
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Steven Glazer, Chair
2019 - 2020 Regular

Bill No:	AB 2134	Hearing Date:	August 8, 2020
Author:	Chen		
Version:	February 10, 2020		
Urgency:	No	Fiscal:	No
Consultant:	Elissa Silva		

Subject: Crematories: burning of flags.

SUMMARY: Adds additional dates during which time American flags can be incinerated at a crematory for purposes of retirement.

Existing state law:

- 1) Establishes the Cemetery and Funeral Bureau (Bureau) under the Department of Consumer Affairs (DCA) for the licensure and regulation of cemetery brokers, cemetery salespersons, cemetery managers, cemeteries, crematories, crematory managers, cremated remains disposers, and licensed hydrolysis facilities. (Business and Professions Code (BPC) § 7600 *et. seq.*)
- 2) Requires a crematory to employ a licensed crematory manager to manage and supervise its operations at all times. (BPC § 7713)
- 3) Requires a crematory regulated by the Bureau to only cremate human remains in cremation chambers, along with the cremation container, personal effects of the deceased, and no more than a negligible amount of chlorinated plastic pouches utilized for disease control when necessary, unless otherwise exempted. (HSC § 8344.5(a))
- 4) 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, as provided in 3) above;
 - 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: Memorial Day, Flag Day, or Independence Day. (HSC 8344.5(b))
- 5) 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 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 two additional periods of time in which a flag may be incinerated at a crematory regulated by the Bureau – one week before or after Veterans’ Day, and one week before or after Presidents’ Day.

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

COMMENTS:

- 1. **Purpose.** This bill is sponsored by the author. According to the author, “the issue with existing law is that the dates are too close together. There is only about a month and a half window throughout the year when flags can be retired...”

- 2. **Background.**

Crematory Regulation. The Bureau is responsible for the oversight and regulation of crematories. A crematory may be operated by a corporation, partnership or natural person provided that a valid crematory license has been issued by the Bureau. In addition, each licensed crematory must at all times employ a licensed crematory manager to manage and supervise all of the crematory operations. As specified in BPC § 7712.8, each crematory license is required to keep records as prescribed by the Bureau, and file a report annually with the Bureau describing the operations of the licensee, including the number of cremations made, the disposition of the remains and any other information as the Bureau may require. Further, HSC § 8343 requires each crematory to maintain the name of deceased, date of cremation, name of cremation chamber operator, time and date that final processing of cremated remains was completed, disposition of cremated remains which must be maintained for at least 10 years after the cremation is performed that information is subject to inspection by the Bureau.

SB 119 (Calderon, Chapter 205, Statutes of 2013) permitted the incineration of American flags in crematories licensed by the Bureau for the purpose of retiring a flag. Currently, the cremation of flags can occur only one week before or after Memorial Day, Flag Day, and Independence Day. Essentially, flags may only be retired via the crematory process six weeks a year. This bill will provide an additional timeframe for individuals or groups to retire flags in the controlled and safe environment of a cremation chamber. A number of California crematories offer flag retirement programs, in which worn-out flags are collected or donated, stored, and ceremonially cremated. This bill would provide two more periods of time in which the American Flag may be cremated for purposes or retirement. Specifically, this bill will allow a flag to be burned at a crematory within one week before or after both Presidents' Day and Veteran's Day.

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.

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. This bill would simply add additional timeframes to retire an American flag in California.

3. **Arguments in Support.** The Cemetery and Mortuary Association of California writes in support, "CMAC agrees that adding dates throughout the year would facilitate the ability to ensure that flags are retired safely, respectfully, and in a timely manner."
4. **Prior Related Legislation.** 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.

SB 1197 (Calderon) of 2012 was essentially identical to this measure, was approved by this Committee 8-0 on July 2, 2012. (Status: *The bill was amended to deal with a different subject.*)

SUPPORT AND OPPOSITION:

Support:

Cemetery and Mortuary Association of California

Opposition:

None on file

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