

105TH CONGRESS  
1ST SESSION

# H.R. 409

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.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1997

Mr. GILMAN (for himself, Mr. HAMILTON, Mr. SOLOMON, Mr. McHALE, Mr. TALENT, and Mr. SAM JOHNSON of Texas) introduced the following bill; which was referred to the Committee on National Security.

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## 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,*

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

10 (A) by striking out subsection (c) and inserting in  
11 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.

1           “(B) A civilian, in the case of an inquiry with  
2 respect to a civilian employee of the Department of De-  
3 fense or of a contractor of the Department of Defense.”.

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

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

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

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

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

1           “(ii) such members of the armed forces as  
2           the Secretary considers advisable.

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

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

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

17           (B) in paragraph (4), by striking out “section  
18           1503(c)(3)” and inserting in lieu thereof “section  
19           1503(c)(4)”.

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

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

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

1           “(B) a civilian employee of the Depart-  
2           ment of Defense or an employee of a contractor  
3           of the Department of Defense who serves with  
4           or accompanies the armed forces in the field  
5           under orders and who is in a missing status.”.

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

8           (A) in subsection (a)(2)—

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

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

15           (B) by redesignating subsection (b) as sub-  
16           section (c);

17           (C) by inserting after subsection (a) the follow-  
18           ing new subsection (b):

19           “(b) TRANSMISSION THROUGH THEATER COMPO-  
20           NENT COMMANDER.—Upon reviewing a report under sub-  
21           section (a) recommending that a person be placed in a  
22           missing status, the theater component commander shall  
23           ensure that all necessary actions are being taken, and all  
24           appropriate assets are being used, to resolve the status

1 of the missing person. Not later than 14 days after receiv-  
2 ing the report, the theater component commander shall  
3 forward the report to the Secretary of Defense or the Sec-  
4 retary concerned in accordance with procedures prescribed  
5 under section 1501(b) of this title. The theater component  
6 commander shall include with such report a certification  
7 that all necessary actions are being taken, and all appro-  
8 priate assets are being used, to resolve the status of the  
9 missing person.”; and

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

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

23 (3) Section 1513 of such title is amended by adding  
24 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  
4 (A) is commander of all forces of that armed force  
5 assigned to that combatant command, and (B) is di-  
6 rectly subordinate to the commander of the combat-  
7 ant 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)  
12 In the case of a missing person who was last known to  
13 be alive or who was last suspected of being alive, the Sec-  
14 retary shall appoint a board to conduct an inquiry with  
15 respect to a person under this subsection—

16           “(A) on or about three years after the date of  
17 the 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 there-  
20 after.

21           “(2) In addition to appointment of boards under  
22 paragraph (1), the Secretary shall appoint a board to con-  
23 duct an inquiry with respect to a missing person under  
24 this subsection upon receipt of information that could re-  
25 sult in a change of status of the missing person. When



1 the Secretary appoints a board under this paragraph, the  
2 time for subsequent appointments of a board under para-  
3 graph (1)(B) shall be determined from the date of the re-  
4 ceipt of such information.

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

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

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

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

15 (1) by redesignating subsection (e) as sub-  
16 section (f); and

17 (2) by inserting after subsection (d) the follow-  
18 ing new subsection (e):

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

1 (e) INFORMATION TO ACCOMPANY RECOMMENDA-  
 2 TION OF STATUS OF DEATH.—Section 1507(b) of such  
 3 title is amended adding at the end the following new para-  
 4 graphs:

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

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

11 (f) SCOPE OF PREENACTMENT REVIEW.—(1) Section  
 12 1509 of such title is amended—

13 (A) by redesignating subsection (c) as sub-  
 14 section (d); and

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

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

23 (2)(A) The heading of such section is amended by  
 24 inserting “, **special interest**” after  
 25 “**Preenactment**”.

1           (B) The item relating to such section in the table of  
2 sections at the beginning of chapter 76 of such title is  
3 amended by inserting “, special interest” after  
4 “Preenactment”.

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