

**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: Cemeteries: Unitrust Conversion

Section(s) Affected: Add a new Article 3.5 and title and sections 2334, 2334.1, 2334.2, 2334.3, 2334.4, and amend section 2350 in Article 5 of Division 23 of Title 16 of the California Code of Regulations (CCR)

Specific purpose of each adoption, amendment, or repeal:

1. 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 13,100 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 the Business and Professions Code (BPC)) (Act). (Bus. & Prof. Code, § 7602, subd. (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. (Bus. & Prof. Code, § 7606.)

Existing law requires each privately-owned cemetery authority to create an endowment care trust fund through a written trust agreement executed by their board of directors and requires them to deposit funds to the trust for each interment space they sell. There are various types of interments cemeteries sell (graves, crypts, niches, and scattering of cremated remains on the cemetery's property) and each type of interment has a minimum required deposit. The deposits cemeteries make to endowment care trusts, along with the initial contribution required by Health and Safety Code (HSC) section 8738.1, form what is known as the corpus of the trust. The law prohibits expenditure of the fund corpus.

In 2017, the Legislature passed Assembly Bill (AB) 926 (Irwin, Chapter 750, Statutes of 2017), requiring the Bureau to develop processes and functions necessary to facilitate and regulate the conversion of endowment care trust funds from the net income

distribution method to the unitrust distribution method (“unitrust method”) beginning January 1, 2020 (see Health & Safety Code, §§ 8726.1, 8726.2).

Under the net income distribution method, only the income and a portion of realized capital gains generated from endowment care fund investments may be used for cemetery care and maintenance, whereas the unitrust method allows expenditures based on the total value of the endowment care fund assets. AB 926 capped the unitrust amount at 5 percent and capped trustee fees at 0.1 percent of the net fair market value of the endowment care fund as of the last trading day for each of the three preceding fiscal years. AB 926 further requires the Bureau to evaluate the effectiveness of the unitrust distribution method and to report its findings at its next two hearings before the Joint Sunset Review Oversight Hearings of the Assembly Committee on Business and Professions and Senate Committee on Business, Professions and Economic Development.

In 2019, AB 795 (Irwin, Chapter 309, Statutes of 2019) was passed amending the prior version of Health and Safety Code section 8726.2 enacted by AB 926 and delaying the implementation date to January 1, 2021. Section 8726.2 now sets limits on trustee compensation that allows professional management of trust assets and prevents depletion of assets via excessive trustee fees. Additionally, HSC sections 8726.2 and 8726.3 place controls on excessive investment adviser fees that could unduly deplete a fund and limits the ability of private creditors to seize trust fund assets. Section 8726.3 also makes clear that, in the event of a seizure by a public entity, trust fund assets can only be used for care, maintenance, and embellishment of the cemetery for which the funds were originally put in trust.

Significantly, HSC section 8726.2 authorizes a cemetery authority, its board of trustees or its corporate trustee on and after January 1, 2021, to apply to the Bureau to convert from the net income distribution method to the unitrust distribution method. Section 8726.2 also provides the Bureau with authority to review and evaluate information provided by the applicant (cemetery authority, board of trustees or corporate trustee) to determine whether the cemetery authority meets Section 8726.2’s conditions for approval, including the provision of “relevant trust documents.” In addition, subdivision (f) of that section authorizes the Bureau to adopt rules to administer HSC section 8726.2 and ensure compliance, including, but not limited to, reporting requirements for cemetery authorities.

There are no existing regulations that specify the processes and procedures for how a cemetery authority applicant may apply to the Bureau to convert from the net income distribution method to the unitrust distribution method as authorized by HSC section 8726.2. Further, there are no regulations that specify how a cemetery authority may maintain such approval, report any updated or changed information, and the processes and procedures for denial of approval or reversion to the net income distribution method in the event that specified conditions are not met. This proposal would establish such regulations. The Bureau has drafted proposed text to specify: (1) the processes and procedures for applying for and receiving approval from the Bureau to convert from a net

income distribution method to a unitrust distribution method, including the provision of a completed application form “Unitrust Conversion Application”, (2) the grounds for denying a unitrust conversion application, (3) the circumstances under which a unitrust conversion application will be deemed abandoned, (4) the process for reverting to a net income distribution method from a unitrust method; and, (5) the process for providing any “created, updated, or changed” information to the Bureau in the cemetery authority’s annual report.

The Bureau has consulted with stakeholders (licensees, consumer advocates, and members of the public) regarding the proposed unitrust distribution method regulations. The Bureau held a stakeholder workshop on June 21, 2021, and discussed and made available for public comment the draft language and application for endowment care fund conversion. Based on stakeholder comments, the Bureau revised the proposed language to address the stakeholder’s concerns. The revised proposed language is included with this proposal.

The Bureau proposes to:

- Add a new Article 3.5, and Title, “Endowment Care Fund Unitrust Distribution” and Sections 2334, 2334.1, 2334.2, 2334.3, 2334.4, and amend Section 2350 in Article 5 of Division 23 of Title 16 of the CCR.
- Adopt section 2334 to establish timeframes for required content of and information and documents required to be submitted with a “Unitrust Conversion Application,” for the endowment care fund conversion to the unitrust distribution method and incorporates the form by reference. The proposal would also provide a process for applicants to use when relevant trust documents are not available, allow the Bureau discretion to condition approval on the applicant’s provision of the relevant trust documents within a certain timeframe and revoke the conditional approval, after notice and potential hearing, as provided in section 2334.2. The proposal would also require a completed application be submitted at least 90 days prior to the beginning of the cemetery authority’s reporting year for which the conversion is requested.
- Adopt section 2334.1 to establish the requirement for cemeteries to obtain the Bureau’s prior approval for and specify the effective date of the endowment care fund conversion to the unitrust distribution method.
- Adopt section 2334.2 to establish the denial, written notice, and appeal process for the endowment care fund conversion to the unitrust distribution method, including opportunities for an informal office conference and informal hearing.
- Adopt section 2334.3 to establish the abandonment date for conversion applications the Bureau returns as incomplete and provides the applicant must submit a new application and documents once the application is abandoned to obtain the Bureau’s approval.

- Adopt section 2334.4 to establish the process for requiring a cemetery authority to revert an endowment care fund to the net income distribution method, including options for the effective date of reversion. The proposal would set standards for notifying the cemetery authority of the requirement to revert and specifies what the Bureau determines is “satisfactory proof” of reversion, as well as the response date for providing the Bureau such proof. The proposal would establish it constitutes unprofessional conduct to fail to comply with the Bureau’s notice requiring the cemetery authority to revert, or to refuse to provide the “satisfactory proof” of reversion as specified by this section. Finally, the proposal would specify that a cemetery authority that has reverted to net income distribution and seeks to reconvert its endowment care fund to the unitrust method shall submit a new application and receive Bureau approval prior to conversion.
- Amend section 2350 to divide the regulation into two subdivisions. Subdivision (a) corrects outdated terminology and citations in the existing regulation regarding the annual report requirements pursuant to BPC section 7612.6(b) and proposes other technical and grammatical clean-up to this section to improve readability. It also adds a requirement for the audit report to be “signed” by a licensed independent certified public accountant or public accountant and adds text to clarify that the report must fully and accurately disclose the “financial” position of the endowment care fund. It strikes references to the requirement of rendering an “independent” opinion and replaces it with an “unmodified” opinion requirement. Newly added subdivision (b) of this section lists the additional information that must be provided with the endowment care fund report when the cemetery authority is using the unitrust distribution method including any information that has been created, updated or changed since the Bureau’s approval. It also replaces an outdated code reference from BPC section 9650(c) with BPC section 7612.6(b) in the regulatory text and the Authority and Reference sections.

2. Anticipated benefits from this regulatory action:

This regulatory proposal would establish: (1) a consistent and straightforward process for obtaining Bureau approval to convert to the unitrust distribution method, (2) the grounds for denying a unitrust conversion application, (3) the circumstances under which a unitrust conversion application will be deemed abandoned, (4) the process for reverting to a net income distribution method from a unitrust method; and, (5) the process for providing any “created, updated, or changed” information to the Bureau in the cemetery authority’s annual report.

Section 2334 will eliminate confusion for licensed cemetery authorities and the public regarding the application and documentation requirements, procedures, and timelines for seeking the Bureau’s approval to convert an endowment care fund from the net income distribution method to the unitrust distribution method. The information collected from the

application and the accompanying documents enables the Bureau to properly evaluate the application and determine the cemetery authority meets the conditions of approval set forth in HSC section 8726.2(b). This will help ensure that only qualified cemetery authorities are able to use the unitrust income distribution method, and therefore helps ensure the licensee's ongoing care and future maintenance of the cemetery for the benefit of the public in general.

The proposed adoption of section 2334.1 will provide notice and clarity to licensed cemetery authorities and the public of the requirement to receive the Bureau's approval before converting to the unitrust distribution method and notifies them of the effective date of the conversion.

The proposed adoption of section 2334.2 will inform licensed cemetery authorities and the public of the denial process for unitrust conversion applications. In addition, it provides an opportunity for the applicant to submit additional documentation and information which the applicant believes supports a reversal of the denial resulting in the approval of the application. The establishment of an appeal process will ensure due process is provided to applicants.

The proposed adoption of section 2334.3 will provide transparency and clarity to cemetery authorities and the public of the date for abandonment of the application. The 12-month limit will encourage applicants to submit documentation necessary to complete the application and to obtain the Bureau's approval in a timely manner.

The proposed adoption of section 2334.4(a) through (e) provides straightforward and uniform procedures and instruction to cemetery authorities and the public of the requirements, procedures, and timeframes applicable to the reversion process. It will provide that a failure to comply with the Bureau's direction to revert to the net income distribution method will subject cemetery authorities to disciplinary action for unprofessional conduct. Since the size of the endowment care fund when the cemetery is sold out is the dominant factor in determining how much income can be produced to meet the needs of cemeteries, protection of principal through reversion will ensure that cemeteries have adequate funds now and in the future so that they do not fall into disrepair.

The proposed amendment of section 2350 clarifies the annual reporting requirements for cemetery authorities who have been approved to convert to the unitrust method. This new requirement provides a simplified and efficient method for the Bureau to meet section 8726.2(e)'s review requirement. It also provides a less costly alternative for the cemetery authority to report updated or new information to the Bureau rather than requiring the filing of a separate report or notice with the Bureau. The proposed amendments also eliminate confusion regarding those requirements by replacing an outdated code reference and updating other provisions consistent with Section 7612.6 of the Business and Professions Code.

Adopt a new Article and Title: “Endowment Care Fund Unitrust Distribution”

Rationale: The Bureau proposes to add this new article and title to its Division 23 for better organization, ease-of-reference and notice to the affected licensees of where new requirements, processes and procedures for endowment care fund conversion to the unitrust distribution method (“unitrust method”) may be found among the Bureau’s regulations.

Adopt Section 2334 of Division 23 of Title 16 of the CCR (Unitrust Conversion Application)

Adopt Section 2334(a): Requirement for Completed Unitrust Conversion Application, form 23-UCA (New 7/21)

The Bureau proposes to adopt section 2334, subdivision (a) to provide that a cemetery authority, its board of trustees, or its corporate trustee seeking to convert the cemetery authority’s endowment care fund from a net income distribution method to a unitrust distribution method shall submit a completed application using form “Unitrust Conversion Application,” form 23-UCA (New 7/21).

The regulation will incorporate the form by reference and specifies the documents and information that must accompany the conversion request.

Rationale: HSC section 8726.2(b) sets forth the conditions of approval a cemetery authority, its board of trustees, or its corporate trustee (collectively herein, “cemetery authority”) must meet, and the Bureau shall consider when granting approval to convert an endowment care fund from the net income distribution method to the unitrust distribution method. Section 2334 is necessary to: (a) provide a consistent method for licensees to apply for the conversion, (b) provide instructions to help applicants understand the Bureau’s application procedures and documentation requirements; and (c) provide the applicants with notice regarding the timeframes for submission of the application and documentation materials to help ensure submission of a timely and completed application to the Bureau.

The Bureau requires the application and accompanying documents to evaluate whether the applicant meets each of the conditions of approval as outlined in Section 8726.2. Since HSC section 8726.2 does not explicitly prescribe the contents of the application and specify what relevant documents must be submitted to meet the conditions for conversion to the unitrust method, the application provides a convenient way for applicants to understand these requirements to obtain Bureau approval. In addition, specifying timeframes allows both the Bureau and the applicant to act and respond in a timely manner.

The form will contain the following:

A. Introductory paragraphs

The form contains introductory paragraphs explaining the purpose of the form and instructions for completing and submitting the form. In addition, it notifies the applicant that a copy of HSC section 8726.2 is attached for reference. These notices provide the applicant with information to help ensure the Bureau's receipt and processing of a completed application.

HSC section 8726.2 permits conversion only if all conditions in subdivision (b) are met. This includes subdivision (b)(8), which provides that the cemetery authority must meet the following condition: "The cemetery authority has submitted all annual reports, pursuant to Section 7612.6 of the Business and Professions Code, for the previous five consecutive years." Therefore, the second introductory paragraph provides the applicants with advance notice that their application shall be denied if they have failed to submit all annual reports for the preceding five (5) consecutive years and that it is a qualification for conversion. This helps ensure only qualified applicants fill out this application.

B. Section A: Applicant and Cemetery Information

The form requires the following identifying information:

1. Names(s) and Title(s) of Applicant(s)
2. Applicant Type with options to select as a cemetery authority, board of trustees or corporate trustee
3. Name of Cemetery
4. Certificate of Authority (COA) license number
5. Address of cemetery
6. Mailing address (address of record to be provided if different)
7. Telephone number
8. Primary contact name (first, last name), phone number, and optional email address of the primary contact person for the application

HSC section 8726.2(a) permits the applicant to be one of three types: a cemetery authority, its board of trustees, or its corporate trustee. Requirements 1 through 8 are necessary to verify the applicant's records and eligibility and identify both the entity type submitting the application to convert to the unitrust distribution method, and the cemetery the application is submitted for. These requirements also help ensure accuracy in the processing of the application and enable the Bureau to communicate more efficiently with the applicant's representatives.

C. Section B: Corporate Trustee Information, if applicable

If the trustee for the cemetery is not a corporate trustee, the applicant may skip to Section C of the application. If the trustee is a corporate trustee, the applicant is required to provide the following information:

1. Department of Financial Protection and Innovation (DFPI) license number, or Office of the Comptroller of the Currency (OCC) license, charter, or certificate type and number; and,
2. Name, designated agent for, phone number, optional email address, address, city, state, and zip code of the financial institution acting as the corporate trustee.

HSC section 8726.2(b)(3) requires the corporate trustee, if applicable, to demonstrate sufficient knowledge and experience in investing and managing the endowment care fund under the unitrust method. Requirements 1 and 2 are necessary to provide identifying information for corporate trustees and to verify that the corporate trustee is authorized to provide services in California. Corporate trustees are part of a highly regulated industry, which is overseen by DFPI (California agency regulating banks, trust companies and trust facilities in California (see e.g. Fin. Code, §§ 1550 et seq.) and OCC (federal bureau of the U.S. Treasury which charters, regulates and supervises national trust companies and banks). These corporate trustees already meet rigorous standards enforced by these agencies to be authorized to conduct business in this State. Therefore, the Bureau proposes that corporate trustees meet the knowledge and expertise requirement in Section 8726.2(b)(3) by providing proof of license, charter or certificate type from either DFPI or OCC.

D. Section C: Individual Trustee(s) or Designee of a Cemetery Authority

For those cemetery authorities that do not employ a corporate trustee, an applicant may show they meet Section 8726.2(b)(3)'s knowledge and expertise requirement by providing evidence of knowledge and expertise of its individual board of trustee member(s) or the cemetery authority. Since a corporate entity or limited liability company (LLC) (entities who are permitted to be licensed cemetery authorities in California) are legal fictions, and such entities may qualify for licensure or authorization only through its designated individual(s) or members, the Bureau proposes the cemetery authority designate one individual who is responsible for managing the endowment care fund who may meet the experience requirements in this section.

Therefore, Section C asks the applicant to identify the individual trustee(s) or designee of a cemetery responsible for managing the endowment care fund of the cemetery who meet both the knowledge and expertise requirements specified by the Bureau. Having at least one designee assures the Bureau that one person has the knowledge and expertise to manage the endowment trust fund. This section lists the requirements and qualifying work expertise question, as shown below, for the individual(s). The education

requirement may be met by (1) OR (2) below. The expertise requirement may only be met by (3) below.

1. Possession of a minimum total of 20 semester units, or the equivalent in quarter units, in one or more of the following academic areas: accounting, auditing, finance, economics, or actuarial science from a college, university, or other institution of higher learning accredited by an association recognized by the Secretary of the United States Department of Education. Documentation for these units shall be provide by sending copies of original transcripts to the Cemetery and Funeral bureau via email to unitrust@cfb.ca.gov or via mail to the Bureau's address listed on the application.

Requirement 1 is necessary to verify that individual trustees or designees have gained knowledge in one or more academic areas which are directly related, or impart knowledge and skills which are transferable to, investment management. The academic subject matter identified has historically been used as a minimum requirement for licensure into accountancy and investment advisor professions. Twenty units are specified as this is a typical unit requirement for an undergraduate major in a subject field. The Bureau is providing flexibility in the educational requirement category by including a provision for applicants with a mixture of these courses in a variety of higher learning settings, taken at any time, to meet the requirement as opposed to restricting it to individuals with a degree in one specific area. The Bureau has determined that possession of this baseline level of education qualifies an applicant for an entry level position in the investment field if the individual(s) does not hold an applicable professional license. To help ensure receipt of a completed application, this requirement also informs the applicant of the method for submitting proof of education to the Bureau. The "original transcripts" requirement helps the Bureau confirm the authenticity of the information being provided to the Bureau and eliminates possible fraud in the application process.

2. Holds a current, active, and unrestricted Certified Public Accountant (CPA), or Registered Investment Advisor License or registration from a federal agency, state, or territory in the United States. It also requires the applicant to identify the type of license or registration, issuing agency and license or registration number.

Requirement 2's licensure option is an alternative to the education required in Requirement 1. This option is offered as an equivalent knowledge requirement because the Bureau has determined that individuals holding the specified licenses have already completed relevant coursework to meet minimum competency standards for licensure in these established professions involving accounting, investing or finance.

Experience as a licensed or registered investment advisor shows knowledge concerning finance and management of investments. The Bureau requires a current, active, and unrestricted license because it would provide assurances that the individual has a current knowledge and experience base, is minimally competent to perform their duties,

and is not limited in their competency or restricted in any manner from discharging those duties. Such licensure or registration would help ensure competency in the decision-making process for investing and managing an endowment care fund. A CPA license would be similarly relevant because accounting standards apply to the full scope of an entity's financial picture, including assets, liabilities, revenues, expenses, and shareholders' equity. Therefore, an accounting knowledge base helps ensure competency in the management of the endowment care fund under the unitrust method, which would require a similar skill set. This requirement also specifies a straightforward and consistent method (i.e., listing type of license or registration, number and name of issuing agency) for the applicant to provide information which can be used by the Bureau to verify the license.

For the protection of the public to help ensure consistency in knowledge for these professions and since standards for these professions are typically national (see e.g., American Institute of Certified Public Accountants (AICPA), applicants must meet requirement 3 in addition to requirements 1 and 2. This requirement is necessary to confirm an applicant meets the expertise and knowledge requirements of HSC section 8726.2(b)(3) by combining practical work experience with relevant education in the management of an endowment care fund. Two years is designated as a minimum to ensure that an applicant has professional experience over at least one full fiscal year, in addition to a second year in which to evaluate results and performance from the first year, to establish some level of proficiency in investing and managing an endowment care fund under the unitrust distribution method. The requirement that experience be within the last ten years provides assurance that the applicant's skills are relatively current.

Meeting requirements 1 or 2 demonstrates that the individual(s) possess sufficient knowledge, and meeting requirement 3 demonstrates that the individual(s) possess sufficient expertise in investing and managing an endowment care fund under the unitrust distribution method as required by HSC section 8726.2(b)(3).

The Bureau determined that it need not seek the information sought in Section C from corporate trustees because they already possess the knowledge and expertise required by Section 8726.2(b)(3) as evidenced by authorization granted by the DFPI, the United States Department of the Treasury, or the OCC to provide services as a trustee.

E. Section D: Required Attachments

Section D is necessary to notify the applicant of the additional documentary requirements for completing their application under section 2334. Additionally, it provides notice that if all documents are not available the applicant must provide an explanation for why the document(s) are not available. This provides uniformity between the form requirements and proposed section 2334(b), which sets forth the process for providing additional explanation when all relevant trust documents are not available.

Further, this direction to the applicant, along with corresponding requirements at section 2334(b), helps an applicant to meet the requirements of HSC section 8726.2, which both requires specified conditions of approval to be met by applicants, but also allows relevant trust documents to be provided to the Bureau “if available” (see subdivision (d)). To resolve the apparent conflict or ambiguity between Section 8726.2(b) and (d), this proposal allows the Bureau discretion to determine what documents are needed based on the applicant’s explanation (and if applicable, the date the document(s) become available), while meeting its public policy obligations to ensure conditions for approval are satisfied.

To assist the applicant in compiling and submitting all the required documents and information, the Bureau attaches a copy of section 2334 to the application. These notices are provided to help ensure that the applicant submits a completed application and knows all applicable rules governing the Bureau’s conversion application process.

F. Section E: Certified True Statements

Section E includes a certification requirement for the applicant to certify that all statements, answers, and representations, including attachments the applicant provides, are true, complete, accurate and the individual(s) are authorized to complete the form on behalf of the cemetery authority. 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 cemetery authority. 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 materials, will be eligible for approval.

The form provides options for the applicant to check their signature category in Section E, including cemetery authority, board of trustees, or corporate trustee as authorized by Section 8726.2(a), and then provide information (signature, name, title and date) for each individual authorized to complete the application on behalf of the cemetery authority. Since corporations may have different officers with authority, the Bureau has elected to allow the corporation to determine the appropriate authorized representative to sign the application. For an LLC, in line with options for either member-managed or manager-managed LLC structures in California, an LLC may provide either the managing member’s signature or another authorized representative to sign the form. These requirements provide applicants with a simplified and uniform approach to authorizing the changes requested on this application for the cemetery authority.

Finally, the application form includes the required notices and disclosures to the applicant for the Board’s collection of personal information in compliance with Civil Code section 1798.17.

The Unitrust Conversion Application, form 23-UCA (New 07/21), incorporated by reference, would be cumbersome, unduly expensive, and otherwise impractical to publish in the CCR. The form will be available on the Bureau's website and hard copies will be available from the Bureau upon request.

Adopt Section 2334 (a)(1)-(a)(6): Documents Required to Accompany Application

Rationale: The information and documents specified under subdivisions (a)(1) through (a)(6) are necessary to ensure the Bureau obtains sufficient information to evaluate compliance with the conditions for approval of a conversion application contained in HSC section 8726.2. Each requirement is necessary for the following reasons:

(a)(1) The proposed endowment care fund trust instrument executed by the board of directors or limited liability company members of the cemetery authority.

The proposed endowment care fund trust instrument is necessary because HSC section 8726.2(d) requires the cemetery authority to provide all relevant trust documents to the Bureau, including a proposed trust instrument to assist the Bureau in making its determination. The requirement that the instrument be executed by the Board of Directors or LLC members also helps ensure this document requirement is consistent with existing regulatory requirements for cemetery authority licensure at Section 2326(a)(1)(G) of Title 16 of the California Code of Regulations, which contains this same execution requirement.

(a)(2) The trustee compensation schedule as referenced in Section 8726.2(b)(7)(B) of the Health and Safety Code.

As a condition of the Bureau's approval, HSC section 8726.2(b)(7)(B) requires the compensation of the trustee to be fair and reasonable and meet specified conditions set forth therein. As a result, the Bureau needs a copy of this schedule to confirm these conditions are met, including that it is a contractually prescribed schedule, adopted for a period of no less than one year, and with relation to the net fair market value of the endowment care fund as of the end of the scheduled period, and the calculation of those fees as a percentage of that value shall be adjusted for that calculation.

(a)(3) Written investment objectives that promote the mutual goals set forth in Section 8726.2(b)(1) of the Health and Safety Code.

As a condition of the Bureau's approval, HSC section 8726.2(b)(1) requires the applicant to provide the investment objectives of the trust that meet specified criteria listed therein. This proposed change would help implement that requirement by requiring the investment objectives be provided in writing for the Bureau's review. The Bureau needs these objectives to be in writing to enable it to closely review the details of these objectives to ensure they actually meet Section 8726.2(b)(1)'s public policy goals.

According to the statute, the investment objectives must meet the public policy goals of: (A) growing the principal assets to sufficiently cover of future and ongoing care and maintenance of the cemetery; and, (B) generating income to support the cemetery as described in HSC section 8726. This information is also necessary to determine whether a cemetery authority has established clear investment goals and whether they are supported by specific objectives. These objectives and goals impact how aggressive the fund's investment strategy can be and affect investment class allocation ranges. This information provides assurances to the Bureau that the fund is reasonably invested given the objective to preserve the corpus. Therefore, this information would also be a good indicator of whether "reasonable care, skill, and caution" would be used in managing and investing trust assets as a "prudent investor would" as required by Probate Code section 16047 of the Uniform Prudent Investor Act. (For ease of reference, the Bureau refers to the short form name of the applicable laws considered the "prudent investor rule" as "the Uniform Prudent Investor Act" in this proposal (see authority to cite in this manner at Probate Code section 16045).)

(a)(4) Evidence of how the cemetery authority, its board of trustees, or its corporate trustee will invest and manage the trust under the prudent investor rule as set forth in the Uniform Prudent Investor Act. Evidence shall be in the form of an analysis and shall include:

As a condition of the Bureau's approval, HSC section 8726.2(b)(2) requires the Bureau to collect "evidence" the cemetery authority will invest and manage the trust under the prudent investor rule. Current law does not specify what "evidence" would meet the Bureau's requirements for approval. As a result, this subdivision specifies what, in the Bureau's experience, would be the minimum evidence (in the form of analysis) the cemetery authority needs to show the Bureau it is managing and investing according to the prudent investor rule (Article 2.5 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9 of the Probate Code, and including Probate Code section 16050). Further section-by-section explanation follows.

(a)(4)(A) Current investment asset class allocation ranges, with explanations of the role(s) each class of investment plays in the overall portfolio strategy, and how the asset allocation will assist the trustee in managing the fund according to the prudent investor rule.

This subdivision requires the applicant to supply asset class allocation ranges. This is typically understood as an investment strategy that aims to balance risk and reward by apportioning a portfolio's assets classes (also known as categories of investments, e.g., stocks, bonds, mutual funds, fixed-income investments, and commodities), in accordance with the goals of the fund. This information is necessary so the Bureau can confirm the assignment of the various types and amounts of investments in the fund are predicated on and conform to the objectives and goals of the fund as described in subdivision (a)(3) above. Section 16047(b) of the Uniform Prudent Investor Act provides: "A trustee's investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation, but in the context of the trust

portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.” This information would therefore also provide further evidence that the investments and assets are “suited” to the trust.

(a)(4)(B) A five (5) year projection for the fund, by year, of anticipated income, expense, and valuation calculations adjusted for inflation and changes in asset values that identify and consider the following:

The five-year projection provides documentation that managers of the fund have considered and are able to particularize and evaluate the fund’s income, expenditures, and changes in value for a reasonable future time frame, and are able to integrate this information into a cohesive representation of the condition of the endowment care fund. Probate Code section 16047 in the Uniform Prudent Investor Act requires trustees to evaluate and consider this information when investing and managing trust assets, which the analysis will provide. It also provides some assurance that managers of the fund understand and are capable of administering the fund in conformity with the prudent investor rule and all laws and regulations applicable to endowment care funds. The Bureau considers such an evaluation to be a routine exercise for the trustee(s). This information ensures only qualified applicants are approved for conversion to the unitrust distribution method.

The projection must identify and consider the following elements:

- The projected value of the endowment care fund necessary to maintain the cemetery when it no longer has any interment space left to sell, if that condition is expected to occur before the end of the five (5) year projection.

This information is necessary because once the cemetery’s interment spaces are sold out, no further deposits will be made to the endowment care fund, and growth of the fund is solely dependent on investment returns and controlling expenditures. The analysis must reflect that the fund is adequate and sustainable at this level under the specified investment plans outlined in the analysis to meet the prudent investor rule, which requires the trustee to consider the funds needs for liquidity, regularity of income, and preservation and growth of capital. In addition, the timing of this event (once the cemetery’s interment spaces are sold out) must be specifically identified because after that date there must be more cash available for withdrawal to meet expenses. The fund’s portfolio should reflect this need with increased attention to liquidity concerns as part of its investment strategy as liquidity concerns also should be addressed pursuant to Section 16047(c)(7) of the Uniform Prudent Investor Act.

- The reasonable administrative expenses attributable to generating income to the endowment care fund. “Reasonable administrative expenses” are the expenses identified in Section 8733 of the Health and Safety Code.

A statement of these expenses is necessary because they represent expenditures from the fund which will reduce its value and therefore must be accounted for under section 16047 of the Uniform Prudent Investor Act. Use of the definition in Health and Safety Code section 8733 for “reasonable expenses” is needed to provide examples of which expenses are included in this category as a reference for applicants that is also specifically related to income generation for the endowment care fund.

- The portion of expenses attributable to care, maintenance and embellishment of the cemetery expected to be paid by the endowment care fund.

HSC section 8726(a) provides, in part: “The principal of all funds for endowment care shall be invested and the income only may be used for the care, maintenance, and embellishment of the cemetery in accordance with the provisions of law and the resolutions, bylaws, rules, and regulations or other actions or instruments of the cemetery authority and for no other purpose.” A statement of what portion of expenses are attributable to care, maintenance, and embellishment of the cemetery is therefore necessary because these expenses factor into an assessment of the fund’s value. A statement of these expenses is necessary because they represent expenditures from the fund which will reduce its value and therefore must be accounted for under section 16047 of the Uniform Prudent Investor Act.

- The projected contributions to the corpus from: (1) sales of developed property categorized by quantity and type of interment space, including current deposit rates and any anticipated modification of the deposit rates; and (2) sales of undeveloped property, if known and applicable.

This information is necessary because it quantifies the annual expected dollar amount of deposits to the fund resulting from space sales, which is a component needed for a calculation of the fund’s value and is required to be considered under section 16047 of the Uniform Prudent Investor Act. Separate identification of projected deposits from sales of undeveloped property are understood to be more speculative in nature due to the unknown costs of future land development, particularly irrigation costs. Subsequent analysis of or reliance on the cemetery’s projection of contribution amounts necessarily has a larger margin of error for deposits to corpus from undeveloped property. Projected contributions to the corpus from these sources would tell the Bureau how well the cemetery authority’s strategy to ensure endowment care fund sufficiency is working from a deposit rate and quantity perspective, and whether the cemetery is increasing deposit rates as needed to grow the fund. Endowment care fund growth comes from adding deposits, deferring income distributions to the cemetery, and maximizing total return on investments. Individual identification of each element and its effect on the year-end dollar value of the fund tells the Bureau that the cemetery has considered all of its options for ensuring fund sufficiency.

- The projected growth of the fund, with consideration of tax obligations.

Projected growth is necessary because it is integral to the calculation of the fund's value from year to year and is necessary under Section 16047(c)(5) of the Uniform Prudent Investor Act. The Bureau selected the term "growth" because it is a commonly used industry term and industry professionals agreed it was appropriate after the Bureau's stakeholders' workshop June 21, 2021. Tax consequences must be considered in analyzing investment and management decisions under Section 16047(c)(3) of the Uniform Prudent Investor Act. As tax obligations can adversely affect the growth of the fund, the Bureau requires the analysis to consider tax obligations in projecting the growth of the fund to obtain a more accurate and complete projection of fund growth from the applicant.

- The projected annual unitrust amount.

The projected annual unitrust amount for a given year is predicated on the fund's present and past values and is subject to caps and restrictions based on various conditions and calculations as described in HSC section 8726.2. The cemetery can calculate the anticipated amount of the distribution which will be allowed under HSC section 8726.2 for each year based on the data it has compiled for the application. Probate Code section 16047 of the Uniform Prudent Investor Act requires that distributions from the fund be evaluated since they impact the value of the fund.

This information is necessary because this distribution amount assists the Bureau in determining whether the investment performance of the fund is adequate to allow for the planned distribution amount and is and consistent with the standards set forth in the prudent investor rule as it is a necessary part of calculation of the fund's value.

The projection, in part, also demonstrates that cemeteries meet the requirement to reconsider annually, and adjust as necessary, the amount collected in endowment care fees, based upon current and projected maintenance expenditures. This helps to ensure that sufficient funds are available which would allow the cemetery to adhere to the cemetery maintenance standards required by Section 2333 of Title 16 of the CCR.

(a)(5) Policies or written procedures that identify any internal controls and reporting systems used by the trustee to manage the fund under the prudent investor rule.

Section 16047(d) of the Uniform Prudent Investor Act provides: "A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets." In the Bureau's experience, this information is necessary so the cemetery authority can demonstrate to the Bureau the cemetery authority, its board of trustees, or its corporate trustee has mechanisms in place to effectively monitor, manage, and oversee the endowment care fund according to this "reasonable effort" standard in the prudent investor rule, as required by HSC section 8726.2(b)(2).

(a)(6) Written financial records showing a separately identifiable reserve account has been created for future maintenance, repair, restoration of property, or embellishments in the cemetery pursuant to Section 8726.2(b)(5) of the Health and Safety Code. The beginning balance of this reserve may include the prior year's ending balance of the Reserve for Future Maintenance under the net income distribution method.

These records are necessary to show to the Bureau's satisfaction that the cemetery authority has created a reserve account prior to submitting the application, which is a condition of approval under HSC section 8726.2(b)(5). The provision to allow the beginning balance of the reserve to include the prior year's ending balance of the Reserve for Future Maintenance under the net income distribution method addresses the unresolved issue, not expressly addressed by the statute, regarding the treatment and disposition of previously established reserve amounts (established per the net income method) by permitting them to be carried over to the new reserve for the unitrust method. HSC section 8726.2(b)(5) also does not mandate how the reserve account should be funded prior to approval of the conversion by the Bureau and how an applicant could show compliance. This proposal would provide guidance to the regulated community for a reasonable method for compliance with section 8726(b)(5)'s requirements to establish a reserve account for future maintenance, repair, restoration of property, or embellishments in the cemetery. However, the Bureau, in providing this option, does not prohibit other funding mechanisms for meeting this requirement.

Adopt Section 2334(b): Provision of Relevant Trust Documents

Subdivision (1):

“If all relevant trust documents including a proposed trust instrument are not available at the time of application, then the applicant shall include with the application an explanation for why the document(s) are not available and, if applicable, the date the document(s) are expected to become available. Any approval of the application without the relevant trust document(s) may be conditioned upon the applicant's provision of the relevant document(s) within thirty (30) days of the date when the applicant indicates the documents will become available. For the purposes of this section, “relevant trust documents” means all items listed in this section.”

Rationale: HSC section 8726.2(b) requires the Bureau to approve the application to convert to the untrust method only if the specified conditions of approval are met. HSC section 8726.2(d) also provides:

To assist the bureau in making its determination, the cemetery authority, its board of trustees, or its corporate trustee shall provide all relevant trust documents, including a proposed trust instrument, if available. If relevant trust documents become available after the bureau makes a determination, the cemetery authority, its board of trustees, or its corporate trustee shall provide it to the bureau. (Emphasis added.)

The Bureau proposes this subdivision to resolve the above ambiguities that compel an applicant to meet all conditions of approval and “provide” relevant trust documents but only “if available.” Also, this proposed resolution of the ambiguities will help the Bureau to meet its mandate to approve only those applications that meet the standards in section 8726.2(b). It would allow the Bureau discretion to determine what documents are needed based on the applicant’s explanation (and if applicable, the date the document(s) become available), while meeting its public policy obligations to ensure conditions for approval are satisfied. This proposal also provides a simple, uniform process for applicants to meet the conditions in HSC section 8726.2 without compromising the public protection goals of approving only qualified applicants to make the unitrust method conversion.

This proposal would allow the Bureau discretion to make the approval conditional in those cases where the applicant indicates documents may become available and the further information would provide the Bureau with additional assurances the representations made by the applicant are validated. Further, a conditional approval allows the applicant to make business decisions about whether to move forward with the conversion process and how to prioritize completion of the approval process with the Bureau.

Providing applicants a response date that is 30 days from the date when they indicate the documents will become available, would in the Bureau’s experience, be sufficient time for an applicant to provide the relevant trust documents. Much of the information covered by this proposal are documents and information that a cemetery authority would have readily available as part of its due diligence in complying with the prudent investor rule and filing its annual reports with the Bureau pursuant to BPC section 7612.6. In addition, no public participants indicated that complying with this time frame would be an issue at the June 21, 2021 stakeholder’s meeting.

Finally, the Bureau adds a definition for “relevant trust documents.” This is needed to further prescribe what the Bureau considers “relevant” for the purposes of approving a untrust method conversion application. This also necessary to provide notice to the applicants of this requirement. HSC section 8726.2(d) only mandates inclusion of relevant trust documents generally and specifies only that a “proposed trust instrument” shall be provided to the Bureau in making its determination; it does not specify what other trust documents might be considered “relevant.” This proposal would further specify those other trust documents in this Section.

Subdivision (2):

“If any relevant trust document(s) identified by the bureau in the notice of conditional approval is not provided within thirty (30) days of the date of when the documents become available, then the conditional approval shall be revoked and the application denied. The bureau shall send a notice of revocation of conditional approval and denial of the application to the applicant as set forth in Section 2334.2.”

Rationale: Subdivision (b)(1) of this subdivision provides a mechanism for the Bureau to condition approval on the provision of relevant trust documents within 30 days of the date when the documents become available. This subdivision would provide notice to the applicants and establish the process for revoking the conditional approval if relevant trust documents are not received in the prescribed 30-day timeframe. This would eliminate confusion regarding the meaning of a conditional approval and provide specific regulatory consequences for failure to comply with the conditions prescribed by the Bureau. This helps ensure all cemetery authority licensees are held to the same standards and expectations with regard to complying with the Bureau's laws and regulations.

To ensure that applicants have sufficient notice and opportunity to be heard before the decision becomes final and provide consistency across the Bureau's procedures for this type of application, the Bureau proposes to use the same notice procedures for initial denial set forth in proposed Section 2334.2 for these actions.

Adopt Section 2334(c): Requirement for Completed Application

"(c) A completed application pursuant to this section shall be submitted at least ninety (90) days prior to the beginning of the cemetery authority's reporting year for which the conversion is requested."

Adopt Section 2334.1 of Division 23 of Title 16 of the CCR (Endowment Care Fund Conversion Condition)

Section 2334.1

The Bureau proposes to adopt section 2334.1 to require that a cemetery authority seeking to convert its endowment care fund from the net income distribution method to the unitrust distribution method must first obtain the Bureau's written approval, and to inform the applicant that the conversion to the unitrust distribution method shall become effective on the first day of the cemetery authority's reporting year following the date of approval from the bureau.

Rationale: Under HSC section 8726.2(a), a cemetery authority, its board of trustees, or its corporate trustee "may apply" to convert its endowment care fund to a unitrust method. Further, HSC section 8726.2(b) authorizes the Bureau to approve the cemetery authority's application to convert its endowment care fund from the net income distribution method to the unitrust distribution method only if all the conditions of approval are met. This proposal is necessary to make it explicit that prior approval is required before conversion can occur. This is necessary to place licensees on notice of this requirement and make it an express violation of the Cemetery and Funeral Bureau Act per BPC section 7711.1.

Also, requiring the effective date of conversion to be the first day of the cemetery authority's reporting year following the date of approval from the bureau provides the applicant

sufficient time to prepare for the conversion. It also eliminates the need to provide two sets of reports to the Bureau (one for each distribution method) for the same year as would be required if the conversion is permitted to become effective mid-year, which would result in additional costs to the cemetery to produce the additional reports, and to the Bureau to adequately review them.

Adopt Section 2334.2 of Division 23 of Title 16 of the CCR (Denial of Unitrust Conversion Application)

Subdivision (a) Grounds for Denial:

Rationale: The Bureau proposes to adopt section 2334.2(a) to describe the conditions under which an application for a licensed cemetery authority requesting approval from the Bureau to convert an endowment care fund from the net income distribution method to the unitrust distribution will be denied. The proposal is necessary to centralize all possible grounds for denial in one convenient location.

The conditions are:

- (1) The cemetery authority does not meet the conditions of approval described in Section 8726.2(b) of the Health and Safety Code, as applicable.
- (2) The bureau finds any of the conditions described in subdivisions (a) to (f), inclusive, of Section 7613.9 of the Business and Professions Code.
- (3) The applicant has not provided all relevant documents and information to the bureau pursuant to proposed Section 2334 of the California Code of Regulations.

HSC section 8726.2(b) authorizes the Bureau to approve the cemetery authority's application to convert its endowment care fund from the net income distribution method to the unitrust distribution method only if the conditions of approval, described in HSC section 8726.2(b)(1) through (8), are met. Proposed section 2334 requires that cemeteries complete an application and submit relevant documentation to enable the Bureau to determine whether the applicant meets the conditions. In addition, HSC section 8726.2(c) requires the Bureau to deny a cemetery authority's application if the Bureau finds any of the conditions described in subdivisions (a) through (f), inclusive, of BPC section 7613.9. Section 2334.2(a) is necessary to locate the grounds for denial in one place for ease of reference and convenience to the reader. It summarizes the three sets of conditions under which an application for conversion will be denied so applicants may be informed and placed on advance notice of all the possible grounds for denial of the application.

Subdivisions (b) through (d): Written Notice of Denial, Appeal, and Informal Conference Option

The Bureau proposes to adopt these subdivisions to describe the Bureau's process for informing a cemetery authority that its application for conversion of the endowment care fund to the unitrust distribution method has been denied, and the procedures and processes for appealing the denial.

Rationale: In order to ensure applicants have a fair opportunity to contest the Bureau's denial decision and the Bureau to hear those concerns, section 2334.2, subdivisions (b) through (d) are necessary to set forth the means by which an applicant may receive written notice, appeal the Bureau's denial of conversion to the unitrust distribution method, and request an informal office conference.

Subdivision (b) specifies that the Bureau will provide the cemetery authority with a written notice of the denial, mailed to the cemetery authority licensee's address of record, which will include the basis for the denial, and the process and procedure for appealing the denial. This provision is necessary to ensure that the applicant is informed and provided complete information to allow for a determination whether to contest the Bureau's determination. Written notice of the appeal procedures mailed to the "address of record" where notice is served (see Bus. & Prof. Code, § 124) is needed to help ensure receipt and that complete and accurate information is conveyed to the cemetery authority about its rights and how to exercise them if they wish to appeal. The written notice also serves as the document that triggers the 30-day right to request an appeal set forth in subdivision (c).

Subdivision (c) specifies that the applicant may file a written appeal of the bureau's decision denying its application to convert within thirty (30) days after the date of the notice of the bureau's denial, and that any documentation the applicant wishes to present to the bureau shall be included with the appeal. This proposal helps ensure that applicants have sufficient time to prepare and file a written appeal with the Bureau and an opportunity to present all arguments to contest the Bureau's decision.

Under subdivision (c), the request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act ("APA" - commencing with Section 11445.10 of the Government Code). Section 11445.20(c) of the Government Code permits a state agency to adopt this procedure where the agency authorizes it by regulation. This is potentially a less costly system than the formal hearing procedure and is warranted for a denial or other action (see action in Section 2334(b)(2)) that is mainly focused on documentary evidence and written arguments provided by both parties. This provision is also necessary because it affords fairness to the applicant, due process and entitles them to reconsideration.

Subdivision (d) informs the applicant that in addition to requesting a hearing, the applicant may request in writing an informal office conference with the Bureau regarding the reasons for the denial within ten (10) days from the date of receipt of the denial notice. The Bureau

shall, within thirty (30) days from the date of receipt of the request, hold an informal office conference with the applicant. At the conclusion of the informal office conference, the Bureau may affirm or dismiss the denial. The Bureau must state in writing the reasons for their action and mail a copy of their findings and decision to the applicant within fifteen (15) days from the date of the informal office conference. The applicant does not waive its request for an informal hearing as provided by this section by requesting an informal office conference. If the denial is dismissed after the informal office conference, the application shall be deemed approved and the request for an informal hearing shall be deemed to be withdrawn. It is necessary to provide for an optional informal office conference before an applicant may file an appeal to resolve claims expeditiously at an early stage if possible. This may help avoid the time and expense of an appeal for all parties.

Subdivision (d) is consistent with the Bureau's practice for its licensees who have been issued a citation as set forth in Title 16, CCR, section 2386.5 and provides an inexpensive option to ensure the efficient resolution of appeals when possible. Therefore, in the Bureau's experience, the timeframes and procedures proposed here provide: a fair and efficient means of providing applicants with options for resolving objection to the Bureau's determination, applicants notice of this simplified process for resolving contested actions and a process for expediting approval when the denial is withdrawn. The informal conference option proposed does not affect the appellant's right to a hearing under the APA.

Adopt Section 2334.3 of Division 23 of Title 16 of the CCR (Abandonment of Unitrust Conversion Application)

The Bureau proposes to adopt section 2334.3, subdivisions (a) and (b), to inform licensed cemetery authorities and the public that the Bureau will consider an application that has been returned to the applicant as incomplete is considered abandoned 12 months from the date of returning the application. In addition, it requires an applicant who abandons an application to submit a new application to obtain the Bureau's approval to convert an endowment care fund to the unitrust distribution method.

Rationale: For bureaus subject to the control of the director, such as the Cemetery and Funeral Bureau, BPC section 142(b) provides: "[n]otwithstanding any other provision of law, the abandonment date for an application that has been returned to the applicant as incomplete shall be 12 months from the date of returning the application."

As a result, the Bureau cannot deem an application abandoned until 12 months have passed from the date of returning the application. This section is necessary to apply the Bureau's abandonment of application procedures to cemetery authorities seeking the Bureau's approval to convert an endowment care fund from the net income distribution method to the unitrust distribution method and to provide such notice to affected applicants. In the Bureau's experience, setting such a standard encourages applicants to submit timely information. The Bureau proposes to require a new application be submitted after an applicant abandons an application to simply and clearly communicate to affected applicants that they must submit a new application to obtain Bureau approval.

Adopt Section 2334.4 of Division 23 of Title 16 of the CCR (Reversion to Net Income Distribution Method)

Section 2334.4 (subdivisions (a)-(e))

HSC section 8726.2(e)(3) authorizes the Bureau to revert a cemetery authority from the unitrust distribution method to a net income distribution method if the original conditions of approval described in section 8726.2(b) cease to be met, or the cemetery authority has failed to file an annual report. The Bureau proposes to adopt section 2334.4 to inform cemetery authorities and the public of the requirements, procedures, and timeframes for the reversion process. The proposal would set standards for what the Bureau determines is “satisfactory proof” of reversion, as well as the response date for providing the Bureau such proof. The proposal would establish it constitutes unprofessional conduct to fail to comply with the Bureau’s notice requiring the cemetery authority to revert, or to refuse to provide the “satisfactory proof” of reversion as specified by this section.

Rationale: Subdivision (a) is necessary to set forth instructions for reversion to ensure transparency, clarity, and uniformity for the process when the Bureau requires a cemetery to revert from the unitrust to the net income distribution method. HSC section 8726.2(e)(1) places the responsibility on the Bureau to conduct annual reviews of cemeteries under the unitrust distribution method and to determine when a cemetery authority no longer meets the conditions of approval for the unitrust distribution method. HSC section 8726.2(e)(3) authorizes the Bureau to require cemeteries to revert to the net income distribution method when they no longer meet the conditions of approval for the unitrust distribution method or they fail to file an annual report pursuant to BPC section 7612.6. The Bureau provides the cemetery a 60-day notice to revert to the net income distribution method, which in the Bureau’s experience, is sufficient time to implement any necessary changes to the cemetery authority’s business model and/or relevant trust documents, including the proposed trust instrument.

Subdivision (b) provides the Bureau will mail notice of the Bureau’s requirement that the cemetery authority revert to the net income distribution method and will include the reasons for reversion to the net income distribution method and the effective date of the reversion. This provision is necessary to ensure that the applicant is informed and provided complete information regarding the basis for the Bureau’s decision. This is notice is in writing and mailed to the “address of record” where notice is served (see BPC section 124), to help ensure receipt and that complete and accurate information is conveyed to the cemetery authority about the basis for the Bureau’s decision and the effective date of the reversion.

The effective date of reversion may be in the current or the subsequent calendar year or a fiscal year that has been approved by the Bureau consistent with the filing dates required in BPC section 7612.7. This subdivision is necessary to ensure that the applicant receives advance notification of the reversion requirement and the expected

date of the reversion. Without specific instructions from the Bureau addressing when the reversion must happen, cemeteries may delay or decline to make the reversion, which could result in a further loss of fund principal.

Subdivision (c) provides that after the 60-day period set forth in subdivision (a) has passed, the Bureau may require a cemetery authority show “satisfactory proof” of reversion. The cemetery authority must provide proof of reversion within fourteen (14) days of the date of the Bureau’s written request for such proof. This subdivision is necessary to ensure that the cemetery has complied with the reversion notice, provide the Bureau with express authority to investigate compliance with its reversion notice and require the licensee’s cooperation by showing proof of compliance with that notice. At the industry stakeholder’s meeting on June 21, 2021, a representative suggested that 14 days would be sufficient time for a cemetery authority to gather the necessary proof of compliance after the date of the Bureau’s written request for such proof. Therefore, this proposal would adopt such a standard to help validate compliance.

In addition, for the purposes of this section, “satisfactory proof” means the documents or other written information, including a new proposed trust instrument or amendment(s) to the trust instrument, showing the cemetery authority’s endowment care fund reversion to the net income distribution method. Providing a definition avoids confusion and helps establish consistent standards for what the Bureau needs to validate compliance with the notice of reversion. Since the trust instrument is the legal document that governs or shows how a trust will be effectively managed, including the distribution of income, proof of a new or amended trust instrument showing the change would be considered satisfactory proof of the reversion back to the net income method.

BPC section 7711.1 provides, in part: “Unprofessional conduct by any licensee or registrant or by any agent or employee of a licensee or registrant constitutes grounds for disciplinary action. Unprofessional conduct includes, but is not limited to, the following...” Existing law at section 7711.1 sets forth the categories of conduct that constitute unprofessional conduct and the conduct that could result in disciplinary action or the imposition of civil or administrative fines (see Bus. & Prof. Code, § 7686 – for acts constituting grounds for discipline and 16 CCR § 2382 – for violation of any regulation enforced by the Bureau). The Health and Safety Code does not specify how the Bureau would enforce compliance with its requirement to revert to the net income distribution method. This proposal would implement the mechanism for enforcement of the Bureau’s reversion requirement.

Currently, there is no regulation that makes it unprofessional conduct, and therefore a violation of the Act, to fail to comply with the Bureau’s notice of reversion or refuse to provide satisfactory proof of reversion. Subdivision (d) would adopt such a standard.

The Bureau should be authorized to consider this conduct unprofessional, which would allow the Bureau discretion to determine whether to impose discipline or issue a citation if the licensee fails to comply with the Bureau’s notice of reversion or refuses to provide

satisfactory proof of reversion. Such conduct is evidence of the licensee's inability to meet minimum standards and exercise good judgment in dealing with the Bureau, and possibly the regulated public. However, current regulations do not address such conduct.

This amendment would make it unprofessional conduct, and therefore, a violation of the Act's regulations, to fail to comply with the Bureau's notice of reversion or refuse to provide satisfactory proof of reversion. This would assist the Bureau in enforcing its reversion notice and addressing these compliance deficiencies by essentially providing the Bureau with discretion to discipline or issue a citation to a licensee for this type of unprofessional conduct. In addition, by adopting this new unprofessional conduct standard in this manner, it also assures the affected cemetery authorities of the availability of the notice and hearing procedures already required by the APA at section 11500 and following of the Government Code, BPC section 125.9, and section 2382 of Title 16 of the California Code of Regulations when disciplinary actions or citations are issued by the Bureau.

Subdivision (e) provides a cemetery authority that reverts to the net income distribution method and seeks to reconvert its endowment care fund to the unitrust distribution method shall submit a new application pursuant to section 2334 and receive approval from the Bureau as provided in Section 2334.1 prior to conversion. The Bureau requires a new application as circumstances may have changed since the cemetery authority last converted to the unitrust distribution method. Further, this proposal would simply and clearly communicate the requirements after reversion if the cemetery authority wishes to reconvert to a unitrust method: you must submit a new application to obtain Bureau approval prior to conversion.

Amend Section 2350 of Division 23 of Title 16 of the CCR (Endowment Care Fund Reports)

BPC section 7612.6(b) addresses the annual report requirements for cemeteries and section 2350 provides additional requirements for submitting an acceptable annual report to the Bureau. In consideration of the additional standards required to be met by HSC section 8726.2, the Bureau proposes to divide section 2350 into two subdivisions, (a) and (b), to clarify the section and its requirements relative to cemetery authorities who convert to the unitrust method.

Proposed changes to subdivision (a) corrects the outdated terminology of the existing regulation pertaining to annual report requirements by changing it from 9650(c) to BPC section 7612.6(b) and proposes other technical and grammatical clean-up to this Section to improve readability. It also adds requirements for the audit report to be "signed" by a licensed certified public accountant or public accountant and adds text to clarify that the report must fully disclose the "financial" position of the endowment care fund. It strikes references to the requirement of rendering an "independent" opinion and replaces it with an "unmodified" opinion.

The proposal adds a new subdivision (b) that provides that a cemetery authority approved for conversion of its endowment care fund to the unitrust distribution method

must provide a copy of all documents that were created, updated, or changed since its approval by the Bureau, including all relevant trust documents and information provided to the Bureau in Section 2334. It also replaces outdated BPC section 9650(c) with BPC section 7612.6(b) in the regulatory text and the Authority and Reference sections.

Rationale: The expansion of the regulation into two subdivisions clarifies the meaning of the existing language pertaining to the audit report required under BPC section 7612.6(b) by striking “The terminology of Section 9650(c) of the Code shall be deemed to require the certificate of the accountant or auditor preparing such a statement and shall be deemed to have been complied with when...” and replacing it with “The annual audit report required pursuant to Section 7612.6(b) shall be...” prepared and signed by a certified public accountant. Section 9650 was repealed, and relevant provisions moved to 7612.6 of the Code. This change is therefore necessary to avoid licensee confusion regarding the Bureau’s authority and where to find the requirements for annual reports. Further, this proposal adds a signatory requirement for the licensed certified public accountant or public accountant providing the report to be filed with the Bureau, which is a requirement of BPC section 7612.6 and necessary to conform existing regulatory text to this requirement.

The addition of the word “financial” before position is necessary to prevent licensee confusion and ensure that the report accurately reports the financial as opposed to another condition to the Bureau in compliance with Section 7612.6(b)’s financial reporting requirements. Finally, the Bureau proposes to strike the word “independent” before opinion and replace it with the word “unmodified.” Stakeholders have indicated that this is a more accurate term for what is being requested by the Bureau since the Bureau seeks an unqualified opinion (referred to in the profession as an “unmodified opinion”) regarding the financial statements submitted on behalf of the cemetery authority to accompany the annual report.

The addition of subdivision (b) addresses the Bureau’s needed additional information which cemetery authorities that have been approved to convert to the unitrust distribution method must provide with the annual report. HSC section 8726.2(e)(1) requires the Bureau review on an annual basis whether a cemetery authority continues to meet the conditions of approval for the use of the unitrust distribution method. Mandating that the cemetery authority provide a copy of all documents that were created, updated, or changed since its approval by the Bureau, including all relevant trust documents set forth in section 2334, with its annual report provides a simplified and efficient method for the Bureau to meet section 8726.2(e)’s review requirement. It also provides a less costly alternative for the cemetery authority to report updated or new information to the Bureau rather than requiring the filing of a separate report or notice with the Bureau.

It also replaces outdated code BPC section 9650(c) with BPC section 7612.6(b) in the regulatory text and the Authority and Reference sections.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

- AB 926 (Irwin, Chapter 750, Statutes of 2017)
- AB 795 (Irwin, Chapter 309, Statutes of 2019)
- Stakeholder Workshop Minutes, June 21, 2021

Fiscal Impact Assessment:

The proposed regulations are not anticipated to increase workload or costs to the state.

Current law requires the Bureau to implement and oversee an application process to convert an endowment care fund from a net distribution method to a unitrust distribution method. Any workload and costs of implementation are a result of current law.

Business Impact:

The Bureau has made the initial determination that the proposed regulations will not have statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other States.

This initial determination is based on the following facts:

- The Bureau has determined that the only types of businesses that may be affected are licensed cemetery authorities seeking the Bureau's approval to convert their endowment care trust fund from the net income distribution method to the unitrust distribution method.
- As of July 2020, the Bureau licenses 194 endowment care cemeteries, which are all projected to apply for the unitrust distribution method in the first year. Of the 194, the Bureau anticipates 96 licensees will qualify for the unitrust distribution method. Given that the licensee population is only 194, and not all will meet the conditions of approval, the Bureau has determined that the number of licensees is insufficient to create a statewide adverse economic impact.
- These proposed regulations would provide licensed cemeteries with an additional business structure option consistent with current law. The regulation does not require licensed cemeteries to convert to or to be established using the unitrust distribution method.
- Opting to utilize the unitrust distribution method is a voluntary business decision made by the cemetery and therefore, any business impact is a result of this choice and not the regulations.

- Existing law requires licensed cemetery authorities to annually submit an endowment care fund report. The Bureau is requesting additional documents and/or information to aid in its evaluation of the effectiveness of the unitrust distribution method. The additional documents and/or information add to the existing reporting requirements, which would not add additional cost to the cemetery authorities because the cemetery already keeps records of this information and this proposal would not require a separate report to be filed.

Economic Impact Assessment:

This Bureau has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because this proposed regulation only offers a licensed cemetery authority an alternative method to structure its endowment care fund. These proposed regulations would provide licensed cemeteries with an additional business structure option consistent with current law. The regulation does not require licensed cemeteries to convert to or to be established using the unitrust distribution method.
- It will not create new business or eliminate existing businesses within the State of California or the expansion of business currently doing business within the State of California. The proposed regulations are only applicable to cemeteries which are already licensed by the Bureau and provides the cemetery with the business option to expend funds which may be available to the cemetery under the unitrust distribution method. The regulation proposal does not require licensed cemeteries to convert to or to be established using the unitrust distribution method.
- This regulatory proposal will not affect the health and welfare of California residents because the regulations are aimed toward licensed cemetery authorities seeking the Bureau's approval to convert the endowment care fund to the unitrust distribution method. The use of the unitrust distribution method may offer a better long-term outlook for the endowment care fund because it is a more comprehensive approach to investing which better balances the need for asset appreciation with current income.
- This regulatory proposal may positively affect worker safety if a sufficient endowment care fund is maintained by the cemetery, which would allow the cemetery to expend funds to repair surfaces and ensure the property is kept in a condition so as to prevent a hazard to the worker.
- This regulatory proposal may positively affect the state's environment if a sufficient endowment care fund is maintained over the life expectancy of the cemetery which may enhance the condition of the cemetery grounds, thus making a positive impact on the environment.

Specific Technologies or Equipment:

This regulation does not mandate the use of 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.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected or accepted:

Alternative 1: Maintain the status quo. This alternative was rejected because it would make the Bureau non-compliant with the statutory requirements of Section 8726.2 of the Health and Safety Code.

Alternative 2: Adopt new regulations and amend existing regulatory sections. This alternative was accepted as the most efficient option for the Bureau to evaluate the application to grant approval to licensed cemetery authorities seeking the Bureau's approval to convert the endowment care fund to the unitrust distribution method, in order to comply with Section 8726.2 of the Health and Safety Code, which mandates that applicants may apply to the Bureau for approval to convert to the unitrust distribution method by January 1, 2021.

Incorporated by Reference:

The following form has been incorporated by reference:

Unitrust Conversion Application, 23-UCA (New 07/21)