

107TH CONGRESS  
2D SESSION

# H. R. 4940

---

IN THE SENATE OF THE UNITED STATES

JULY 23, 2002

Received; read twice and referred to the Committee on Veterans' Affairs

---

## 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                 etery).”.

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:

JEFF TRANDAHL,

*Clerk.*