

**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
Hearing Room S-102
Sacramento, CA 95834
Wednesday, July 22, 2015
3:00 – 4:00 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, July 20, 2015, 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 9630, 9717, and 9783 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 136, 9653.5, 9653.6, 9715, 9716, 9717, 9723, 9723.2, 9761, 9781, 9782, 9783, 9787, and 9787.2 of the BPC; sections 16956 and 17701.13 of the Corporations Code; and section 8738.1 of the Health and Safety Code (HSC), the Bureau is considering changes to Division 23 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

The Private Cemeteries Act (HSC section 8250 et seq.) regulates the ownership, control, and maintenance of private cemeteries in the state. Under the Private Cemeteries Act, it is unlawful for any corporation, co-partnership, firm, trust,

association, or individual to engage in or transact any of the businesses of a cemetery within the state except by means of a corporation duly organized for such purposes (HSC section 8252). This statute was enacted in 1939 and amended in 1959, to make minor changes in the language of the statute.

A cemetery, as defined in HSC section 7003, is an area of land that is used or intended to be used and dedicated for cemetery purposes such as: a burial park, for earth internments; a mausoleum, for crypt or vault internments; a columbarium, for cinerary internments; or a place where six or more human bodies are buried.

A cemetery authority, as defined in HSC section 7018, includes a cemetery association, corporation sole, limited liability company (added by Senate Bill [SB] 1225 as discussed below), or other person owning or controlling cemetery lands or property.

The Bureau issues a license called a “certificate of authority” to applicants that have met licensing requirements to own and operate a private or fraternal cemetery in the State of California.

The Legislature enacted the Beverly-Killea Limited Liability Company Act in 1994 (SB 469 [Beverly, Chapter 1200, Statutes of 1994]) allowing businesses in the state to organize in the form of a limited liability company (LLC). Until then, businesses could organize as sole proprietors, partnerships, limited partnerships, and corporations. As of January 1, 2014, the Beverly-Killea Limited Liability Company Act was repealed and replaced with the California Revised Uniform Limited Liability Company Act (SB 323 [Vargas, Chapter 419, Statutes of 2012]).

A LLC allows one or more owners to conduct a business without any owner having personal liability for the obligations of the business. The salient nontax characteristics of a LLC are limited liability for its owners (as in a corporation) and freedom to structure management rights and financial interests in the entity in virtually any configuration the parties wish (as in a partnership). A LLC can have different classes of ownership, and income, gain, loss, and other items may be allocated disproportionately to ownership interests without affecting the LLC’s pass-through tax treatment. Further, in contrast to a Subchapter S corporation that allows individuals, estates, and certain types of trusts or tax-exempt organizations to be shareholders in order to maintain its pass-through tax treatment advantage, membership in a LLC is not restricted.

While LLCs may generally engage in any lawful business activity (except banking, insurance, or trust company operations), the California Revised Uniform Limited Liability Company Act prohibits a foreign or domestic LLC from rendering professional services in this state unless expressly authorized under applicable provisions of law. “Professional services” are those services for which a license,

certification, or registration is required under the BPC, the Chiropractic Act, or the Osteopathic Act.

SB 1225 (Harman, Chapter 114, Statutes of 2008) added BPC sections 9653.5 and 9653.6 and amended HSC sections 7018 and 8252 effective January 1, 2009. These statutes authorize the Bureau to issue licensure to a LLC to own, control, and maintain a private cemetery in the state. In order to allow a LLC owned cemetery to conduct cemetery business requiring licensed services, SB 1225 imposes similar insurance or security requirements on a LLC licensed as a cemetery as the law imposes on a limited liability partnership that provides accountancy, architecture, or legal services. Specifically, a LLC that organizes to own and control cemetery land and property and to offer other cemetery services through its licensed employees is required to provide a minimum \$1,000,000 in insurance or other security deposits for five or fewer licensees, plus an additional \$100,000 per additional licensee, up to a maximum of \$5,000,000. The LLC may, instead of the insurance or bank deposits, show evidence of a net worth of at least \$10,000,000 as of the most recently completed fiscal year of the LLC. Lastly, SB 1225 restricts the membership of a person licensed to provide cemetery and funeral related services. A licensee may not have an ownership interest in the LLC. If the Bureau determines that a licensee has an ownership interest in the LLC, the Bureau is required to suspend or terminate the cemetery license until the licensed person has been divested of their ownership interest or has voluntarily surrendered their license.

To implement the requirements of SB 1225, 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 shall certify the document. 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).

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. The proposed regulatory amendments will clarify and add to existing regulations to incorporate the provisions and procedures for cemeteries to be licensed as a LLC. 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 cemetery lands and properties in the State of California.

C. Consistency and Compatibility with Existing State Regulations

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

INCORPORATION BY REFERENCE

The following documents are incorporated by reference in the proposed regulatory text:

- Application for Certificate of Authority, form 23-COA (rev. 1/15)
- Cemetery Notification of Change, form 23-NC (1/15)
- Certification Affidavit, form 16-CA (rev. 1/15)
- Limited Liability Company Bureau Licensed Employee, form 23-LE (1/15)
- Limited Liability Company Certification of Insurance Coverage, form 23-INS (1/15)
- Limited Liability Company Certification of Net Worth, form 23-NW (1/15)

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.

SB 1225 added BPC sections 9653.5 and 9653.6. This authorizes a LLC to organize and operate as a cemetery authority and to employ 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 licensed 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.

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 using the Cemetery Notification of Change, form 23-NC (1/15) along with a \$25 filing fee.

AND

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

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 show that 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. The number of licensed cemeteries has remained consistent, with no significant increase or decrease from year to year. 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.

The proposed additions and amendments 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 are similar to the requirements for corporations with the exception that a LLC must disclose the names of all Bureau licensed employees on form 23-LE (1/15) and provide proof of adequate security on form 23-INS (1/15) or form 23-NW (1/15), depending upon if they use insurance or net worth, as required by SB 1225.

Cost Impact on Representative Private Person or Business:

The cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, and that are known to the Bureau, are minimal. Existing law, BPC section 9715, requires an application for a certificate of authority to be made in writing on the form prescribed by the Bureau and shall be accompanied by the fee provided for in this act.

The Application for Certificate of Authority, form 23-COA (rev. 1/15), delineates the documents and/or permits that an applicant must submit along with the filing fee of \$400. A representative business may be required to incur fees to obtain the documents and/or permits needed for the application process. The actual cost for documents and/or permits may vary from county to county, depending upon the business location, and are not within the Bureau's control.

SB 1225 added BPC sections 9653.5 and 9653.6. This authorizes a LLC to organize and operate as a cemetery authority and to employ 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 licensed 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.

The application requirements for a corporation and a LLC are similar, with the exception that a LLC must disclose the names of all Bureau licensed employees on form 23-LE (1/15) and provide proof of adequate security on form 23-INS (1/15) or form 23-NW (1/15) depending upon if they use insurance or net worth. The application filing fee and annual renewal fee for a cemetery authority are the same for both a corporation and a LLC.

Any person licensed to perform services related to cemeteries and funerals would be prohibited from having an ownership interest in a LLC that is a cemetery authority. The Bureau is authorized to suspend or terminate the certification of the LLC to operate as a cemetery authority in the event a licensed individual, as specified, 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.

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 using the Cemetery Notification of Change, form 23-NC (1/15) along with a \$25 filing fee.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations may affect small businesses. The regulatory proposal affects small businesses if they elect to organize as a LLC to apply for and be designated by the Bureau as a cemetery authority for the purpose of owning and controlling cemetery lands and properties in the State of California.

SB 1225 added BPC sections 9653.5 and 9653.6. This authorizes a LLC to organize and operate as a cemetery authority and to employ 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 licensed 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.

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 using the Cemetery Notification of Change, form 23-NC (1/15) along with a \$25 filing fee.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal may have an impact on the creation of jobs or new businesses but not the elimination of jobs, 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 state's environment:

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.

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, and any document incorporated by reference, and of 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 Jenkins
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.Jenkins@dca.ca.gov

The back-up contact person is:

Name: Linda Kassis
Address: 1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834
Telephone No.: (916) 574-7878
Fax No.: (916) 928-7988
E-mail Address: Linda.Kassis@dca.ca.gov

Web site Access: Materials regarding this proposal can be found at www.cfb.ca.gov.