

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

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS

NOTICE IS HEREBY GIVEN that the Cemetery and Funeral Bureau (hereinafter "Bureau") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at the hearing to be held at:

Cemetery and Funeral Bureau
1625 North Market Boulevard
1st Floor Hearing Room
Sacramento, CA 95834
Wednesday, August 12, 2015
1:30 – 2:30 p.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on Monday, August 10, 2015, or must be received by the Bureau at the hearing.

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference:

Pursuant to the authority vested by sections 125.9, 148, 9630, 9631, 9650.4, and 9658 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 125.9 and 148 of said code, the Bureau is considering changes to Division 23 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

As of February 1, 2015, the Bureau licenses and regulates approximately 5,702 cemeteries, cemetery managers, cemetery brokers, cemetery salespersons, crematories, crematory managers, and cremated remains disposers in the State of California, collectively. The death care industry transacts business with consumers at a time when they are emotionally vulnerable which is why the

Bureau makes consumer protection its highest priority. The Bureau achieves its goal of consumer protection through the following primary methods: issuing and renewing licenses; overseeing funeral and cemetery trust funds; investigating complaints; conducting inspections; and disciplining licensees for violations of its laws and regulations.

Pursuant to BPC section 9630 the Bureau is authorized to adopt and enforce reasonably necessary rules and regulations relating to the Cemetery Act. The proposed regulatory changes will amend and enhance the Bureau's cite and fine function through modernization, clarification, consistency, and relevance of the regulations, which will strengthen the Bureau's ability to achieve its public protection mandate.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The regulations enforced by the Bureau exist for the protection of California consumers and to inform Bureau licensees of their rights and responsibilities within the scope of practice. Currently the regulations include tables of specific violations that have an associated fine range. A licensee can be cited for any of the violations listed in these tables and issued a citation that may contain an assessment of an administrative fine, an order of abatement fixing a period of time for abatement of the violation, or both an administrative fine and an order of abatement. In addition, the regulations list citation factors the Bureau considers, how to request an extension of time to abate a violation, and the process for contesting a violation.

The proposed regulatory amendments will remove the tables of violations and associated fine ranges which will allow the Bureau to enforce all statutes and regulations under its jurisdiction equally and assess administrative fines, as appropriate, with greater flexibility and more consistency. Consistent with current Department of Consumer Affairs (Department) practice as found in BPC section 125.9, the Bureau is increasing the maximum fine for an administrative fine from \$2,500 to a maximum of \$5,000 for each inspection or each investigation made with respect to the violation. In addition, the minimum and maximum fine for unlicensed activity is being increased to deter unlicensed practice. The Bureau updated information on appeal of citations and expanded information on informal office conferences to clarify licensee rights when contesting a citation.

The benefit of these changes will be to allow the Bureau to be responsive to concerns raised by stakeholders while still ensuring consumer protection against both licensed and unlicensed practice in the cemetery industry. This will ensure that licensees who have violated laws and/or regulations will be effectively and efficiently disciplined following the Bureau's progressive discipline process. In addition, these changes will more closely align the cemetery regulations to the funeral regulations enforced by the Bureau, providing clear and consistent direction to the industry.

C. Consistency and Compatibility with Existing State Regulations

After conducting a review for any regulations that would relate to or affect this area, the Bureau has evaluated this regulatory proposal and it is not inconsistent or incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

As of February 1, 2015, the Bureau licenses and regulates approximately 5,702 cemeteries, cemetery managers, cemetery brokers, cemetery salespersons, crematories, crematory managers, and cremated remains disposers in the State of California, collectively. There will be no significant impact to the licensees, as long as the licensees remain in compliance with statutes and regulations enforced by the Bureau. The proposed amendments will modernize, clarify, and streamline existing regulations, better align cemetery and funeral regulations, and bring the maximum fine assessed for violations current with Department statutory authority, while still ensuring consumer protection against both violations by licensees and unlicensed practice.

The Department of Consumer Affairs' Annual Report for the Cemetery and Funeral Bureau from fiscal year 2011-12, 2012-13, and 2013-14 show that the Bureau issued citations to an average of two percent of its total cemetery licensees.

A licensee that is found to be in non-compliance with statutes and regulations enforced by the Bureau may be impacted through the assessment of a citation with an administrative fine which may range from a minimum of \$100 to a maximum of \$5,000 for each inspection or each investigation made with respect to the violation. If all licensees remain in compliance with statutes and regulations there is no business impact.

The Bureau has authority under Section 2387 of Article 7.5 of Title 16 of the California Code of Regulations to issue citations containing orders of abatement and assess administrative fines for unlicensed activity in the State of California. Currently, the fine for unlicensed activity may range from a minimum of \$250 to a maximum of \$2,500. The proposed regulatory changes would increase the minimum fine to \$1,001 and increase the maximum fine to \$5,000. During the last three fiscal years (2011-12, 2012-13, and 2013-14) the Bureau issued four citations for unlicensed activity. Of the citations issued, one citation had no fine assessed, one citation was assessed a fine of \$500, and two citations were assessed at the maximum of \$2,500.

Cost Impact on Representative Private Person or Business:

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses. The regulatory proposal affects small businesses only if they are found to be in violation of any statutes or regulations enforced by the Bureau, which may result in the Bureau assessing an administrative fine of no more than \$5,000 for each inspection or each investigation made with respect to the violation.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Bureau has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and the State's environment:

The proposed amendments will make clear the responsibility of licensed cemeteries, cemetery managers, cemetery brokers, cemetery salespersons, crematories, crematory managers, and cremated remains disposers in the State

of California, and spell out the penalties for non-compliance with the laws and regulations and any unlicensed activity. These regulations exist for the protection of California consumers and to inform Bureau licensees of their rights and responsibilities within the scope of practice. The proposed regulatory action will, as described above, benefit the general welfare of California residents by allowing the Bureau the flexibility to enforce all regulations under the Cemetery Act equally.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Cemetery and Funeral Bureau at 1625 North Market Boulevard, Suite S-208, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Cheryl Jenkins
Address: 1625 North Market Boulevard, Suite S-208

Telephone No.: Sacramento, CA 95834
(916) 574-8203
Fax No.: (916) 928-7988
E-mail Address: Cheryl.Jenkins@dca.ca.gov

The back-up contact person is:

Name: Linda Kassis
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Sacramento, CA 95834
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Web site Access: Materials regarding this proposal can be found at www.cfb.ca.gov.