

Department of Consumer Affairs
Cemetery and Funeral Bureau

Initial Statement of Reasons

Hearing Date:

Subject Matter of Proposed Regulations: Issuance of Citations, Assessment of Fines, Order of Abatement, Unlicensed Activity Citations, and Continuing Education

16 Section(s) Affected:

Amend Sections 1240, 1241, 1242, and 1246

Repeal Sections 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, and 1291

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

The regulations enforced by the Cemetery and Funeral Bureau (Bureau) exist for the protection of California consumers and to inform Bureau licensees of their rights and responsibilities within the scope of practice.

Originally enacted in 1992, Sections 1240, 1241, 1242, and 1246 have not had any substantial regulatory changes made. These regulations have been determined, through a series of stakeholder meetings, to be unclear and cumbersome. Currently, violations the Bureau may issue citations for are limited to only those specifically contained within Section 1241. Violations are organized into classes A, B, and C with a set administrative fine range associated with each class. This limits the Bureau's ability to assess a fair and reasonable administrative fine when a citation is issued to a licensee in accordance with the Bureau's policy of progressive discipline. The current maximum fine listed under Section 1241 and 1246 is outdated and inconsistent with current Department of Consumer Affairs (Department) practice as found in Business and Professions Code (B&P) section 125.9. In addition, the Bureau is making a non-substantive change to delete B&P section 125.95 since this section was repealed in 1992.

Sections 1280 - 1291 were developed in response to AB 2877 (Davis, Chapter 1151, Statutes of 1996) which required the Bureau to enact continuing education (CE) regulations. These regulations were never enforced by the Bureau and the authorizing statute was repealed in 1999 due to difficulty establishing meaningful and relative criteria and courses. Leaving regulations the Bureau no longer has authority to enforce within the California Code of Regulations is inconsistent with

the Bureau's goal of informing licensees of their rights and responsibilities within the scope of practice.

2. Anticipated benefits from this regulatory action:

The proposed regulatory amendments will modernize, clarify, and streamline existing regulations and repeal regulations that are no longer applicable. These changes will allow the Bureau to be responsive to concerns raised by stakeholders while still ensuring consumer protection against both licensed and unlicensed individuals and entities. The Bureau will be able to enforce all statutes and regulations under its jurisdiction equally and assess administrative fines, as appropriate, with greater flexibility and more consistency following current policies and practices of the Department.

Removing Sections 1280 – 1291 will benefit stakeholders and consumers by eliminating reference to regulations that are no longer applicable to the Bureau.

Factual Basis/Rationale:

The California State Board of Funeral Directors and Embalmers was established in 1939 with the creation of the Funeral Directors and Embalmers Law. AB 910 (Speier, Chapter 381, Statutes of 1995) fully transferred the regulatory operations of the Board of Funeral Directors and Embalmers to the Department. Effective January 1, 1996, the Department succeeded to, and was vested with, all the duties, powers, purpose, responsibilities, and jurisdiction of the Cemetery Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into the Cemetery and Funeral Programs.

In 2000, AB 2888 (Committee on Consumer Protection Governmental Efficiency and Economic Development, Chapter 568, Statutes of 2000) created the Cemetery and Funeral Bureau. B&P section 7606 authorizes the Bureau to adopt and enforce reasonably necessary rules and regulations relating to the practice of funeral directing and embalming. The protection of the public is the highest priority of the Bureau (B&P section 7601.1). The Bureau achieves this goal through the following primary methods: issuing licenses; investigating complaints; conducting inspections; and disciplining licensees for violations. The Bureau is proposing the regulatory changes described below in order to enhance its disciplinary function through clarity, consistency, and relevance of the regulations, which will strengthen its ability to achieve its public protection mandate. These regulatory changes were determined to be necessary through a series of stakeholder and Bureau Advisory Committee meetings beginning in 2005, and most recently discussed at the March 5, 2013, Bureau Advisory Committee Meeting.

The Bureau has consulted with stakeholders (licensees, consumer advocates, and members of the public) on numerous occasions about updating the current funeral regulations. Bureau Public Advisory Committee meetings in 2005, 2006, 2008, 2010,

2011, 2012, and 2013, included updates to the funeral regulations discussions, and the Bureau held a publicly noticed Proposed Regulations Workshop in August 2012.

Underlying Data:

1. Minutes from Advisory Committee Meetings in 2005, 2006, 2008, 2010, 2011, 2012, and 2013.
2. Department of Consumer Affairs' Annual Report for the Cemetery and Funeral Bureau from fiscal years 2009-10, 2010-11, and 2011-12.

Business Impact:

These regulations will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The proposed amendments will clarify and streamline existing regulations and fall into line with current Department regulatory trends, while still ensuring consumer protection against both licensed and unlicensed individuals and entities.

The Bureau currently licenses approximately 5,163 (as of May 31, 2013) funeral establishments, funeral directors, embalmers, and apprentice embalmers in the State of California. The Department of Consumer Affairs' Annual Report for the Cemetery and Funeral Bureau from fiscal year 2009-10, 2010-11, and 2011-12 show that the Bureau issued citations to approximately two to three percent of its total licensee population during any given fiscal year. Of the citations issued, approximately one third included an assessment of administrative fines.

The Bureau estimates, based on the current number of licensees and the percentage of past citations issued, that 100 to 155 licensees may be impacted. A licensee that is found to be non-compliant with statutes and regulations enforced by the Bureau may be impacted through the assessment of a citation with an administrative fine which may range from a minimum of \$100.00 to a maximum of \$5,000.00 for each violation. If all licensees remain in compliance with statutes and regulations there is no business impact.

It would impose the following reporting, recordkeeping, or other compliance requirements:

Should a cited person or entity desire to ask for an extension of the period of time to correct violation(s) found, they would need to request such an extension in writing by submitting it to the Bureau.

Description of alternatives which would lessen any significant adverse impact on business (which includes small business):

Status quo was considered and rejected due to the fact that the current regulations are outdated and not in accordance with current Departmental practices.

Economic Impact Assessment:

The purpose of amending Title 16 of the California Code of Regulations Sections 1240, 1241, 1242, and 1246, and repealing Article 9 of the California Code of Regulations, Sections 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, and 1291 is:

1. To clarify and streamline the existing regulations while still ensuring consumer protection against both licensed and unlicensed individuals and entities
2. To delete inoperative sections from the regulations
3. To maintain consistency with current Department of Consumer Affairs regulatory trends

In accordance with Government Code section 11346.3(b), the Bureau has made the following assessments regarding the proposed amended and repealed regulations:

Creation or Elimination of Jobs within the State of California

The current regulations apply to the funeral industry in California, specifically licensed funeral establishments, funeral directors, embalmers, and apprentice embalmers, and unlicensed entities and persons acting as such. No jobs in California will be created or eliminated due to the clarifying and streamlining through amendment Sections 1240, 1241, 1242, 1246, and eliminating through repeal Sections 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, and 1291.

Creation of New or Elimination of Existing Businesses within the State of California

The current regulations apply to the funeral industry in California, specifically licensed funeral establishments, funeral directors, embalmers, and apprentice embalmers. No new businesses in California will be created or existing businesses eliminated due to the clarifying and streamlining through amendment Sections 1240, 1241, 1242, 1246, and eliminating through repeal Sections 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, and 1291.

Expansion of Businesses or Elimination of Existing Businesses within the State of California

The current regulations apply to the funeral industry in California, specifically licensed funeral establishments, funeral directors, embalmers, and apprentice embalmers. No existing businesses in California will be expanded or eliminated due to the clarifying and streamlining through amendment Sections 1240, 1241, 1242, 1246, and eliminating through repeal Sections 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, and 1291.

Benefits of the Regulation

The proposed amendments to current regulations found within the California Code of Regulations under the Bureau's jurisdiction exist to make clear the responsibility of licensed funeral establishments, funeral directors, embalmers, and apprentice embalmers, and to spell out the penalties for unlicensed activity as such. These regulations exist for the protection of California consumers and to inform Bureau licensees of their rights and responsibilities within the scope of practice. However, as they currently exist, these regulations have been determined, through a series of stakeholder meetings, to be unclear and cumbersome. Therefore, the Bureau is seeking to be responsive to changes in practice by updating the regulations for clarity, and streamlining where possible, including repealing those regulations that are no longer applicable. The proposed amendment and repeal of regulations Sections 1240, 1241, 1242, 1246, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, and 1291 is consistent with State law, and will not adversely affect the health of California's residents, worker safety, or the State's environment. The proposed regulatory action will, as described above, benefit the general welfare of California residents by clarifying and streamlining the existing funeral regulations under the jurisdiction of the Bureau.

Specific Technologies or Equipment:

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

Consideration of Alternatives:

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

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

Alternative 1: Status Quo. This alternative is not a viable alternative due to the fact that the current regulations are outdated and not in accordance with current Departmental practices.