

Date of Hearing: May 21, 2020

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 2134 (Chen) – As Introduced February 10, 2020

SUBJECT: Crematories: burning of flags.

SUMMARY: Authorizes additional dates, as specified, during which American flags can be incinerated at a crematory for the purposes of retirement.

EXISTING STATE LAW:

- 1) Establishes the Cemetery and Funeral Bureau (Bureau) under the Department of Consumer Affairs to license and regulate crematories, cremated remains disposers, cemeteries, cemetery managers, cemetery salespersons, cemetery brokers, funeral establishments, funeral directors and embalmers. (Business and Professions Code (BPC) Section 7600 et seq.)
- 2) Requires a crematory regulated by the Bureau to only cremate human remains, with specified exceptions, in cremation chambers, along with the cremation container, personal effects of the deceased, and no more than a negligible amount of chlorinated plastic pouches used for disease control when necessary. (Health and Safety Code (HSC) 8344.5(a))
- 3) Provides that as an exception to HSC Section 8344.5, a crematory regulated by the Bureau may 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, which provides that a flag be destroyed in a dignified way when it is in such condition that it is no longer a fitting emblem for display. (HSC Section 8344.5(b))
- 4) Specifies that incineration of the flag or flags in a crematory regulated by the Bureau can only occur within one week before or after any of the following:
 - a) Memorial Day (Last Monday in May)
 - b) Flag Day (June 14)
 - c) Independence Day (July 4) (HSC Section 8344.5(b))
- 5) Requires a crematory to maintain on its premises accurate records of all the American flags incinerated. The information to be maintained includes:
 - a) Name of the organization or person requesting incineration;
 - b) Date of incineration;
 - c) Name of the cremation chamber operator;

- d) Time and date that the flag or flags were inserted and removed from the cremation chamber;
 - e) Weight of the ashes after incineration;
 - f) Disposition of the ashes of the incinerated flag or flags. (HSC Section 8344.6)
- 6) Requires a crematory to maintain records on incinerated American flags for at least 10 years after incineration, with these records subject to inspection by the Bureau. (HSC Section 8344.6 (b))

EXISTING FEDERAL LAW:

- 1) Describes the role and proper use of the American flag, including handling, displaying, and appropriate conduct during ceremonies involving a flag (4 United States Code (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:

Provides for two additional windows of time in which a flag may be incinerated at a crematory regulated by the Bureau. Specifically:

- a) One week before or after Veterans' Day (November 11)
- b) One week before and after Presidents' Day (Third Monday of February)

FISCAL EFFECT: Unknown. This bill is not keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is author sponsored. According to the author, with the "increased prevalence of synthetic flags, it's important that we ensure they are retired safely in crematory ovens and not burned outside. Unfortunately, the current time frame for retiring flags leads to a stockpiling effect and flags being stowed away in garages for upwards of a year. By adding dates throughout the year, we will be able to avoid this effect and make sure that flags are retired safely, respectfully, and in a timely manner."

Background.

Brief history of the United States Flag Code. Early records of the U.S flag code can be traced back to 1923, when a coalition of over 60 organizations that included the American Legion, the Boy Scouts of America, the American Library Association, and other civic and veteran groups, published the first etiquette guidelines for the American flag. The document aimed to bring together the many traditions and customs involving the flag, and is often credited as the foundation for what would eventually become the United States Flag Code, adopted by Congress in 1942.

The Flag Code, which was amended multiple times over the decades, covers a wide range of topics related to the appropriate use and display of the American flag. These include how individuals should salute the flag during the recitation of the Pledge of Allegiance; the proper time, occasion, and manner of displaying a flag; and general guidelines on respecting the flag as an important patriotic symbol.

In some states, disrespecting and desecrating an American flag was considered a crime, but the Supreme Court ruled in the case of *Texas v. Johnson* in 1989 that anti-desecration laws violated the First Amendment right to free speech. Today, the United States Flag Code is generally considered an advisory set of rules.

Flag Retirement and Disposal. The United States Code sets forth that an American flag, “when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.” Today, many organizations offer flag collection and retirement services, allowing individuals to dispose of old, worn, torn, or faded flags in a respectful manner.

To that end, these organizations have developed special flag retirement ceremonies. For example, the American Legion holds its Unserviceable Flags Ceremonies, usually on Flag Day, June 14, in which flags are burned at night and outdoors in a pyre, following a formal and dignified process. Similarly, the Girl Scouts of America’s retirement ceremonies are typically held at sunset, where the flags escorted by a color guard and given a final tribute before being burned and retired. Generally, these retirement ceremonies all involve burning large outdoor fires, in order to ensure complete and proper incineration of the flags.

Use of Crematories for Flag Disposal. Over the years, the manufacturing process for flags has evolved, moving from cotton as a base material to more resistant petroleum-based fabrics, such as nylon. As a result, some concerns have emerged about burning synthetic materials during flag retirement ceremonies, which may create toxic and hazardous byproduct fumes.

SB 119 (Calderon, Chapter 205, Statutes of 2013) was enacted into law to address these concerns. The law permits the incineration of American flags in crematories licensed by the Bureau for the purpose of retirement. Cremation of flags can occur only one week before or after Memorial Day, Flag Day, and Independence Day. This provided an additional option for individuals to retire flags in the controlled and safe environment of a cremation chamber. Today, many California crematories offer flag retirement programs, in which worn-out flags are collected or donated, stored, and ceremonially cremated.

Prior discussions by the Legislature on this issue have centered on the date limitations for crematories to retire American flags, and that one week before or after Memorial Day, Flag Day, and Independence Day would narrowly cluster the window of opportunity for persons wishing to retire their flags to just 3 months in the year. At the time, the Legislature inquired whether or not it might be more efficient for crematories to consider expanding the available burn periods year-round.

However, it was determined that it was important that crematories do not become the de facto center for flag retirement services. In addition, spreading flag retirement to specific dates of the year would allow crematories to appropriately plan the logistics associated with organizing retirement rites and ceremonies.

Cremation Process and California Requirements. Cremation refers to the process in which the body of a deceased person is incinerated using intense heat. Generally, the body is placed in an industrial grade furnace – known as a cremation chamber – which uses temperatures ranging between 760 and 870 degrees Celsius, or approximately 1400 and 1800 Fahrenheit. The resulting heat and additional mechanical processes reduce the body to pulverized bone fragments and minerals, often referred to as cremated ashes. In some instances, foreign materials such as prosthetics or dental implants remain, which are swept and removed. The cremated ashes are then placed into an urn.

Crematories regulated by the Bureau must adhere to strict procedural rules and standards. With the exception of flags, a crematory can only cremate human remains, along with the cremation container and the personal effects of the deceased person. A crematory may use a negligible amount of chlorinated plastic pouches for the purpose of disease control when necessary.

Licensed crematories must also keep an accurate record of all cremations performed, including the name of referring funeral director, the name of deceased, the date of cremation, the name of cremation chamber operator, the time and date that body was inserted in and removed from the cremation chamber, the time and date that final processing of cremated remains was completed, the disposition of cremated remains, the name and address of authorizing agent, the identification number assigned to the deceased pursuant to HSC Section 8344, and a photocopy of the disposition permit filed in connection with the disposition.

These record-keeping requirements also extend to any American flags incinerated by the crematory. 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.

Current Related Legislation. None.

Prior Related Legislation.

SB 199 (Calderon, Chapter 205, Statutes of 2013) – Authorized the incineration of one or more American flags, performed separately from the cremation of human remains and in accordance with specified federal law, during the periods within one week before or after specified holidays.

ARGUMENTS IN SUPPORT:

None on file.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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