

Union Calendar No. 440

104TH CONGRESS
2^D SESSION

H. R. 4000

[Report No. 104-806]

A BILL

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.

SEPTEMBER 17, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Union Calendar No. 440

104TH CONGRESS
2D SESSION

H. R. 4000

[Report No. 104-806]

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.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 1996

Mr. DORNAN, (for himself, Mr. GILMAN, Mr. SAM JOHNSON of Texas, Mr. TALENT, Mr. ALLARD, Mr. ARCHER, Mr. ARMEY, Mr. BACHUS, Mr. BAKER of California, Mr. BAKER of Louisiana, Mr. BALLENGER, Mr. BARR of Georgia, Mr. BARRETT of Nebraska, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mr. BASS, Mr. BATEMAN, Mr. BEREUTER, Mr. BILBRAY, Mr. BILIRAKIS, Mr. BLILEY, Mr. BLUTE, Mr. BOEHLERT, Mr. BOEHNER, Mr. BONILLA, Mr. BONO, Mr. BREWSTER, Mr. BROWNBACK, Mr. BRYANT of Tennessee, Mr. BUNN of Oregon, Mr. BUNNING of Kentucky, Mr. BURR, Mr. BURTON of Indiana, Mr. BUYER, Mr. CALLAHAN, Mr. CALVERT, Mr. CAMP, Mr. CANADY of Florida, Mr. CASTLE, Mr. CHABOT, Mr. CHAMBLISS, Mrs. CHENOWETH, Mr. CHRISTENSEN, Mr. CHRYSLER, Mr. CLINGER, Mr. COBLE, Mr. COBURN, Mr. COLLINS of Georgia, Mr. COMBEST, Mr. CONDIT, Mr. COOLEY of Oregon, Mr. COSTELLO, Mr. COX of California, Mr. CAMPBELL, Mr. CRAMER, Mr. CRANE, Mr. CRAPO, Mr. CREMEANS, Mrs. CUBIN, Mr. CUNNINGHAM, Mr. DAVIS, Mr. DEAL of Georgia, Mr. DELAY, Mr. DIAZ-BALART, Mr. DICKEY, Mr. DOOLITTLE, Mr. DREIER, Mr. DUNCAN, Ms. DUNN of Washington, Mr. EHLERS, Mr. EHRlich, Mr. ENGLISH of Pennsylvania, Mr. ENSIGN, Mr. EVERETT, Mr. EWING, Mr. FAWELL, Mr. FIELDS of Texas, Mr. FLANAGAN, Mr. FOLEY, Mr. FORBES, Mrs. FOWLER, Mr. FOX of Pennsylvania, Mr. FRANKS of New Jersey, Mr. FRANKS of Connecticut, Mr. FRELINGHUYSEN, Mr. FRISA, Mr. FUNDERBURK, Mr. GALLEGLY, Mr. GANSKE, Mr. GEKAS, Mr. PETE GEREN of Texas, Mr. GILCHREST, Mr. GILLMOR, Mr. GOODLATTE, Mr. GOODLING, Mr. GOSS, Mr. GRAHAM, Ms. GREENE of Utah, Mr. GREENWOOD, Mr. GUNDERSON, Mr. GUTKNECHT, Mr. HALL of Texas, Mr. HANCOCK, Mr. HAN-

SEN, Mr. HASTERT, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HAYWORTH, Mr. HEFLEY, Mr. HEINEMAN, Mr. HERGER, Mr. HILLEARY, Mr. HOBSON, Mr. HOEKSTRA, Mr. HOKE, Mr. HOLDEN, Mr. HORN, Mr. HOUGHTON, Mr. HOSTETTLER, Mr. HUNTER, Mr. HUTCHINSON, Mr. HYDE, Mr. INGLIS of South Carolina, Mr. ISTOOK, Mrs. JOHNSON of Connecticut, Mr. JONES, Mr. KASICH, Mr. KIM, Mr. KING, Mr. KINGSTON, Mr. KLUG, Mr. KNOLLENBERG, Mr. KOLBE, Mr. LAHOOD, Mr. LATOURETTE, Mr. LARGENT, Mr. LATHAM, Mr. LAUGHLIN, Mr. LAZIO of New York, Mr. LEACH, Mr. LEWIS of California, Mr. LEWIS of Kentucky, Mr. LIGHTFOOT, Mr. LINDER, Mr. LIVINGSTON, Mr. LOBIONDO, Mr. LONGLEY, Mr. LUCAS of Oklahoma, Mr. MCCOLLUM, Mr. MCCRERY, Mr. MCDADE, Mr. MCHALE, Mr. MCHUGH, Mr. MCINNIS, Mr. MCINTOSH, Mr. MCKEON, Mr. MCNULTY, Mr. MARTINI, Mr. MANZULLO, Mr. METCALF, Mrs. MEYERS of Kansas, Mr. MICA, Mr. MILLER of Florida, Mr. MINGE, Ms. MOLINARI, Mr. MONTGOMERY, Mr. MOORHEAD, Mrs. MORELLA, Mr. MYERS of Indiana, Mrs. MYRICK Mr. NETHERCUTT, Mr. NEUMANN, Mr. NEY, Mr. NORWOOD, Mr. NUSSLE, Mr. OBERSTAR, Mr. OXLEY, Mr. ORTIZ, Mr. PACKARD, Mr. PARKER, Mr. PAXON, Mr. PETERSON of Minnesota, Mr. PETRI, Mr. PICKETT, Mr. POMBO, Mr. PORTER, Mr. PORTMAN, Ms. PRYCE, Mr. QUILLEN, Mr. QUINN, Mr. RADANOVICH, Mr. RAMSTAD, Mr. REED, Mr. REGULA, Mr. RIGGS, Mr. ROBERTS, Mr. ROGERS, Mr. ROHRBACHER, Ms. ROS-LEHTINEN, Mr. ROTH, Mrs. ROUKEMA, Mr. ROYCE, Mr. SALMON, Mr. SANDERS, Mr. SANFORD, Mr. SAXTON, Mr. SCARBOROUGH, Mr. SCHAEFER, Mr. SCHIFF, Mrs. SEASTRAND, Mr. SENSENBRENNER, Mr. SHADEGG, Mr. SHAW, Mr. SHAYS, Mr. SHUSTER, Mr. SISISKY, Mr. SKEEN, Mr. SKELTON, Mr. SMITH of New Jersey, Mr. SMITH of Texas, Mrs. SMITH of Washington, Mr. SMITH of Michigan, Mr. SPENCE, Mr. SOLOMON, Mr. SOUDER, Mr. STEARNS, Mr. STOCKMAN, Mr. STUMP, Mr. TATE, Mr. TAUZIN, Mr. TAYLOR of North Carolina, Mr. TAYLOR of Mississippi, Mr. TEJEDA, Mr. THOMAS, Mr. THORNBERRY, Mrs. THURMAN, Mr. TIAHRT, Mr. TRAFICANT, Mr. TORKILDSEN, Mr. UNDERWOOD, Mr. UPTON, Mrs. VUCANOVICH, Mr. WALKER, Mr. WALSH, Mr. WAMP, Mr. WATTS of Oklahoma, Mr. WELDON of Pennsylvania, Mr. WELDON of Florida, Mr. WELLER, Mr. WHITFIELD, Mr. WHITE, Mr. WICKER, Mr. WOLF, Mr. YOUNG of Alaska, Mr. ZELIFF, and Mr. ZIMMER) introduced the following bill; which was referred to the Committee on National Security

SEPTEMBER 17, 1996

Additional sponsors: Mr. MANTON, Mr. VENTO, Mr. GEJDENSON, Mr. BEVILL, Mr. BAESLER, Mr. KLECZKA, Mr. CLEMENT, Mr. BROWN of Ohio, Mr. FROST, Mr. BALDACCI, Mr. FALEOMAVAEGA, Mr. MASCARA, Mr. KENNEDY of Rhode Island, Mr. WARD, Mr. MEEHAN, and Mr. TANNER

SEPTEMBER 17, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]
 [For text of introduced bill, see copy of bill as introduced on August 2, 1996]

A BILL

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,*

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

8 *(a) APPLICABILITY TO DEPARTMENT OF DEFENSE CI-*
 9 *VILIAN EMPLOYEES AND CONTRACTOR EMPLOYEES.—(1)*
 10 *Section 1501 of title 10, United States Code, is amended—*

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

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

15 *“(1) Any member of the armed forces on active*
 16 *duty who becomes involuntarily absent as a result of*
 17 *a hostile action, or under circumstances suggesting*

1 *that the involuntary absence is a result of a hostile*
2 *action, and whose status is undetermined or who is*
3 *unaccounted for.*

4 “(2) *Any civilian employee of the Department of*
5 *Defense, and any employee of a contractor of the De-*
6 *partment of Defense, who serves with or accompanies*
7 *the armed forces in the field under orders who be-*
8 *comes involuntarily absent as a result of a hostile ac-*
9 *tion, or under circumstances suggesting that the in-*
10 *voluntary absence is a result of a hostile action, and*
11 *whose status is undetermined or who is unaccounted*
12 *for.”; and*

13 (B) *by adding at the end the following new sub-*
14 *section:*

15 “(f) *SECRETARY CONCERNED.—In this chapter, the*
16 *term ‘Secretary concerned’ includes, in the case of a civilian*
17 *employee of the Department of Defense or contractor of the*
18 *Department of Defense, the Secretary of the military de-*
19 *partment or head of the element of the Department of De-*
20 *fense employing the employee or contracting with the con-*
21 *tractor, as the case may be.”.*

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

23 (A) *in paragraph (1), by striking out “one mili-*
24 *tary officer” and inserting in lieu thereof “one indi-*
25 *vidual described in paragraph (2)”;*

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

3 (C) by inserting after paragraph (1) the follow-
4 ing new paragraph (2):

5 “(2) An individual referred to in paragraph (1) is the
6 following:

7 “(A) A military officer, in the case of an inquiry
8 with respect to a member of the armed forces.

9 “(B) A civilian, in the case of an inquiry with
10 respect to a civilian employee of the Department of
11 Defense or of a contractor of the Department of De-
12 fense.”.

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

14 (A) in paragraph (1), by striking out “who are”
15 and all that follows in that paragraph and inserting
16 in lieu thereof “as follows:

17 “(A) In the case of a board that will inquire into
18 the whereabouts and status of one or more members
19 of the armed forces (and no civilians described in sub-
20 paragraph (B)), the board shall be composed of offi-
21 cers having the grade of major or lieutenant com-
22 mander or above.

23 “(B) In the case of a board that will inquire into
24 the whereabouts and status of one or more civilian
25 employees of the Department of Defense or contractors

1 of the Department of Defense (and no members of the
2 armed forces), the board shall be composed of—

3 “(i) not less than three employees of the De-
4 partment of Defense whose rate of annual pay is
5 equal to or greater than the rate of annual pay
6 payable for grade GS-13 of the General Schedule
7 under section 5332 of title 5; and

8 “(ii) such members of the armed forces as
9 the Secretary considers advisable.

10 “(C) In the case of a board that will inquire into
11 the whereabouts and status of both one or more mem-
12 bers of the armed forces and one or more civilians de-
13 scribed in subparagraph (B)—

14 “(i) the board shall include at least one offi-
15 cer described in subparagraph (A) and at least
16 one employee of the Department of Defense de-
17 scribed in subparagraph (B)(i); and

18 “(ii) the ratio of such officers to such em-
19 ployees on the board shall be roughly propor-
20 tional to the ratio of the number of members of
21 the armed forces who are subjects of the board’s
22 inquiry to the number of civilians who are sub-
23 jects of the board’s inquiry.”; and

1 (B) in paragraph (4), by striking out “section
2 1503(c)(3)” and inserting in lieu thereof “section
3 1503(c)(4)”.

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

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

7 “(A) a member of the armed forces on active
8 duty who is in a missing status; or

9 “(B) a civilian employee of the Department
10 of Defense or an employee of a contractor of the
11 Department of Defense who serves with or ac-
12 companies the armed forces in the field under or-
13 ders and who is in a missing status.”.

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

16 (A) in subsection (a)(2)—

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

19 (ii) by striking out “Secretary concerned”
20 and inserting in lieu thereof “theater component
21 commander with jurisdiction over the missing
22 person”;

23 (B) in subsection (a), as amended by subpara-
24 graph (A)—

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

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

5 (iii) by adding at the end the following new
6 paragraph:

7 “(2) However, if the commander determines that oper-
8 ational conditions resulting from hostile action or combat
9 constitute an emergency that prevents timely reporting
10 under paragraph (1)(B), the initial report should be made
11 as soon as possible, but in no case later than ten days after
12 the date on which the commander receives such information
13 under paragraph (1).”;

14 (C) by redesignating subsection (b) as subsection
15 (c);

16 (D) by inserting after subsection (a), as amended
17 by subparagraphs (A) and (B), the following new sub-
18 section (b):

19 “(b) *TRANSMISSION THROUGH THEATER COMPONENT*
20 *COMMANDER.—Upon reviewing a report under subsection*
21 *(a) recommending that a person be placed in a missing sta-*
22 *tus, the theater component commander shall ensure that all*
23 *necessary actions are being taken, and all appropriate as-*
24 *sets are being used, to resolve the status of the missing per-*
25 *son. Not later than 14 days after receiving the report, the*

1 theater component commander shall forward the report to
2 the Secretary of Defense or the Secretary concerned in ac-
3 cordance with procedures prescribed under section 1501(b)
4 of this title. The theater component commander shall in-
5 clude with such report a certification that all necessary ac-
6 tions are being taken, and all appropriate assets are being
7 used, to resolve the status of the missing person.”; and

8 (E) in subsection (c), as redesignated by sub-
9 paragraph (C), by adding at the end the following
10 new sentence: “The theater component commander
11 through whom the report with respect to the missing
12 person is transmitted under subsection (b) shall en-
13 sure that all pertinent information relating to the
14 whereabouts and status of the missing person that re-
15 sults from the preliminary assessment or from actions
16 taken to locate the person is properly safeguarded to
17 avoid loss, damage, or modification.”.

18 (2) Section 1503(a) of such title is amended by strik-
19 ing out “section 1502(a)” and inserting in lieu thereof “sec-
20 tion 1502(b)”.

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

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

1 “(8) *The term ‘theater component commander’*
2 *means, with respect to any of the combatant com-*
3 *mands, an officer of any of the armed forces who (A)*
4 *is commander of all forces of that armed force as-*
5 *signed to that combatant command, and (B) is di-*
6 *rectly subordinate to the commander of the combatant*
7 *command.’”.*

8 (c) *FREQUENCY OF SUBSEQUENT REVIEWS.*—Sub-
9 section (b) of section 1505 of such title is amended to read
10 as follows:

11 “(b) *FREQUENCY OF SUBSEQUENT REVIEWS.*—(1) *In*
12 *the case of a missing person who was last known to be alive*
13 *or who was last suspected of being alive, the Secretary shall*
14 *appoint a board to conduct an inquiry with respect to a*
15 *person under this subsection—*

16 “(A) *on or about three years after the date of the*
17 *initial report of the disappearance of the person*
18 *under section 1502(a) of this title; and*

19 “(B) *not later than every three years thereafter.*

20 “(2) *In addition to appointment of boards under para-*
21 *graph (1), the Secretary shall appoint a board to conduct*
22 *an inquiry with respect to a missing person under this sub-*
23 *section upon receipt of information that could result in a*
24 *change of status of the missing person. When the Secretary*
25 *appoints a board under this paragraph, the time for subse-*

1 *quent appointments of a board under paragraph (1)(B)*
2 *shall be determined from the date of the receipt of such in-*
3 *formation.*

4 *“(3) The Secretary is not required to appoint a board*
5 *under paragraph (1) with respect to the disappearance of*
6 *any person—*

7 *“(A) more than 30 years after the initial report*
8 *of the disappearance of the missing person required*
9 *by section 1502(a) of this title; or*

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

12 *(d) PENALTIES FOR WRONGFUL WITHHOLDING OF IN-*
13 *FORMATION.—Section 1506 of such title is amended—*

14 *(1) by redesignating subsection (e) as subsection*
15 *(f); and*

16 *(2) by inserting after subsection (d) the following*
17 *new subsection (e):*

18 *“(e) WRONGFUL WITHHOLDING.—Except as provided*
19 *in subsections (a) through (d), any person who knowingly*
20 *and willfully withholds from the personnel file of a missing*
21 *person any information relating to the disappearance or*
22 *whereabouts and status of a missing person shall be fined*
23 *as provided in title 18 or imprisoned not more than one*
24 *year, or both.”.*

1 (e) *INFORMATION TO ACCOMPANY RECOMMENDATION*
2 *OF STATUS OF DEATH.*—Section 1507(b) of such title is
3 amended adding at the end the following new paragraphs:

4 “(3) A description of the location of the body, if
5 recovered.

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

10 (f) *SCOPE OF PREENACTMENT REVIEW.*—(1) Section
11 1509 of such title is amended—

12 (A) by redesignating subsection (c) as subsection
13 (d); and

14 (B) by inserting after subsection (b) the follow-
15 ing new subsection (c):

16 “(c) *SPECIAL RULE FOR PERSONS CLASSIFIED AS*
17 *‘KIA/BNR’.*—In the case of a person described in subsection
18 (b) who was classified as ‘killed in action/body not recov-
19 ered’, the case of that person may be reviewed under this
20 section only if the new information referred to in subsection
21 (a) is compelling.”.

22 (2)(A) The heading of such section is amended by in-
23 serting “, **special interest**” after “**Preenactment**”.

24 (B) The item relating to such section in the table of
25 sections at the beginning of chapter 76 of such title is

1 amended by inserting “, special interest” after
2 “Preenactment”.

3 (g) *EFFECTIVE DATE.*—*The amendments made by this*
4 *section shall take effect immediately after the enactment of*
5 *the National Defense Authorization Act for Fiscal Year*
6 *1997.*