
SENATE COMMITTEE ON MILITARY AND VETERANS AFFAIRS

Senator Bob Archuleta, Chair

2021 - 2022 Regular

Bill No: AB 496 **Hearing Date:** 6/30/21
Author: Chen
Version: 2/9/21 Introduced
Urgency: No **Fiscal:** No
Consultant: Veronica Badillo

Subject: Cremation of veterans with the United States flag

DESCRIPTION

Summary:

Authorizes a crematory to cremate the remains of a person who was a member of a branch of the United States military with a single American flag, and exempts a crematory who includes a United States flag in a cremation under this purpose from the recordkeeping requirements for cremation of a United States flag.

Existing law:

- 1) Establishes the Cemetery and Funeral Bureau (Bureau) under the Department of Consumer Affairs to license and regulate cemetery brokers, cemetery salespersons, cemetery managers, cemeteries, crematories, crematory managers, cremated remains disposers, and licensed hydrolysis facilities. (BPC) § 7600 et. seq).
- 2) Permits a crematory regulated by the Bureau to incinerate one or more American flags under the following conditions:
 - a) Incineration of the flag or flags is performed separately from the cremation of human remains;
 - b) Incineration of the flag or flags is in accordance with Section 8(k) of Title 4 of the United States Code;
 - c) Incineration of the flag(s) occurs within one week before or after any of the following: President's Day, Memorial Day, Flag Day, Independence Day, or Veterans' Day. (HSC) § 8344.5(b))
- 3) Requires a crematory that incinerates an American flag(s) to maintain on its premises, an accurate record of all American flags incinerated and maintain it in the crematory log for at least 10 years after the incineration, and requires the record to include all of the following information:
 - a) Name of the organization or person requesting incineration of the flag or flags;
 - b) Date of incineration of the flag or flags;

- c) Name of the cremation chamber operator;
- d) Time and date that the flag or flags were inserted in the cremation chamber;
- e) Time and date that the flag or flags were removed from the cremation chamber;
- f) Weight of the ashes of the flag or flags after being removed from the cremation chamber; and,
- g) Disposition of the ashes of the incinerated flag or flags. (HSC 8344.6)

Existing federal code:

- 1) Describes the role and proper use of the American flag, including handling, displaying, and appropriate conduct during ceremonies involving a flag (4 U.S.C.) Section 8 et seq.)
- 2) Recommends that an American flag, when in such condition that it is no longer a fitting emblem for display, should be retired in a dignified way, preferably by burning (4 U.S.C. Section 8(k))

This bill:

- 1) Permits a crematory to cremate the remains of a person who was a member of a branch of the United States military with a single American flag, upon request from a person who is authorized to dispose of those remains.
- 2) Exempts a licensed crematory who cremates an American flag as specified in 1) above, from the record keeping requirements for incinerating an American flag, as specified.
- 3) Makes one other minor and technical change.

BACKGROUND

According to the Senate Committee on Business, Professions, and Economic Development:

Cemetery and Funeral Bureau. The Bureau is responsible for the oversight and regulation of crematories. A corporation, partnership or natural person that has obtained a valid crematory license from the Bureau may operate a crematory. Each licensed crematory must employ a licensed crematory manager to oversee all of the crematory operations. As specified in BPC § 7712.8, each crematory license is required to keep specified records and file an annual report with the Bureau describing the operations of the licensee, including the number of cremations made, the disposition of the remains and any other information the Bureau requires. Further, HSC § 8343 requires each crematory to maintain the name of the deceased, date of cremation, name of cremation chamber operator, time and date that final processing of cremated remains was completed, and the disposition of the cremated remains which must be

maintained for at least 10 years after the cremation is performed. All of the record-keeping information is subject to inspection by the Bureau.

Flags. Federal code establishes standards for the respectful treatment of the flag of the United States of America, and provides that when the flag is in such a condition that is no longer fitting as an emblem for display, that the flag should be destroyed in a dignified way, preferably by burning.

In some states (such as North Carolina, Texas and Maryland) funeral homes started programs that allow people and/or organizations to donate their old US flags. They then collect and properly fold them until it is time for them to be used. When a military veteran is to be cremated, they drape a used flag over the body. Cremating the covered body burns the flag in a dignified and respectful manner, following proper flag retiring etiquette.

SB 119 (Calderon, Chapter 205, Statutes of 2013) permitted the incineration of American flags in Bureau-licensed crematories for purposes of retiring a flag. Until January 1, 2021, flag cremations were authorized to occur only one week before or after Memorial Day, Flag Day, and Independence Day. Last year, AB 2134 (Chen, Chapter 72, Statutes of 2020) expanded those days in which a flag could be cremated for retirement purposes to include one week before or after Presidents' Day and Veterans' Day, as well. At no other time of year may flags be retired through cremation procedures.

Current law does not specifically authorize nor prohibit a member of the military from being cremated with an American Flag; however, this bill will statutorily authorize a cremation of a flag outside of the currently designated timeframes for a member of the United States military.

Many of the current record keeping requirements for crematory practice for humans also extend to any American flag incinerated by the crematory. Specifically, HSC 8344.6 specifies that a crematory must keep an accurate record of the name of the organization or person requesting incineration of the flag or flags, the date of incineration of the flag or flags, the name of the cremation chamber operator, the time and date that the flag or flags were inserted in and removed from the cremation chamber, the weight of the ashes of the flag or flags after being removed from the cremation chamber, and the disposition of the ashes of the incinerated flag or flags. This bill would exempt a crematory manager from any of the record keeping requirements related to flags when the flag is cremated with an individual a member of a branch of the United States military.

[This bill passed out of the Senate Committee on Business, Professions, and Economic Development 12-0 on 6/7/2021.]

COMMENT

Author's Statement. According to the Author, "As the first Purple Heart state in the country, California is home to the largest population of veterans with 1.7 million veterans residing in the state. Home to a total of 32 military bases, California has been proud of the commitment made to veterans both during life, and after death. In gratitude of their incredible valor, and in a deserving moment of final respect, service members should be

allowed to be cremated with an American flag draped over their body. Currently, there is no statute that formalizes and protects this request but AB 496 would help avoid any confusion about the request of having the veteran cremated with an American flag draped over their body while simultaneously alleviating the family's heartache during a difficult time of grieving."

Related/Previous Legislation. AB 2134 (Chen, Chapter 72, Statutes of 2020) Added additional dates during which time American flags can be incinerated at a crematory for purposes of retirement.

SB 119 (Calderon, Chapter 205, Statutes of 2013) authorized a crematory regulated by the Bureau, in addition to the cremation of human remains, to also incinerate an American flag(s), in accordance with federal law, as specified, and specifies that the burning of the flag(s) occurs within one week before or after, Memorial Day, Flag Day, or Independence Day; and requires a crematory to maintain an accurate record of all flags incinerated at the crematory.

POSITIONS

Sponsor: Author

Support: City of Brea

Oppose: None on file

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