

107TH CONGRESS
2D SESSION

H. R. 4940

AN ACT

To amend title 38, United States Code, to enact into law eligibility requirements for burial in Arlington National Cemetery, and for other purposes.

107TH CONGRESS
2^D SESSION

H. R. 4940

AN ACT

To amend title 38, United States Code, to enact into law eligibility requirements for burial in Arlington National Cemetery, and for other purposes.

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. SHORT TITLE.**

2 This Act may be cited as the “Arlington National
3 Cemetery Burial Eligibility Act”.

4 **SEC. 2. PERSONS ELIGIBLE FOR BURIAL IN ARLINGTON NA-**
5 **TIONAL CEMETERY.**

6 (a) IN GENERAL.—Chapter 24 of title 38, United
7 States Code, is amended by adding at the end the fol-
8 lowing new section:

9 **“§ 2412. Arlington National Cemetery: persons eligi-**
10 **ble for burial**

11 “(a) PRIMARY ELIGIBILITY.—The remains of the fol-
12 lowing individuals may be buried in Arlington National
13 Cemetery:

14 “(1) Any member of the Armed Forces who
15 dies while on active duty.

16 “(2)(A) Any retired member of the Armed
17 Forces.

18 “(B) Any member or former member of a re-
19 serve component of the Armed Forces—

20 “(i) who served on active duty;

21 “(ii) who was honorably discharged from
22 such active duty service;

23 “(iii) who, at the time of death, was under
24 60 years of age; and

1 “(iv) who, but for age, would have been eli-
2 gible at the time of death for retired pay under
3 chapter 1223 of title 10.

4 “(3) Any former member of the Armed Forces
5 separated for physical disability before October 1,
6 1949, who—

7 “(A) served on active duty; and

8 “(B) would have been eligible for retire-
9 ment under the provisions of section 1201 of
10 title 10 (relating to retirement for disability)
11 had that section been in effect on the date of
12 separation of the member.

13 “(4) Any former member of the Armed Forces
14 whose last active duty military service terminated
15 honorably and who has been awarded one of the fol-
16 lowing decorations:

17 “(A) Medal of Honor.

18 “(B) Distinguished Service Cross, Air
19 Force Cross, or Navy Cross.

20 “(C) Distinguished Service Medal.

21 “(D) Silver Star.

22 “(E) Purple Heart.

23 “(5) Any former prisoner of war who dies on or
24 after November 30, 1993.

1 “(6) Any member of a reserve component of the
2 Armed Forces who dies in the performance of duty
3 while on active duty for training or inactive duty
4 training.

5 “(7) The President or any former President.

6 “(b) ELIGIBILITY OF FAMILY MEMBERS.—The re-
7 mains of the following individuals may be buried in Arling-
8 ton National Cemetery:

9 “(1) The spouse, surviving spouse (which for
10 purposes of this paragraph includes any remarried
11 surviving spouse, section 2402(5) of this title not-
12 withstanding), minor child, and, at the discretion of
13 the Superintendent, unmarried adult child of a per-
14 son listed in subsection (a), but only if buried in the
15 same gravesite as that person.

16 “(2)(A) The spouse, minor child, and, at the
17 discretion of the Superintendent, unmarried adult
18 child of a member of the Armed Forces on active
19 duty if such spouse, minor child, or unmarried adult
20 child dies while such member is on active duty.

21 “(B) The individual whose spouse, minor child,
22 and unmarried adult child is eligible under subpara-
23 graph (A), but only if buried in the same gravesite
24 as the spouse, minor child, or unmarried adult child.

1 “(3) The parents of a minor child or unmarried
2 adult child whose remains, based on the eligibility of
3 a parent, are already buried in Arlington National
4 Cemetery, but only if buried in the same gravesite
5 as that minor child or unmarried adult child.

6 “(4)(A) Subject to subparagraph (B), the sur-
7 viving spouse, minor child, and, at the discretion of
8 the Superintendent, unmarried adult child of a
9 member of the Armed Forces who was lost, buried
10 at sea, or officially determined to be permanently ab-
11 sent in a status of missing or missing in action.

12 “(B) A person is not eligible under subpara-
13 graph (A) if a memorial to honor the memory of the
14 member is placed in a cemetery in the national cem-
15 etery system, unless the memorial is removed. A me-
16 morial removed under this subparagraph may be
17 placed, at the discretion of the Superintendent, in
18 Arlington National Cemetery.

19 “(5) The surviving spouse, minor child, and, at
20 the discretion of the Superintendent, unmarried
21 adult child of a member of the Armed Forces buried
22 in a cemetery under the jurisdiction of the American
23 Battle Monuments Commission.

24 “(c) DISABLED ADULT UNMARRIED CHILDREN.—In
25 the case of an unmarried adult child who is incapable of

1 self-support up to the time of death because of a physical
2 or mental condition, the child may be buried under sub-
3 section (b) without requirement for approval by the Super-
4 intendent under that subsection if the burial is in the same
5 gravesite as the gravesite in which the parent, who is eligi-
6 ble for burial under subsection (a), has been or will be
7 buried.

8 “(d) FAMILY MEMBERS OF PERSONS BURIED IN A
9 GROUP GRAVESITE.—In the case of a person eligible for
10 burial under subsection (a) who is buried in Arlington Na-
11 tional Cemetery as part of a group burial, the surviving
12 spouse, minor child, or unmarried adult child of the mem-
13 ber may not be buried in the group gravesite.

14 “(e) EXCLUSIVE AUTHORITY FOR BURIAL IN AR-
15 LINGTON NATIONAL CEMETERY.—(1) Eligibility for bur-
16 ial of remains in Arlington National Cemetery prescribed
17 under this section is the exclusive eligibility for such bur-
18 ial.

19 “(2)(A) In the case of an individual not otherwise eli-
20 gible for burial under subsection (a) whose acts, service,
21 or contributions to the Armed Forces are so extraordinary
22 as to justify burial in Arlington National Cemetery, the
23 President may deem such individual eligible for burial
24 under subsection (a).

1 “(B) If the President deems an individual eligible for
2 burial in Arlington National Cemetery under subpara-
3 graph (A), the Secretary of the Army shall immediately
4 notify the chairmen and the ranking members of the Com-
5 mittee on Veterans’ Affairs of the Senate and House of
6 Representatives.

7 “(C)(i) Except as provided in clause (ii), the author-
8 ity under subparagraph (A) may not be delegated.

9 “(ii) The President may only delegate the authority
10 under subparagraph (A) to the Secretary of the Army.

11 “(f) APPLICATION FOR BURIAL.—(1) A request for
12 burial of remains of an individual in Arlington National
13 Cemetery shall be made to the Secretary of the Army or
14 to any other Federal official that the Secretary of the
15 Army may specify.

16 “(2) The Secretary, or other Federal official, may not
17 consider a request referred to in paragraph (1) that is
18 made before the death of the individual for whom burial
19 in Arlington National Cemetery is requested.

20 “(3) The President, or the Secretary, as the case may
21 be, may not consider a request to deem an individual eligi-
22 ble for burial in Arlington National Cemetery under sub-
23 section (e)(2) that is made before the death of the indi-
24 vidual for whom burial in Arlington National Cemetery is
25 requested.

1 “(g) REGISTER OF BURIED INDIVIDUALS.—(1) The
2 Secretary of the Army shall maintain a register of each
3 individual buried in Arlington National Cemetery and
4 shall make such register available to the public.

5 “(2) With respect to each such individual buried on
6 or after January 1, 2002, the register shall include a brief
7 description of the basis of eligibility of the individual for
8 burial in Arlington National Cemetery.

9 “(h) DEFINITIONS.—For purposes of this section:

10 “(1) The term ‘retired member of the Armed
11 Forces’ means—

12 “(A) any member of the Armed Forces on
13 a retired list who served on active duty and who
14 is entitled to retired pay;

15 “(B) any member of the Fleet Reserve or
16 Fleet Marine Corps Reserve who served on ac-
17 tive duty and who is entitled to retainer pay;
18 and

19 “(C) any member of a reserve component
20 of the Armed Forces who has served on active
21 duty and who has received notice from the Sec-
22 retary concerned under section 12731(d) of title
23 10, of eligibility for retired pay under chapter
24 1223 of title 10, United States Code.

1 “(2) The term ‘former member of the Armed
2 Forces’ includes a person whose service is considered
3 active duty service pursuant to a determination of
4 the Secretary of Defense under section 401 of Public
5 Law 95–202 (38 U.S.C. 106 note).

6 “(3) The term ‘Superintendent’ means the Su-
7 perintendent of Arlington National Cemetery.”.

8 (b) PUBLICATION OF UPDATED PAMPHLET.—Not
9 later than 180 days after the date of the enactment of
10 this Act, the Secretary of the Army shall publish an up-
11 dated pamphlet describing eligibility for burial in Arling-
12 ton National Cemetery. The pamphlet shall reflect the pro-
13 visions of section 2412 of title 38, United States Code,
14 as added by subsection (a).

15 (c) CLERICAL AMENDMENT.—The table of sections
16 at the beginning of chapter 24 of title 38, United States
17 Code, is amended by adding at the end the following new
18 item:

 “2412. Arlington National Cemetery: persons eligible for burial.”.

19 (d) TECHNICAL AMENDMENT.—Section 2402(5) of
20 title 38, United States Code, is amended by inserting “,
21 except section 2412(b)(1) of this title,” after “which for
22 purposes of this chapter”.

23 (e) CONFORMING REPEAL.—Section 1176 of the Na-
24 tional Defense Authorization Act for Fiscal Year 1994
25 (Public Law 103–160; 38 U.S.C. 2402 note) is repealed.

1 (f) EFFECTIVE DATE.—(1) Except as provided in
2 paragraph (2), section 2412 of title 38, United States
3 Code, as added by subsection (a), shall apply with respect
4 to individuals dying on or after the date of the enactment
5 of this Act.

6 (2) In the case of an individual buried in Arlington
7 National Cemetery before the date of the enactment of
8 this Act, the surviving spouse of such individual is deemed
9 to be eligible for burial in Arlington National Cemetery
10 under subsection (b) of such section, but only in the same
11 gravesite as such individual.

12 **SEC. 3. PERSONS ELIGIBLE FOR PLACEMENT IN THE COL-**
13 **UMBARIIUM IN ARLINGTON NATIONAL CEME-**
14 **TERY.**

15 (a) IN GENERAL.—Chapter 24 of title 38, United
16 States Code, is amended by adding after section 2412, as
17 added by section 2(a) of this Act, the following new sec-
18 tion:

19 **“§ 2413. Arlington National Cemetery: persons eligi-**
20 **ble for placement in columbarium**

21 “The cremated remains of the following individuals
22 may be placed in the columbarium in Arlington National
23 Cemetery:

24 “(1) A person eligible for burial in Arlington
25 National Cemetery under section 2412 of this title.

1 “(2)(A) A veteran whose last period of active
2 duty service (other than active duty for training)
3 ended honorably.

4 “(B) The spouse, surviving spouse, minor child,
5 and, at the discretion of the Superintendent of Ar-
6 lington National Cemetery, unmarried adult child of
7 such a veteran.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 at the beginning of chapter 24 of title 38, United States
10 Code, is amended by adding after section 2412, as added
11 by section 2(c) of this Act, the following new item:

 “2413. Arlington National Cemetery: persons eligible for placement in columbarium.”.

12 (c) CONFORMING AMENDMENT.—Section
13 11201(a)(1) of title 46, United States Code, is amended
14 by inserting after subparagraph (B), the following new
15 subparagraph:

16 “(C) Section 2413 (relating to placement
17 in the columbarium in Arlington National Cem-
18 etry).”.

19 (d) EFFECTIVE DATE.—Section 2413 of title 38,
20 United States Code, as added by subsection (a), and sec-
21 tion 11201(a)(1)(C), as added by subsection (c), shall
22 apply with respect to individuals dying on or after the date
23 of the enactment of this Act.

1 **SEC. 4. MONUMENTS IN ARLINGTON NATIONAL CEMETERY.**

2 (a) IN GENERAL.—Chapter 24 of title 38, United
3 States Code, is amended by adding after section 2413, as
4 added by section 3(a) of this Act, the following new sec-
5 tion:

6 **“§ 2414. Arlington National Cemetery: authorized**
7 **headstones, markers, and monuments**

8 “(a) GRAVESITE MARKERS PROVIDED BY THE SEC-
9 RETARY.—A gravesite in Arlington National Cemetery
10 shall be appropriately marked in accordance with section
11 2404 of this title.

12 “(b) GRAVESITE MARKERS PROVIDED AT PRIVATE
13 EXPENSE.—(1) The Secretary of the Army shall prescribe
14 regulations for the provision of headstones or markers to
15 mark a gravesite at private expense in lieu of headstones
16 and markers provided by the Secretary of Veterans Affairs
17 in Arlington National Cemetery.

18 “(2) Such regulations shall ensure that—

19 “(A) such headstones or markers are of simple
20 design, dignified, and appropriate to a military cem-
21 etery;

22 “(B) the person providing such headstone or
23 marker provides for the future maintenance of the
24 headstone or marker in the event repairs are nec-
25 essary;

1 “(C) the Secretary of the Army shall not be lia-
2 ble for maintenance of or damage to the headstone
3 or marker;

4 “(D) such headstones or markers are aestheti-
5 cally compatible with Arlington National Cemetery;
6 and

7 “(E) such headstones or markers are permitted
8 only in sections of Arlington National Cemetery au-
9 thorized for such headstones or markers as of Janu-
10 ary 1, 1947.

11 “(c) MONUMENTS.—(1) No monument (or similar
12 structure as determined by the Secretary of the Army in
13 regulations) may be placed in Arlington National Ceme-
14 tery except pursuant to the provisions of this subsection.

15 “(2) A monument may be placed in Arlington Na-
16 tional Cemetery if the monument commemorates—

17 “(A) the service in the Armed Forces of the in-
18 dividual, or group of individuals, whose memory is to
19 be honored by the monument; or

20 “(B) a particular military event.

21 “(3) No monument may be placed in Arlington Na-
22 tional Cemetery until the end of the 25-year period
23 beginning—

1 “(A) in the case of commemoration of service
2 under paragraph (1)(A), on the last day of the pe-
3 riod of service so commemorated; and

4 “(B) in the case of commemoration of a par-
5 ticular military event under paragraph (1)(B), on
6 the last day of the period of the event.

7 “(4) A monument may be placed only in those sec-
8 tions of Arlington National Cemetery designated by the
9 Secretary of the Army for such placement.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of chapter 24 of title 38, United States
12 Code, is amended by adding after section 2413, as added
13 by section 3(b) of this Act, the following new item:

 “2414. Arlington National Cemetery: authorized headstones, markers, and
 monuments.”.

14 (c) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall apply with respect to headstones,
16 markers, or monuments placed in Arlington National
17 Cemetery on or after the date of the enactment of this
18 Act.

19 **SEC. 5. PUBLICATION OF REGULATIONS.**

20 Not later than one year after the date of the enact-
21 ment of this Act, the Secretary of the Army shall publish
22 in the Federal Register any regulation proposed by the
23 Secretary to carry out sections 2 through 4.

1 **SEC. 6. APPLICATION OF DEPARTMENT OF VETERANS AF-**
2 **FAIRS BENEFIT FOR GOVERNMENT MARKERS**
3 **FOR MARKED GRAVES OF VETERANS AT PRI-**
4 **VATE CEMETERIES TO VETERANS DYING ON**
5 **OR AFTER SEPTEMBER 11, 2001.**

6 (a) **IN GENERAL.**—Subsection (d) of section 502 of
7 the Veterans Education and Benefits Expansion Act of
8 2001 (Public Law 107–103; 115 Stat. 994; 38 U.S.C.
9 2306 note) is amended by striking “the date of the enact-
10 ment of this Act” and inserting “September 11, 2001”.

11 (b) **EFFECTIVE DATE.**—The amendment made by
12 subsection (a) shall take effect as if included in the enact-
13 ment of such section 502.

Passed the House of Representatives July 22, 2002.

Attest:

Clerk.