

**TITLE 16. CEMETERY AND FUNERAL BUREAU
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

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

Cemetery and Funeral Bureau
1625 North Market Boulevard
1st Floor Hearing Room
Sacramento, CA 95834
Wednesday, February 12, 2014
12:30 – 1:30 p.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on Monday, February 10, 2014, or must be received by the Bureau at the hearing.

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

Authority and Reference:

Pursuant to the authority vested by Sections 125.9 and 7606 of the Business and Professions Code (B&P), and to implement, interpret or make specific section 125.9 of said code, the Bureau is considering changes to Division 12 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

The Bureau is proposing the following regulatory changes:

Amend Section 1240(a) of Article 5.5 of Title 16 of the California Code of Regulations:

The proposed amendment would strike out language referencing Section 1241, which limits violations to those found in Section 1241. The proposed amendment also adds language to define “citable offense” as any violation of the statutes and regulations enforced by the Bureau.

Amend Section 1241 of Article 5.5 of Title 16 of the California Code of Regulations:

The proposed amendment eliminates the specific classes of violations but retains the subsection noting the factors to be given due consideration when determining whether or not to assess an administrative fine for a violation.

Amend Section 1242 of Article 5.5 of Title 16 of the California Code of Regulations:

The proposed amendment corrects a grammatical error and clarifies that requests need to be submitted to the Bureau in writing.

Amend Section 1246 of Article 5.5 of Title 16 of the California Code of Regulations:

The proposed amendment would amend the regulation by increasing the maximum amount of fine from \$2,500.00 to \$5,000.00 in accordance with the provisions of B&P section 125.9. The phrase licensure “by the bureau” is being used to streamline the regulation in lieu of listing out all license types which would require a license.

Repeal Sections 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, and 1291 of Article 9 of Title 16 of the California Code of Regulations:

The proposed repeal of these sections would remove the requirement to enact continuing education (CE) regulations imposed by AB 2877 (Davis, Chapter 1151, Statutes of 1996), which added B&P section 7651. This required that the then Board of Funeral Directors and Embalmers adopt regulations requiring CE of 14 hours every two years for licensed funeral directors and embalmers. This requirement was repealed by AB 1379 (Granlund, Chapter 241, Statutes of 1999) due to the virtual impossibility of establishing meaningful criteria and courses.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The regulations enforced by the Bureau exist for the protection of California consumers and to inform the Bureau licensees of their rights and responsibilities within the scope of practice. This regulatory proposal is necessary to update the Bureau’s regulations and bring them current with the policies of other entities within the Department of Consumer Affairs (Department). In addition, this will allow the Bureau to enforce all of the statutes and regulations under its jurisdiction equally, and benefit the general welfare of California residents by clarifying and streamlining the existing funeral regulations.

C. Consistency and Compatibility with Existing State Regulations

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

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact:

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

AND

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

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. There will be no significant impact to the licensees, as long as the licensees remain in compliance with statutes and regulations enforced by the Bureau. All of these Sections already exist in Division 12 of Title 16 of the California Code of Regulations; 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 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.

The Bureau has authority under Section 1246 of Article 5.5 of Title 16 of the California Code of Regulations to issue citations containing orders of abatement and assessing administrative fines for unlicensed activity in the State of California. Currently, the fine for unlicensed activity may range from a minimum of \$1,001.00 to a maximum of \$2,500.00. During the last three fiscal years (2009-10, 2010-11, and 2011-12) the Bureau issued a total of 10 citations for unlicensed activity. Of the citations issued, 6 citations had no fine assessed and 4 citations had fines assessed, totaling \$5,503.00. One fine was assessed at the maximum of \$2,500.00 and the other four were assessed at the minimum of \$1,001.00. The proposed regulatory changes would change the maximum fine from \$2,500.00 to \$5,000.00, with a maximum fine of \$5,000.00 per inspection or investigation. This may have impacted one unlicensed individual/entity during the previous three fiscal years.

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses. The regulatory proposal affects small businesses only if they are found to be in violation of any statutes or regulations enforced by the Bureau, which may result in the Bureau assessing an administrative fine of no more than \$5,000.00 per violation, with a maximum fine of \$5,000.00 per inspection or investigation.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

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

Benefits of Regulation:

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

The proposed amendments would make clear the responsibility of licensed funeral establishments, funeral directors, embalmers, and apprentice embalmers, and 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.

CONSIDERATION OF ALTERNATIVES

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

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or

prior to the hearing upon request from the Cemetery and Funeral Bureau at 1625 North Market Boulevard, Suite S-208, Sacramento, California 95834.

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

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

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

CONTACT PERSON

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

Name: Cheryl Steurer
Address: 1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834
Telephone No.: (916) 574-8203
Fax No.: (916) 928-7988
E-mail Address: Cheryl.Steurer@dca.ca.gov

The back-up contact person is:

Name: Linda Kassis
Address: 1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834
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Web site Access: Materials regarding this proposal can be found at www.cfb.ca.gov.