

**TITLE 16. CEMETERY AND FUNERAL BUREAU
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing is scheduled.

Subject Matter of Proposed Regulations: Crematory: Change in Ownership

Section(s) Affected: Amendment of Section 2326 and adoption of Section 2326.01 in Article 3 of Division 23 of Title 16 of the California Code of Regulations (CCR).

Background and Statement of the Problem:

The Cemetery and Funeral Bureau (Bureau) licenses, regulates, and investigates complaints against 14 different license categories in California, totaling approximately 11,315 licensees. These licensing categories include funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons, cremated remains disposers, crematories, crematory managers, hydrolysis facilities, cemetery managers, and private, nonreligious cemeteries. It is the Bureau's duty to enforce and administer the Cemetery and Funeral Act (Chapter 12 (commencing with section 7600) of Division 3 of BPC) (Act). (BPC section 7602, subdivision (a)(2).) The Bureau is authorized to establish necessary rules and regulations for the enforcement of the Act and the laws subject to its jurisdiction. (BPC section 7606.)

In 2023, the Legislature passed, and the Governor signed into law, Assembly Bill (AB) 1560 (Flora, Chapter 206, Statutes of 2023) amending BPC sections 7712.1 and 7712.9. This law authorizes a new owner of a crematory to apply to the Bureau to assign a crematory license, under certain circumstances (or after meeting certain requirements). This law also requires the Bureau to approve or disapprove the new owner's application. Further, pursuant to BPC 7712.9(b), the fee to assign a crematory license shall be seven hundred fifty dollars (\$750) paid by the assignee applying for the change in ownership, and deposited in the Cemetery and Funeral Fund.

Existing law, BPC 7712.2 requires an application for a crematory license to be made in writing on the form prescribed by the Bureau and filed at the principal office of the Bureau. Also, the application must be accompanied by the fee provided for in this article and must show that the applicant owns or is actively operating a crematory in this state or that the applicant is in a position to commence operating such a crematory.

There is no existing regulation that specifies the form for use by an applicant seeking an initial crematory license or the assignment of an existing crematory license.

The current version of 16 CCR section 2326, titled “Applications for Cemetery Certificate of Authority and Crematory License, includes three subdivisions:

- Subdivision (a) specifies the Bureau approved form 23-COA (rev. 01/23) shall be submitted when seeking a Certificate of Authority to operate a cemetery. It also lists all the documents the application shall be accompanied by.
- Subdivision (b) specifies that in addition to complying with the provisions listed in subdivision (a) a limited liability company applying for a certificate of authority must also include certain requirements.
- Subdivision (c) specifies that the application for a crematory license shall be filed on the form furnished by the Bureau at the principal office of the Bureau and in addition to the payment of the fees required by 16 CCR section 2311. It also lists all the documents the application shall be accompanied by.

The Bureau is proposing to separate the “Applications for Cemetery Certificate of Authority” and “Crematory License” into two sections of the CCR. The separation would provide each application category its own regulation section. This is necessary to inform the regulated public that these are two separate processes to go through, rather than mixing the two together. In this proposal, 16 CCR 2326 will address an applicant seeking a certificate of authority licensure and the new proposed adoption of 16 CCR 2326.01 will address an applicant seeking an initial crematory license or the assignment of a crematory license. The proposal also establishes Bureau approved form 23-CR (New 1/24), “Application for an Initial Crematory License or the Assignment of an Existing Crematory License” and incorporates the form by reference. Further, the proposal also addresses the post licensure requirements for an applicant seeking the assignment of a crematory license due to a change in ownership to meet.

The Bureau proposes to:

- Amend 16 CCR section 2326 by changing the title from “Applications for Cemetery Certificate of Authority and Crematory License” to “Application for Cemetery Certificate of Authority.”
- Amend 16 CCR section 2326(c) by moving the regulatory text to a newly adopted regulation, 16 CCR 2326.01.
- Adopt 16 CCR section 2326.01 titled “Application for Initial Crematory License or Assignment of an Existing Crematory License,” and subsections (a) and (b) to specify the requirements for applicants seeking an initial crematory licensure or a change of ownership to assign an existing crematory license to follow. Subsection (a) requires the applicant to submit Bureau approved form, 23-CR (New 1/24). “Application for Initial Crematory License or Assignment of an Existing Crematory License,” along with the required fee and documents to accompany the application. The form is incorporated by reference. Subdivision

(b) specifies that in addition to the requirements of subdivision (a) of this section, the new owner seeking the assignment of an existing crematory license shall submit to the Bureau the change of ownership to assign an existing crematory license shall occur once the Bureau has approved the application. The new owner shall submit the application to the Bureau at least 30 days before the change of ownership occurs. Copy of the final dated and signed sales agreement shall be submitted to the Bureau within 10-days of the final sale; and within 60 days from the date of the sales agreement the new owner must submit to the Bureau the local air pollution required permit to operate the crematory, the new owner shall file satisfactory proof of the permit issued at least 30 days before the change of ownership occurs.

The process, which has been in place for over 30 years, for initially applying for a crematory license will not change. The regulatory text is the same as it has been and no confusion, concerns, or questions have been received by the Bureau from the regulated community. The only change to the text for the new 16 CCR 2326.01 will be the implementation of AB 1560, as summarized above.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

- i. Amend 16 CCR section 2326 of Division 23 (Application for Cemetery Certificate of Authority and Crematory License).

Purpose: Amend the title of 16 CCR 2326, “Application for Cemetery Certificate of Authority and Crematory License,” to “Application for Cemetery Certificate of Authority”. Strike the regulatory text of subdivision (c). Strike the word “and” and number “7712.5” from the Authority cited section. Strike the numbers “7712.2, 7712.4, and 7712.5” along with the word “and” from the Reference Section.

Rationale: The proposed action would split section 2326 into two regulations. It will move subdivision (c) to a new section 2326.01. The purpose of adding 16 CCR section 2326.01 is to provide each application category its own regulation section. 16 CCR 2326 will address an applicant seeking a certificate of authority licensure and the new proposed adoption of 16 CCR 2326.01 will address an applicant seeking a crematory licensure or a change of ownership to assign a crematory license. By striking the words “and” and Authority and Reference statutory number sections, 7712.5, 7712.2 and 7712.4, it removes statutory reference to the requirements of crematory licensure. The crematory licensure requirements will now be in the newly adopted 16 CCR 2623.01.

- ii. Adopt 16 CCR section 2326.01.

Purpose: Adopt 16 CCR 2326.01 titled “Application for Initial Crematory License or Assignment of an Existing Crematory License” to describe its purpose.

Rationale: The title makes the regulation directs the regulated public to where they need to go when they are applying for a crematory license or a change of ownership. This new title describes the sections purpose to the applicant.

iii. Adopt Section 2326.01, subdivision (a)

Purpose: Adopt 16 CCR section 2326.01(a). By relocating existing regulatory text from 16 CCR 2326(c) to this newly adopted subdivision, subdivision (a) specifies to applicants seeking an initial crematory license or the assignment of an existing crematory license that the applicant shall submit Bureau approved form, 23-CR (New 1/24). "Application for Initial Crematory License or Assignment of an Existing Crematory License," along with the required fee and documents that shall accompany the application, and incorporates the form by reference. The requirements as outlined for applying for an initial crematory have not changed, thus the rights and responsibilities for the applicant have not changed.

Rationale: Although the Bureau has all of the requirements for obtaining crematory licensure in the same regulation that set forth the requirements for obtaining a cemetery certificate of authority license, these are separate processes, often completed by unrelated applications (cemetery and crematory applicants are not always the same). Further, the current regulation does not have the application for crematory licensure incorporated by reference, 16 CCR 2326.

Additionally, AB 1560 amended BPC 7712.2 relating to crematory license transfers. The law authorizes a new owner of a crematory to apply to the Bureau to assign an existing crematory license, after meeting certain requirements instead of the license lapsing. A new owner seeking the assignment of a crematory license due to a change of ownership would have continuity of business rather than ceasing operations of a Bureau approved and legally compliant crematory to issue a new license when there is a change of ownership. The Bureau determined that the adoption of 16 CCR 2326.01 would make the regulation easier to follow and give immediate notice to the crematory regulated community of the requirements for all applicants. This section is also needed to incorporate the form by reference that the applicant seeking an "Initial Crematory License or Assignment of an Existing Crematory License" shall submit along with the fees and documents required.

iv. Adopt Section 2326.01, subdivision (b)

Purpose: Adopt 16 CCR section 2326(b) to specify that in addition to the requirements in subdivision (a) of this section, a new owner seeking the change of ownership requesting the assignment of an existing crematory license shall submit to the Bureau the documents specified in BPC 7712.1. The additional documents are:

- i. Subdivision (b)(1) specifies that the new owner shall submit the application to the Bureau at least 30 days before the change of ownership occurs. occurs.

- ii. Subdivision (b)(2) specifies that copy of the final dated and signed sales agreement shall be submitted to the Bureau within 10 days of the final sale, and
- iii. Subdivision (b)(3) specifies that within 60 days from the date of the sales agreement the new owner must submit to the Bureau the local air pollution required permit to operate the crematory, the applicant shall file satisfactory proof of the permit issued.

Rationale: Pursuant BPC 7712.1(c) through (d), prescribes the requirements for a new owner seeking the assignment of an existing crematory license to meet This is necessary to provide a consistent and straightforward process for a new owner seeking an assignment of an existing crematory licensure allowing for continuity of business without interrupting critical services. The submission of these documents to the Bureau assists with the evaluation of these requirements to determine if the applicant meets the requirements set forth in BPC 7712.1 to make the final determination for the issuance of a license.

This regulation will reference the required form, Initial Crematory License or Assignment of an Existing Crematory License. The form will contain the following:

A. Introductory Paragraph

The form contains an introductory paragraph explaining the purpose of the form and instructions for completing and submitting the form. It includes a “check box” for the applicant to indicate if the application is for a New or Initial Crematory License or Assignment of an Existing Crematory License. It contains an online hyperlink “Notice on Collection of Personal Information”, which is also available as an offline paper form that can be printed, if needed. The “Notice on Collection of Personal information” ensure individuals are provided with clear and effective notice of the Bureau’s authority for requesting personal information, how the information will be used, who it may be shared with, and the individual’s right of access to their own records in compliance with BPC section 27 and Civil Code sections 1798.24, and 1798.40. This is necessary to provide information to the applicant regarding the purpose of the form.

B. Section A

The form requires the following identifying information:

1. Name of the crematory.
2. Number of the crematory license, for assignment of crematory license only.
3. Address, city, state, and zip code of the crematory.
4. Mailing Address, if applicable, city, state, and zip code of the crematory.
5. Telephone number.
6. Fax number.
7. Optional email address.

8. Federal Employment Identification Number (FEIN).
9. Date of Sale, if applicable.

Requirements in Section A of the form are necessary to research and verify the applicant's records. The Bureau requires the application to evaluate whether the applicant meets each of the conditions to obtain an initial crematory license or for the change of ownership assignment of an existing crematory license. It ensures public protection, while enabling applicants to continue toward licensure. The Federal Employer Identification Number (FEIN) is required to be collected pursuant to BPC section 30, and will be used exclusively for identification, tax enforcement purposes, or compliance with any judgment or order for family support in accordance with Section 17520 of the Family Code. Lastly, the Date of Sale if applicable is for the applicant seeking a change of ownership to assign an existing crematory license. This will assist the Bureau in the evaluation whether the applicant meets the notification requirement specified in BPC 7212.2(c)(2).

C. Section B, Name of Person Filing the Application

1. This section asks for the last name, first name, and telephone number of the person filling out the application.

Requirement in Section B of the form is necessary to establish a primary contact person for the Bureau to contact the applicant with notices and other mailings.

D. Section C, Name of Designated Crematory Manager (CRM)

1. This section asks for the last name, first name, crematory manager license number and the expiration date.

Requirement in Section C of the form is necessary to establish that the crematory is in compliance with BPC section 7713, which requires that the crematory shall at all times employ a crematory manager to manage, direct, or control its business or professions as is necessary to ensure full compliance with the applicable provisions of the Code, the Health and Safety Code, and any regulations adopted thereto. This requirement assists the Bureau to ensure that the crematory is operated under the supervision of a manager is qualified in accordance with rules adopted by the Bureau.

E. Section D, Approval to Share Crematory Manager

1. This section asks for the crematory address and license number that has been designated as the main office from the crematory identified in Section B of the application.
2. The number of miles from the new crematory, identified in Section B of the application.

Requirements in Section D of the form are necessary to research and verify the

applicant's records. In addition, the Bureau requires the application to evaluate whether the applicant meets each of the conditions to share a crematory manager.

Title 16 CCR 2326.6 allows a licensed crematory under common ownership within close geographical proximity of each other to designate a licensed crematory manager to manage, supervise, and direct the business or profession of more than one licensed crematory. For the purpose of meeting the requirements of 16 CCR 2326.6 subdivision (a) through subdivision (d), these requirements of Section D are necessary to ensure full compliance with the applicable provisions of the regulation.

F. Section E, Ownership

1. The form permits the applicant to be one of three types of ownership. Individual, Partnership, or Corporation.
2. The form asks for the last name, first name, and middle initial if it is an individual ownership.
3. The form asks for the last name, first name, middle initial, and percentage owed of all the partners.
4. The form asks for the name of the corporation (Exact name and address as shown on the Articles of Incorporation) if the owner type is a corporation.
5. The form asks for the State the corporation was incorporated in and the date it was incorporated.
6. The form asks for the top four senior officers of the corporation, President, Vice President, Treasurer, and Secretary. Listed by title, last name, first name, and middle initial.
7. The form asks the applicant to submit a completed Certification Affidavit for each individual owner, partnership, or corporation officers.

Requirements of Section E asks the applicant to identify the type of ownership. Individual, Partnership, or Corporation. For individual ownership, the form asks for the last name, first name, and middle initial. For partner ownership, the form asks for the last name, first name, middle initial, and the percentage owned of all the partners. For corporate ownership, the form asks for the exact name and address as shown on the Articles of Incorporation. It asks for the State the corporation was incorporated in and the date it was incorporated. It asks for the top four senior officers of the corporation, President, Vice President, Treasurer, and Secretary to be identified by title, last name, first name, and middle initial. It requires the applicant to submit a completed Certification Affidavit for each individual owner, partnership, or corporation officer.

Rationale: BPC 7712 allows a crematory to be operated, or maintained by a corporation, partnership, or natural person. The requirements in Section E are necessary to ensure eligibility for crematory licensure. The Certification Affidavit form is incorporated by reference pursuant to 16 CCR 2326.3. The form allows each applicant to certify their role with the business. It allows the licensee to report changes of corporate officers, including change of name and/or address of any individual shall be

reported to the Bureau within 10 days.

G. Section F, Applicant Certification

1. The form contains a statement, “I certify under penalty of perjury under the laws of the State of California that all statements furnished in connection with this application are true and accurate.
2. The form asks for the applicant’s signature, title, and the date.

Requirements in Section F of the form includes a certification requirement for the applicant to certify that all statements, answers, and representation, including attachments the applicant provides, are true, complete, accurate and the individual is authorized to complete the form on behalf of the crematory. This requirement helps ensure that the representations on the form are made in good faith, and the Bureau receives documented authorization to process the application on behalf of the crematory. The Bureau relies upon applicants’ self-reported information in evaluating applications. The certification requirement protects consumers because it helps ensure that only applicants who meet Bureau requirements, as demonstrated by their application material, will be eligible for licensure.

Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications under penalty of perjury: “The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith.”].) Accordingly, the certification under penalty of perjury in the form is necessary to ensure that applicants submit truthful and accurate information to the Bureau. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Bureau (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Bureau with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. [“The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

The Bureau relies upon applicants’ self-reported information in evaluating applications. The certification requirement protects consumers because it helps ensure that only applicants who meet the Bureau requirements, as demonstrated by their application materials, will be eligible for approval.

H. For Bureau Use Only

1. The form asks for the Date Cashiered, Amount Cashiered, ATS No.,

Receipt No. Completed on, Approved Date, and/or Denied Date.

2. The form asks for Post Licensure Requirements for Change in Ownership to Assign an Existing Crematory License the following:
 - Date of final sales agreement (change of ownership) and the date it was reported to the Bureau.
 - Date local air pollution issued the required permit to operate the crematory to new owner and the date it was reported to the Bureau.

Requirements in the Bureau Use Only section of the form assists the Bureau in tracking the application process. The addition of the post licensure requirements for change in ownership to assign an existing crematory license assists the Bureau to evaluate whether the applicant met each of the post licensure requirements and the submission of the documents as outlined in BPC section 7712.1.

The Application for Initial Crematory License or Assignment of an Existing Crematory License, form 23-CR (new 1/24, incorporated by reference, would be cumbersome, unduly expensive, and otherwise impractical to publish in the California Code of Regulations because of special formatting. The form will be available on the Bureau's website and hard copies will be available from the Bureau upon request.

Underlying Data:

Technical documents relied upon:

- AB 1560 (Flora, Chapter 206, Statutes of 2023).
- Certification Affidavit.
- Notice on Collection of Personal Information form.
- CFB Initial and Change of Ownership Fiscal Workload Analysis – Application.

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because this proposal only affects already licensed crematories. Opting to seek the assignment of a crematory license is a voluntary business decision made by the applicant.

The Bureau does not anticipate additional costs to a representative private person or business to comply with the proposed action. Applicants are currently required to complete and submit an application for an initial crematory license accompanied by the required fee. This proposal is not anticipated to increase workload or costs to individuals or businesses that chooses to request a crematory license to be assigned when a change of ownership occurs. Opting to seek the assignment of a crematory license is voluntary rather than to apply for an initial crematory license is a voluntary

business decision made by the applicant.

As of July 2023, the Bureau currently is responsible for 230 licensed crematories throughout California. The Bureau is not able to project the number of applicants that would apply to have a crematory license assigned rather than apply for an initial crematory license.

Any workload to complete and submit the application is anticipated to be done within normal business operations and without incurring additional costs.

Economic Impact Assessment:

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because licensees are currently required to complete and submit the Application for Initial Crematory License form. Adding the option to assign an existing crematory license is a voluntary option to the applicant.
- It will not create new businesses or eliminate existing businesses within the State of California because licensees are currently required to complete and submit the Application for Initial Crematory License.
- It will not affect the expansion of businesses currently doing business within the State of California because licensees are currently required to complete and submit the Application for Initial Crematory License.
- The benefits to the health and welfare of California residents include a consistent and streamlined process for an applicant seeking a crematory license, as well as allowing crematory owners to maintain critical services when there is a change of ownership.
- This regulatory proposal does not affect worker safety because it does not involve worker safety.
- This regulatory proposal will have no impact on the state's environment because the proposal will not impact the environment any differently than existing practices. (i.e., an operating crematory transferring ownership will also transfer with it the same air quality permit previously issued.)

Specific Technologies or Equipment:

These regulations do not require the use of any specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.