and is not
23 identifiable through visual means, a certification by
24 a practitioner of an appropriate forensic science that
25 the body recovered is that of the missing person.”.

1 (f) SCOPE OF PREENACTMENT REVIEW.—(1) Section
2 1509 of such title is amended—

3 (A) by redesignating subsection (c) as sub-
4 section (d); and

5 (B) by inserting after subsection (b) the follow-
6 ing new subsection (c):

7 “(c) SPECIAL RULE FOR PERSONS CLASSIFIED AS
8 ‘KIA/BNR’.—In the case of a person described in sub-
9 section (b) who was classified as ‘killed in action/body not
10 recovered’, the case of that person may be reviewed under
11 this section only if the new information referred to in sub-
12 section (a) is compelling.”.

13 (2)(A) The heading of such section is amended by
14 inserting “, **special interest**” after
15 “**Preenactment**”.

16 (B) The item relating to such section in the table of
17 sections at the beginning of chapter 76 of such title is
18 amended by inserting “, special interest” after
19 “Preenactment”.

20 (g) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect immediately after the enact-

1 ment of the National Defense Authorization Act for Fiscal
2 Year 1997.

Passed the House of Representatives September 27,
1996.

Attest:

ROBIN H. CARLE,
Clerk.