

**CEMETERY AND FUNERAL BUREAU
INITIAL STATEMENT OF REASONS**

Hearing Date: July 22, 2015

Subject Matter of Proposed Regulations: Applications for Cemetery Certificate of Authority and Crematory License, Managers, Limited Liability Company Certification of Insurance Coverage or Net Worth, Record Keeping and Reporting of Changes, and Approval to Share a Cemetery Manager

5 Section(s) Affected:

Amend Sections 2326, 2326.1, and 2326.5
Add Sections 2326.2 and 2326.3

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

Health and Safety Code (HSC) section 7018 defined a "Cemetery Authority" to include any cemetery association, corporation sole, or other person owning or controlling cemetery lands or property. HSC section 8252 prohibited any corporation, co-partnership, firm, trust, association, or individual from engaging in or transacting any of the businesses of a cemetery within this state except by means of a corporation duly organized for these purposes.

Senate Bill (SB) 1225 (Harman, Chapter 114, Statutes of 2008) amended both HSC section 7018 and 8252 to include a limited liability company (LLC) in the definition of a cemetery authority and to allow a LLC duly organized for engaging or transacting the businesses of a cemetery to engage or transact such businesses.

In addition, SB 1225 added Business and Professions Code (BPC) sections 9653.5 and 9653.6. This authorizes a LLC to organize and operate as a cemetery authority and to employ Cemetery and Funeral Bureau (Bureau) licensed persons to provide services related to cemeteries and funerals. BPC section 9653.5 requires the LLC to maintain an insurance policy or policies or other security in the amount of \$1,000,000 for a LLC that employs five or fewer licensed individuals, plus an additional \$100,000 for each additional person employed, up to a maximum of \$5,000,000, to cover any liability resulting from acts, errors, or omissions of those licensed employees. Alternately, the LLC may satisfy the security requirement by certifying that, as of the most recently completed fiscal year, it had a net worth equal to or exceeding ten million dollars. The LLC is required to notify the Bureau of any changes to the Bureau licensed employees using Bureau Licensed Employee, form 23-LE (1/15), within 30 days

of the change. In addition, the LLC is required to annually submit either Certification of Insurance Coverage, form 23-INS (1/15), certifying they have the minimum insurance required, or Certification of Net Worth, form 23-NW (1/15), certifying the LLC has a net worth equal to or exceeding ten million dollars.

Any person licensed to perform services related to cemeteries and funerals is prohibited from having an ownership interest in a LLC that is a cemetery authority. The Bureau is required to suspend or terminate the certification of the LLC to operate as a cemetery authority in the event a licensed individual becomes an owner or member of the LLC, until the licensed person has been divested of his or her ownership interest or the licensed person has voluntarily surrendered his or her license.

SB 1225 provides the Bureau statutory authority to license a LLC to operate as a cemetery authority; however the Bureau does not have an application process or the necessary forms and definitions in place to issue a license. The proposed amendments will allow the Bureau to implement SB 1225 and offer licensure to a LLC for purposes of operating as a cemetery authority.

2. Anticipated benefits from this regulatory action:

The proposed regulatory amendments will clarify and add to existing regulations and incorporate the provisions and procedures for a LLC to be licensed as a cemetery. This will allow a LLC to apply for and be designated by the Bureau as a cemetery authority for the purpose of owning and controlling private or fraternal cemetery lands and properties in the State of California.

Factual Basis/Rationale:

SB 1225 added BPC sections 9653.5 and 9653.6, authorizing LLCs to organize and operate as a cemetery authority in the state. BPC section 9630 authorizes the Bureau to adopt and enforce reasonably necessary rules and regulations relating to the Cemetery Act. The Bureau achieves its goal of consumer protection through the following primary methods: issuing and renewing licenses; overseeing funeral and cemetery trust funds; investigating complaints; conducting inspections; and disciplining licensees for violations of its laws and regulations. The Bureau is proposing the regulatory changes described below in order to enhance its licensing 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 2011 and most recently discussed at the February 12, 2014, Bureau Advisory Committee Meeting.

The Bureau has consulted with stakeholders (licensees, consumer advocates, and members of the public) on several occasions about the proposed regulatory additions and amendments. Bureau Public Advisory Committee meetings in 2011, 2012, 2013,

and 2014 included discussion of the proposed regulations, and the Bureau held a publicly noticed Proposed Regulations Workshop in August 2012.

The Bureau is proposing the following regulatory changes:

Amend Section 2326 of Article 3 of Title 16 of the California Code of Regulations:

Section 2326 allows for a corporation to apply for a certificate of authority to operate a cemetery via a form furnished by the Bureau accompanied by specific documents. The proposed amendment specifies that the Application for Certificate of Authority, form 23-COA (rev. 1/15), shall be used to apply for licensure and adds language to allow a LLC to apply for a certificate of authority to operate a cemetery. A LLC applying for licensure must submit additional information that a corporation is not required to submit.

Subsection (b) has been added to include the four additional requirements, listed as 1 through 4 in subsection (b), for a LLC. These requirements include: (1) providing a completed form 23-LE (1/15), Bureau Licensed Employee, for each employee issued a license by the Bureau to ensure no licensed employee holds an ownership interest in the LLC; (2) providing either a completed Certification of Insurance Coverage, form 23-INS (1/15), or Certification of Net Worth, form 23-NW (1/15); (3) providing the names and addresses of all LLC members along with a completed Certification Affidavit, form 16-CA (rev. 1/15), for each member; and (4) providing an operating agreement for the LLC (if a corporation is a member of the LLC the articles of incorporation must also be submitted).

Existing law requires a certified copy of each of the following documents be submitted with the application for a cemetery license:

1. Articles of Incorporation.
2. Application for permit to sell and issue securities.
3. Permit to sell and issue securities.
4. Application to the city or county planning commission for a cemetery use permit or rezoning for cemetery purposes, or both.
5. Land use or zoning permit.
6. Declaration of dedication to cemetery purposes certified by the county recorder.
7. Deed to the property, contract of purchase or any other instrument which provides the applicant with merchantable title thereto.
8. Endowment care trust agreement executed by the board of directors of the cemetery authority.

The proposed amendments require a copy of each document be submitted and adds language to the specific documents that are required to be certified and states who the document shall be certified by. The language requiring an application to sell and issue securities and for land use or zoning is being removed as it is unnecessarily duplicative; the Bureau only needs the permits that were issued. A cemetery is not required to sell and issue securities so the Bureau has modified the language to provide that a

statement certifying securities will not be issued or sold may be provided in lieu of a permit.

In addition, the Bureau is making non-substantive changes in (a)(2)(D) and (a)(2)(F), changing board to bureau and or to of respectively.

Amend Section 2326.1 of Article 3 of Title 16 of the California Code of Regulations:

Section 2326.1 requires each cemetery to have a cemetery manager. The proposed amendment states the cemetery manager of a cemetery owned and operated by a LLC shall not have an ownership interest as a member of the LLC. In addition, the current language refers to managing officer where the Bureau is referencing a cemetery manager. To eliminate any potential confusion between corporate officers and managing officers, the Bureau has updated all references related to a “managing officer” to now reflect “cemetery manager” to be consistent with BPC section 9605.1.

Add Section 2326.2 of Article 3 of Title 16 of the California Code of Regulations:

Section 2326.2 is added to implement reporting requirements for a LLC to ensure they maintain compliance with BPC section 9653.5. A LLC that owns and operates a cemetery must maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims or have a net worth equal to or exceeding ten million dollars as of the most recently completed fiscal year. The LLC will be required to annually submit either Certification of Insurance Coverage, form 23-INS (1/15), certifying the LLC has the minimum insurance required or Certification of Net Worth, form 23-NW (1/15), certifying the LLC has a net worth equal to or exceeding ten million dollars.

Add Section 2326.3 of Article 3 of Title 16 of the California Code of Regulations:

Section 2326.3 is added to implement record keeping and reporting requirements for cemeteries. Subsections (a) and (b) only apply to LLCs that own and operate a cemetery and requires the LLC to maintain a designated office for service and the names and addresses of all members. If the LLC changes its address by filing a statement of information with the Secretary of State, the LLC shall also provide the information to the Bureau. Subsection (e) requires a LLC to file Bureau Licensed Employee, form 23-LE (1/15), for each employee that is a licensee. This form is required for all Bureau licensees upon initial application and within 30 days of employing a Bureau licensed employee or upon the resignation or termination of a Bureau licensed employee.

Subsection (c) and (d) apply to all cemeteries and implements a filing fee of \$25 as authorized under BPC section 9761. These subsections require any change of or addition to corporate officers, LLC members, or trustees of the endowment care fund be reported to the Bureau within 30 days on the Cemetery Notification of Change, form 23-NC (1/15), along with a filing fee of \$25. If the corporate officer, LLC member, or trustee has not previously been fingerprinted by the Bureau, they will also need to provide a Certification Affidavit, form 16-CA (rev. 1/15).

Amend Section 2326.5 of Article 3 of Title 16 of the California Code of Regulations:

Section 2326.5(c) allows cemeteries within a certain geographical distance to share a cemetery manager. The proposed amendment would require that the geographical distance between cemeteries shall be within a one hour driving distance, not to exceed 60 miles, from the designated main office instead of within a 60 mile radius. The Bureau determined this change was necessary due to the ambiguity of the term “radius” for purposes of establishing a reasonable driving distance between cemetery locations throughout California. The time it takes a cemetery manager to drive from one cemetery to another within a 60 mile radius can greatly vary throughout the State of California. Limiting the distance between cemetery locations overseen by a cemetery manager to an hour driving distance will ensure the cemetery manager can reach each location in a reasonable amount of time.

The proposed amendment to subsection (d) adds language stating the cemetery manager shall not have an ownership interest as a member of the LLC. Any person licensed to perform services related to cemeteries and funerals is prohibited from having an ownership interest in a LLC that is a cemetery authority.

The Bureau is repealing subsection (e)(1) through (e)(3). This change is needed because the Permit Reform Act which required this information was repealed by Assembly Bill 1757 (Chapter 229, Statutes of 2003).

Underlying Data:

1. SB 1225 (Harman, Chapter 114, Statutes of 2008)
2. Minutes from Advisory Committee Meetings in 2011, 2012, 2013, and 2014.
3. 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 Bureau currently licenses approximately 201 (as of January 1, 2014) private and fraternal cemeteries 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 licensed 186, 188, and 192 cemeteries respectively. The number of licensed cemeteries has remained consistent, with no significant increase or decrease from year to year.

The proposed amendments and additions do not alter the licensing requirements for corporations and therefore have no significant adverse economic impact on businesses. The licensing requirements for a LLC to apply for and become licensed as a cemetery authority mirror the requirements for corporations with the exception of additional reporting requirements for LLCs as required by SB 1225.

The proposed regulations would impose additional reporting, recordkeeping, or other compliance requirements for LLCs as follows:

Annually submit, within four months of the completion of the fiscal year, either Certification of Insurance Coverage, form 23-INS (1/15), certifying the LLC has the minimum insurance required or Certification of Net Worth, form 23-NW (1/15), certifying the LLC has a net worth equal to or exceeding ten million dollars.

Pursuant to Section 17701.13 of the Corporations Code, LLCs are required to designate and continuously maintain in this state an office and agent for service of process. They are also required to maintain a current list of the full name and address of each LLC member.

Any change of address made by filing a statement of information with the Secretary of State shall be reported to the Bureau.

Any change of or addition to corporate officers, LLC members, or trustees of the endowment care fund shall be reported to the Bureau within 30 days on the Cemetery Notification of Change, form 23-NC (1/15), along with a filing fee of \$25. If the corporate officer, LLC member, or trustee has not previously been fingerprinted by the Bureau, they will also need to complete a Certification Affidavit, form 16-CA (rev. 1/15), and provide a copy of their live scan form confirming they were fingerprinted by the Bureau.

The LLC is required to file Bureau Licensed Employee, form 23-LE (1/15), for each employee that is a licensee. This form is required for all Bureau licensees upon initial application and within 30 days of employing a Bureau licensed employee or upon the resignation or termination of a Bureau licensed employee.

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

There are no alternatives less burdensome than those proposed.

Economic Impact Assessment:

The purpose of the added and amended regulations is to clarify and streamline the cemetery licensure provisions and process in light of the allowance of LLC ownership in

addition to the currently existing corporate ownership, while still ensuring consumer protection.

The Bureau does not anticipate any significant economic impact due to these regulatory changes. The Bureau licensed 186 cemeteries in fiscal year 2009-10, 188 cemeteries in fiscal year 2010-11, and 192 cemeteries in fiscal year 2011-12. The Bureau received six to eight applications each of these years to either license a new cemetery or process a change of ownership for an existing cemetery. Based upon licensing trends, the Bureau does not anticipate a significant increase in licensing by allowing LLCs to apply for and become licensed as a cemetery authority.

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

Creation or Elimination of Jobs within the State of California

The existing regulations apply to the cemetery industry in California, specifically licensed cemeteries, cemetery managers, crematories, crematory managers, cemetery brokers, cemetery salespeople, and cremated remains disposers. In defining, clarifying, and streamlining through the addition of Sections 2326.2 and 2326.3, and through the amendment of Sections 2326, 2326.1, and 2326.5, a LLC will be allowed to apply for and become licensed as a cemetery authority. The proposed regulatory changes will not eliminate any currently existing jobs. If any jobs are impacted, the types of jobs that may be impacted are those held by persons licensed by the Bureau to provide cemetery and funeral related services. Any person licensed to perform services related to cemeteries and funerals is prohibited from having an ownership interest in a LLC that is a cemetery authority. If a person licensed by the Bureau elects to become a member of the LLC they would need to surrender their license.

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

The existing regulations apply to the cemetery industry in California, specifically licensed cemeteries, cemetery managers, crematories, crematory managers, cemetery brokers, cemetery salespeople, and cremated remains disposers. In defining, clarifying, and streamlining through the addition of Sections 2326.2 and 2326.3, and through the amendment of Sections 2326, 2326.1, and 2326.5, a LLC will be allowed to apply for and become licensed as a cemetery authority. This may result in the creation of new businesses by allowing LLCs to apply for certification as a cemetery. The proposed regulations do not negatively impact existing cemeteries doing businesses in California.

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

The existing regulations apply to the cemetery industry in California, specifically licensed cemeteries, cemetery managers, crematories, crematory managers, cemetery brokers, cemetery salespeople, and cremated remains disposers. In defining, clarifying,

and streamlining through the addition of Sections 2326.2 and 2326.3, and through the amendment of Sections 2326, 2326.1, and 2326.5, a LLC will be allowed to apply for and become licensed as a cemetery authority. This may result in the expansion of businesses but not the elimination of existing businesses in California.

Benefits of the Regulation

The proposed additions and amendments to existing regulations found within the California Code of Regulations under the Bureau's jurisdiction exist to make clear the responsibility of applicants and licensees in the Cemetery Act. These regulations exist for the protection of California consumers and to inform Bureau applicants and licensees of their rights and responsibilities within the scope of practice. SB 1225 added BPC sections 9653.5 and 9653.6, which allows LLCs to become licensed as and operate a cemetery in California, as an alternative to the already existing provisions for licensure as a corporation. The proposed regulatory action will, as described above, benefit the general welfare of California residents by clarifying and streamlining the existing cemetery regulations related to the cemetery licensure process under the jurisdiction of the Bureau for LLCs, adding the fewest regulations necessary to still ensure adequate consumer protection.

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 or accepted:

Alternative 1: Status Quo. This alternative was rejected since without regulations the Bureau is unable to license a LLC to operate as a cemetery authority. This would make the Bureau non-complaint with SB 1225.

Alternative 2: Creating a new application process for LLCs. This alternative was rejected after it was determined to be unnecessarily duplicative. The Bureau has an existing application and associated regulations in place to license cemetery authorities owned by a corporation duly organized for the purpose of owning and operating cemetery lands and property.

Alternative 3: Modify the existing application process to include LLCs. This alternative was accepted as the most efficient option to license a LLC as a cemetery authority with the minimal addition of provisions prohibiting member ownership in the LLC and the creation of forms necessary to demonstrate compliance with the statutory requirements.