

## CEMETERY AND FUNERAL BUREAU

### Proposed Language

(1) Amend Section 2382 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

#### **§ 2382. Issuance of Citations and Fines.**

(a) ~~The bureau chief, or his or her designee, is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and assessing administrative fines to a licensee or registrant for any violations by a licensee or registrant of the provisions of law referred to in section 2383 of this article of the statutes and regulations enforced by the Cemetery and Funeral Bureau including Part 1 (commencing with section 8100), Part 3 (commencing with section 8250), and Part 5 (commencing with section 9501) of Division 8 of the Health and Safety Code.~~

~~(b) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The Each citation shall contain a statement informing the cited person or entity that if he or she desires a hearing of the right to contest the finding of a violation, that hearing shall be requested by written notice to the bureau chief within thirty (30) days of the issuance of the citation and to request a hearing pursuant to subdivision (b)(4) of Business and Professions Code section 125.9, and section 2386 of this article. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement. The Each citation shall be served upon the licensee personally or by certified mail in accordance with the provisions of section 11505(c) of the Government Code.~~

~~(c) The amount of any fine to be levied by the bureau chief, or his or her designee, shall take into consideration the factors listed in section 2384 of this article and shall be within the range set forth in section 2383 of this article. In no case shall the total exceed two thousand five hundred dollars (\$2,500) five thousand dollars (\$5,000) for each inspection or each investigation made with respect to the violation.~~

~~(d) If a hearing is not requested pursuant to subdivision (b)(4) of Business and Professions Code section 125.9, and section 2386 of this article, payment of any fine shall not constitute an admission of the violation charged.~~

Note: Authority cited: Sections 125.9, 148, 9630, ~~and 9631~~ and 9658, Business and Professions Code. Reference: Sections 125.9 and ~~148~~ 9658, Business and Professions Code.

(2) Amend Section 2383 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

**§ 2383. Assessment of Fines.**

(a) ~~The fine for a violation of the following provisions shall be from one hundred fifty dollars (\$150) to one thousand five hundred dollars (\$1,500):~~ In no event shall the administrative fine be less than one hundred dollars (\$100) or exceed five thousand dollars (\$5,000) for each inspection or each investigation made with respect to the violation.

<b>Rule</b>	<b>Description</b>
2340	Maintenance of records
2370	Special trusts
<b>Business and Professions Code</b>	
9679	Employing unlicensed salespersons
9684	Advertising statements
9702.2	Cemetery broker bond
9719	Access during inspection
9743	Scattering remains
9749	Scattering of remains
9785	Filing crematory report
<b>Health and Safety Code</b>	
7050.5	Removal of remains from county
7051	Removal of remains without authorization
7051.5	Dental gold and silver
7052	Disinterment without authority
7054	Disposal in place other than cemetery
7054.7(a)	Commingling of cremated remains
8342	Cremation casket requirement
8360	Loans to officers/directors
8362	Loans to officers/directors
8733	Trustee fees
8734	Bond requirement
8738.2	Endowment care funds
8747.5	Books and records availability
8751	Endowment care fund investments
8777	Special care funds
8778	Special care fund investments

(b) ~~The fine for a violation of the following provisions shall be from one hundred dollars (\$100) to one thousand dollars (\$1,000):~~

<b>Rule</b>	<b>Description</b>
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2339	Crematory contracts
2351	Crematory report
2381	Misrepresentation
<b>Business and Professions Code</b>	
9682	Representations re resale of property
9726	Misrepresentations
9728	Discharge of salespersons-report
9744	Cremated remains-disposer-permit
9745	Cremated remains-disposer-annual report
9767	Payment of regulatory charges
9784	Cremation restrictions
<b>Health and Safety Code</b>	
7053	Failure to release human remains
8120	Notice re change in cemetery use
8277	Contracts
8278	Contract cancellation
8330	Record of interment
8331	Record of plot ownership
8573	Pre-construction sale of crypts
8726	Endowment care investments
8732	Trustees
8732.1	Trustees
8780	Misrepresentation re endowment care
8781	Misrepresentation re endowment care
9550	Mausoleum construction without permit

(c) The fines for a violation of the following provisions shall be from fifty dollars (\$50) to five hundred dollars (\$500):

<b>Rule</b>	<b>Description</b>
2336	Nonendowment care signs
2337	Nonendowment care signs
2338	Cemetery broker signs
2339.1	Cemetery contracts
<b>Business and Professions Code</b>	
9680	Compensation to unlicensed brokers
9709	Display license
9710	Return license
9711	Notice of change in location
9713	Cemetery broker sign
<b>Health and Safety Code</b>	
7055	Removal of human remains
8276	Charges for markers
8309	Regulations-availability

8734	<del>Bond</del>
8740	<del>Nonendowment care signs</del>
8741	<del>Endowment care signs posting</del>
8744	<del>Nonendowment care contracts</del>
8745	<del>Revision of signs</del>

~~(d) In his or her discretion, the bureau chief may issue a citation containing an order of abatement without levying a fine for the first violation of any provision set forth in subsections (a) through (c) above.~~

Note: Authority cited: Sections 125.9, 9630, 9631 and 9658, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.

(3) Amend Section 2384 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

**§ 2384. Citation Factors.**

In assessing an administrative fine, or issuing an order of abatement, the bureau chief following factors shall be given due consideration ~~to the following factors~~:

(a) The nature and severity of the violation.

(b) The good or bad faith of the cited person or entity.

(c) History of violations of the same or similar nature.

(d) Evidence that the violation was willful.

(e) The extent to which the cited person or entity has cooperated with the department's bureau's investigation.

(f) The extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.

(g) Such other matters as justice may require.

Note: Authority cited: Sections 125.9, 148, 9630 and 9631, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

(4) Amend Section 2385 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

**§ 2385. Failure to Comply with Order Citation; Extension of Time and Failure to Comply or Pay.**

~~(a) The time allowed for the abatement of a violation shall begin the first day after the order of abatement has been served or received. If a cited person or entity who has been issued an order of abatement is unable to complete the correction within the time set forth specified in the citation because of conditions beyond his, or her or its control after the exercise of reasonable diligence, the person or entity cited may request an extension of time from the bureau chief in which to complete the correction. Such a request shall be submitted to the bureau chief in writing and shall be made within the time set forth for abatement. Any order granting a request for an extension shall be in writing and shall specify the new date for compliance.~~

~~(b) An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. When a citation containing an assessment of an administrative fine, an order of abatement, or both an administrative fine and an order of abatement is not contested or if the order citation is appealed and the person or entity cited does not prevail, failure to pay the fine or abate the violation charged within the time allowed thirty (30) days of the issuance or affirmation shall constitute a violation and failure to comply with the order of abatement may result in disciplinary action being taken by the bureau chief, or his or her designee. When a citation is not contested and a fine is not paid, the full amount of the fine shall be added to the fee for renewal of the license and the license shall not be renewed without payment of the renewal fee and fine.~~

Note: Authority cited: Sections 125.9, 148, 9630 and 9631, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

(5) Amend Section 2386 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

**§ 2386.-Contest Appeal of Citations.**

~~(a) In addition to requesting a hearing provided for in subdivision (b)(4) of Section 125.9 of the code, the person cited may, within ten (10) days after service or receipt of the citation, notify the bureau chief in writing of his or her request for an informal conference regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received. Any person or entity served with a citation pursuant to this article and section 125.9 of the Business and Professions Code may contest the citation by filing with the bureau chief, within thirty (30) days of the date of issuance of the citation, a written request for a hearing. All hearings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The cited person or entity may contest any or all of the following aspects of the citation:~~

(1) The occurrence of a violation of the Cemetery Act or of a regulation adopted by the bureau.

(2) The reasonableness of the order of abatement, if an order of abatement is included in the citation.

(3) The reasonableness of the period of time allowed for correction in an order of abatement, if an order of abatement is included in the citation.

(4) The amount of the fine, if a fine is included in the citation.

~~(b) The bureau chief shall hold, within thirty (30) days from the receipt of the request, an informal conference with the person cited or his or her legal counsel or authorized representative. At the conclusion of the informal conference, the bureau chief may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The bureau chief shall state in writing the reasons for his or her action and serve or mail, as provided in subsection (b) of Section 2382, a copy of his or her findings and decision to the person cited within ten (10) days from the date of the informal conference. This decision shall mark the conclusion of the informal conference proceeding. Failure of a cited person or entity to appear at the time and location of the requested hearing shall be deemed a withdrawal of his, her or its appeal, and the citation shall constitute a final order of the bureau chief, or his or her designee, and shall not be subject to administrative appeal or review.~~

~~(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the bureau chief. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within thirty (30) days of the date of issuance in accordance with subdivision (b)(4) of Section 125.9 of the code.~~

Note: Authority cited: Sections 125.9, 148, 9630 and 9631, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

(6) Add Section 2386.5 to Division 23 of Title 16 of the California Code of Regulations to read as follows:

**§ 2386.5. Informal Office Conference.**

(a) Without waiving the right to contest the citation pursuant to subdivision (b)(4) of Business and Professions Code section 125.9, the cited person or entity may, within ten (10) days after service of the citation, notify the bureau chief in writing of the request for an informal office conference regarding the violations charged in the citation.

(b) An informal office conference shall be held with the cited person or entity or his, her or its legal counsel or authorized representative, within thirty (30) days of receipt of the request. After the conclusion of the informal office conference, the citation may be

affirmed, modified or dismissed. The cited person or entity shall be notified of the actions taken, in writing, within fifteen (15) days of the conclusion of the conference, stating the reasons for the actions, the findings, and the decision. This written notification shall be served in accordance with the provisions of section 11505(c) of the Government Code. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The decision following an informal office conference shall affect the cited person or entity's right to a hearing to contest the citation as follows:

(1) If a citation is dismissed after an informal office conference, any request for a hearing to contest the matter shall be deemed to be withdrawn.

(2) If the citation is affirmed after an informal office conference, the cited person or entity has a right to a hearing to contest the affirmed citation pursuant to subdivision (b)(4) of Business and Professions Code section 125.9.

(3) If the citation, including any fine levied or any order of abatement issued, is modified after an informal office conference, the citation originally issued shall be considered withdrawn and a new citation issued, and the cited person or entity has a right to a hearing to contest the newly modified citation in accordance with subdivision (b)(4) of Business and Professions Code section 125.9.

(4) No new informal office conference will be granted for an affirmed or newly modified citation, issued after an informal office conference.

Note: Authority cited: Sections 125.9, 148, 9630 and 9631, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

(7) Amend Section 2387 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

**§ 2387. Citations; Unlicensed-Practice Activity.**

The bureau chief, or his or her designee, may is authorized to issue citations containing orders of abatement and assessing administrative fines against any unlicensed person or entity who is acting in the capacity of a licensee under the jurisdiction of the department and who is not otherwise exempt from licensure engages in any activity for which licensure by the bureau is required. A citation issued pursuant to this section shall comply with Section 125.9 of the code. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement. Administrative fines shall be in a ~~two hundred fifty dollars (\$250) to two thousand five hundred dollars (\$2,500)~~ The citation may include a fine for such unlicensed activity which may range from one thousand one dollars (\$1,001) to five thousand dollars (\$5,000) for each investigation. The provisions of section 125.9 of the

Business and Professions Code shall apply to the issuance of citations for unlicensed activity under this section. Any sanction authorized ~~for activity~~ under this section shall be separate from and in addition to any other civil or criminal remedies.

Note: Authority cited: Sections 125.9, 148, 9630 and 9631, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

(8) Amend Section 2388 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

**§ 2388. Failure to File Annual Report.**

(a) Any cemetery authority that does not file the annual report required by ~~Section~~ 9650 of the Business and Professions Code within the time prescribed by said Code shall be assessed a fine by the bureau chief, or his or her designee, in the amount of four hundred dollars (\$400) per month for a maximum of five (5) months. Failure to pay the fine within fifteen (15) days after receipt of written notification of the assessment or, where a timely request for waiver or reduction of the fine has been filed with the bureau chief, within fifteen (15) days after receipt of written notification of the bureau chief's decision in the matter, shall be cause for disciplinary action.

(b) A cemetery authority may request waiver or reduction of a fine by making a written request to the bureau chief therefore. The request shall be postmarked within the time specified above for payment of the fine and shall be accompanied by a statement showing good cause for the request.

(c) The bureau chief, or his or her designee, may waive or reduce the fine where a timely request is made and where he or she determines, in his or her discretion, that the cemetery authority has made a sufficient showing of good cause for the waiver or reduction.

(d) In addition to requesting a hearing to be held pursuant to Chapter 5 (commencing with ~~Section~~ 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the person or entity cited may, within ~~fifteen (15)~~ ten (10) days after service ~~or receipt~~ of the citation, notify the bureau chief in writing of ~~his or her~~ the request for an informal office conference regarding the ~~acts~~ violations charged in the citation. The time allowed for the request shall begin the first day after the citation has been served ~~or received~~. An informal office conference shall be in accordance with the procedures delineated in ~~Section 2386.5, subdivisions (b) and (c)~~ of this article.

Note: Authority cited: Sections 125.9, 9630, 9631 and 9650.4, Business and Professions Code. Reference: Sections 125.9 ~~and 148~~, Business and Professions Code.