

**TITLE 16. CEMETERY AND FUNERAL BUREAU
DEPARTMENT OF CONSUMER AFFAIRS**

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

**§ 1267, Keeping of Preneed books, Accounts, Contracts, and
Records**

§ 1267.1, Funeral Establishment Intending to Cease Business Operations

§ 1274, Inability to Perform

§ 1275, Requirements of Preneed Trust Agreement

§ 1277.5, Disclosure of Preneed Funeral Agreement

**California Code of Regulations
(CCR)**

NOTICE IS HEREBY GIVEN that the Cemetery and Funeral Bureau (Bureau) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office no later than Tuesday, November 8, 2022.

PUBLIC HEARING AVAILABILITY

The Bureau has not scheduled a public hearing on this proposed action. The Bureau will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Bureau may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations 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 the 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 Business and Professions Code (BPC) sections 7606, 7735, 7736, 7737, 7731.1, 7737.2, 7738, 7740, 7740.5, 7745, and 7685.6 and to implement, interpret or make specific BPC sections 7737, 7737.1, and 7737.2 the

Bureau is considering amending 1267, 1274, 1275, and 1277.5, and adding section 1267.1 (commencing with section 1200) of Title 16 of the CCR as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Cemetery and Funeral Bureau (Bureau) licenses, regulates, and investigates complaints against 14 different license categories in California, totaling approximately 13,100 licensees. These licensing categories include funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons, cremated remains disposers, crematories, crematory managers, hydrolysis facilities, cemetery managers, and private, nonreligious cemeteries. It is the Bureau's duty to enforce and administer the Cemetery and Funeral Act (Chapter 12 (commencing with section 7600) of Division 3 of the Business and Professions Code (BPC)) (Act). (Bus. & Prof. Code, § 7602, subdivision (a)(2).) The Bureau is authorized to establish necessary rules and regulations for the enforcement of the Act and the laws subject to its jurisdiction. (Bus. & Prof. Code, § 7606.)

Title 16, CCR, section 1277 defines "preneed arrangement," "preneed agreement," or "preneed" as "written instruction regarding goods or services or both goods and services for final disposition of human remains when the goods or services are not provided until the time of death, and may be either unfunded or paid for in advance of need." Consumers pay funeral establishments in advance of need for these arrangements pursuant to a trust agreement executed by the funeral establishment, the trustor, and a trustee, which requires all monies received to be deposited into a preneed funeral trust within 30 days of receipt by a funeral establishment.

As of July 2022, the Bureau was responsible for oversight of 1,101 licensed funeral establishments throughout California. Of these, 713 reported having preneed trust funds totaling approximately \$682 million dollars in consumer funds. Although not all licensed funeral establishments report holding preneeds, all have the authority to hold them, and can start writing preneed contracts and accepting consumer monies at any time. The funeral establishment holds these preneed funds until death occurs, and the goods and services are delivered unless the trustor cancels the contract. The trustee is required to deliver the corpus (contributions received from the trustor) and any income accrued in the trust upon the signature of a majority of the trustees pursuant to BPC section 7737(b). Additionally, funeral establishments may hold unclaimed preneed funds for trustors or beneficiaries whose accounts have not been serviced or canceled. Presently, funeral establishments are not required to take any action on these unclaimed accounts.

In 2021, Assembly Bill (AB) 293 (Kalra, Chapter 514, Statutes of 2021) was enacted, which recast provisions of the Act to require funeral establishments to escheat

unclaimed accounts to the state in accordance with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. Beginning January 1, 2023, it requires funeral establishments to take reasonable efforts to contact the beneficiary or trustor of unclaimed preneed funeral trust accounts so these monies can be returned. If the beneficiary or trustor cannot be found, it requires a funeral establishment to report and pay or deliver all abandoned preneed trust accounts, including the corpus of the trust, together with any income accrued in the trust (interest, dividends, and capital gains) at the time of payment or delivery, less a revocation fee, to the State Controller. It also defines requirements for funeral establishments intending to cease operations both for those transferring their preneed funeral agreements to another funeral establishment and those who are not transferring agreements.

Specifically, AB 293 adds section 1518.5 to the Code of Civil Procedure to require that funds maintained in a preneed funeral trust or similar account or plan become payable and distributable under any of the following circumstances:

- 1) The beneficiary of the trust attained, or would have attained if living, 105 years of age.
- 2) Forty-five years have passed since execution of the preneed funeral agreement.
- 3) The holder received notification of the death or presumed death of the beneficiary and has not provided the contracted funeral merchandise or services.
- 4) The preneed funeral trust is a preneed installment trust and the amount due to the funeral establishment from the trustor has not been paid during the three preceding years and neither the trustor nor the beneficiary has communicated with either the funeral establishment or the trustee about the preneed installment trust during that three-year period.

If the trustor or beneficiary has not corresponded with a funeral establishment concerning the property or expressed an interest for more than three years after the funds became payable and distributable, the funds, less a revocation fee pursuant to BPC section 7735, escheat to the State Controller.

AB 293 also amends BPC section 7737 and adds BPC section 7737.1 to provide specific instructions pertaining to procedures, timeframes, and required elements to include in notices that funeral establishments must issue when intending to cease engaging in business operations for both those transferring their preneed agreements to a successor funeral establishment and those not transferring agreements. BPC section 7737.2 has also been added to require the notices to be on forms created by the Bureau and to be posted on its website by January 1, 2023. Additionally, BPC section 7737.2 states the Bureau shall adopt and post regulations on its website regarding the type of proof of notice funeral establishments ceasing operations, and licensed successor establishments, must provide or retain.

There are no existing regulations or forms for use by funeral establishments to notify trustors, trustees, the Bureau, or successor funeral establishments a funeral establishment is ceasing business operations, that preneed funeral monies are being transferred to a successor funeral establishment, or that preneed funeral monies will be escheated to the state under certain conditions. AB 293 mandates necessitate modified reporting and record keeping regulations for funeral establishments, which the Bureau is required to promulgate. This proposal would modify existing regulations and establish new regulations.

The Bureau has drafted proposed text to provide: (1) requirements for additional preneed funeral trust record keeping for licensed funeral establishments, and refine existing language; and (2) reporting requirements to the Bureau for funeral establishments intending to cease operations. The Bureau has also created the forms that must be posted on the Bureau's website for establishments to use to notify affected parties of transfer, cancellation, or escheatment of preneed agreements held by an establishment intending to cease operations.

The Bureau has drafted proposed text to provide: (1) requests to terminate a preneed funeral trust may now be made via electronic communication; (2) requirements for additional preneed funeral trust record keeping for licensed funeral establishments, along with refinement of existing regulatory language; and (3) reporting requirements to the Bureau for establishments intending to cease operations. The Bureau has also created the forms which must be posted on the Bureau's website notifying affected parties of transfer or cancellation of preneed agreements held by an establishment intending to cease operations.

The Bureau therefore proposes to:

- **Add a new section 1267.1 amend Sections 1267, 1274, 1275, and 1277.5 in Article 8 of Division 23 of Title 16 of the California Code of Regulations.**
- **Amend section 1267, Keeping of Preneed Books, Accounts, Contracts, and Records**

Existing law addresses the requirements for maintaining preneed books, accounts, contracts, and records by a funeral establishment.

The Bureau proposes to amend section 1267 to correct spelling and punctuation errors and to renumber subdivisions as necessary to accommodate the additional requirements in this section relevant to the adoption of AB 293. They include additional recordkeeping requirements for all funeral establishments holding preneed funds, those accepting the transfer of another funeral establishment's preneed arrangements, and funeral establishment record keeping requirements for escheated accounts.

- **Adopt section 1267.1, Funeral Establishments Intending to Cease Business Operations**

The Bureau proposes to adopt Section 1267.1 to establish the requirement for funeral establishments intending to cease business operations to submit the form designated by the Bureau to the Bureau pursuant to CCR Section 1274(c), and to describe the additional information that must be included with the submittal.

- **Amend section 1274, Inability to Perform**

Existing law requires when a licensed funeral establishment or licensed funeral director is unable to perform the funeral services prior to or upon the death of the beneficiary of a preneed trust agreement, the trustee shall pay all trust corpus and net income to the beneficiary, trustor or the legal representative of either the beneficiary or trustor without the imposition of any revocation charge.

The Bureau proposes to amend section 1274 to add requirements for funeral establishments intending to cease operations by reason of dissolution, closure, sale, or license revocation in instances when a funeral establishment is not transferring its preneed funeral arrangements to a successor establishment, as well as when it is transferring. When the funeral establishment is not transferring its preneed arrangements and is escheating or cancelling the arrangements the funeral establishment shall use bureau form 12-PACE (New 1/23), Notice of Cancellation of Preneed Funeral Contract or Agreement. When transferring its preneed arrangements, the funeral establishment shall use bureau form 12-PASFD (New 1/23), Notice of Transfer of Preneed Contract or Agreement to Successor Funeral Establishment. It also defines the type of proof of notice the funeral establishment ceasing operations is required to provide.

- **Amend section 1275, Requirements of Preneed Trust Agreements**

Existing law specifies the information required to be included in a preneed trust agreement.

The Bureau proposes to amend section 1275 to correct the punctuation in subdivision (d) by adding a comma after the word “address”, in subdivision (f)(2) by adding a comma after the word “rule”, and in subdivision (h) to correct the spelling of the word pre-need to preneed.

- **Amend section 1277.5, Disclosure of Preneed Funeral Agreement**

Existing law addresses the requirements for funeral establishments’ disclosure of preneed agreements.

The Bureau proposes to amend section 1277.5(d) by adding a “be” to correct grammar.

ANTICIPATED BENEFITS OF PROPOSED REGULATIONS

AB 293 protects consumers and their surviving loved ones by providing mechanisms to locate and claim unused preneed trust funds. Specifically, AB 293 clarifies the party responsible for reporting abandoned trust accounts, outlines dormancy triggers regarding the death or presumed death of the beneficiary, and establishes requirements for communication with owners of preneed funeral trust accounts.

Laws regulating preneed funeral trust accounts only ensure the funds for merchandise and services are available at the time of death. Funeral establishments are not required to have consistent contact with the owners of record or adequately address handling of abandoned trust accounts. AB 293 closes this loophole by bringing unclaimed preneed funeral trust accounts under unclaimed property law. AB 293 enhances consumer protection by establishing added requirements for dormant preneed funeral trust accounts.

DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATION(S)

During the process of developing these regulations and amendments, the Bureau has conducted a search of any similar regulations of these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

- Notice of Cancellation of Preneed Funeral Contract or Agreement, 12-PACE (New 1/23).
- Notice of Transfer of Preneed Contract or Agreement to Successor Funeral Establishment, 12-PASFD (New 1/23).

DISCLOSURES REGARDING PROPOSED ACTION:

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

The proposed regulations do not result in a fiscal impact to the state in the form of federal funding or any cost or savings to any state agency. Any increase in workload or cost to the state is a result of AB 293 which has an implementation date of January 1, 2023.

Cost or Savings in Federal Funding to the State: The regulations do not result in costs or savings in federal funding to the state.

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 not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

- The Bureau has determined that the only types of businesses that may be affected are licensed funeral establishments holding preneed trust funds for consumers.
- As of July 2022, the Bureau is responsible for 1,101 licensed funeral establishments throughout California. Of these, 713 reported having preneed trust funds totaling about \$682 million dollars in consumer funds. Although not all licensed funeral establishments report holding preneeds, all have the authority to hold preneeds, and can start writing preneed contracts and accepting consumer monies at any time. Given that the licensee population is 1,101, and not all report having preneed trust funds, the Bureau has determined that the number of licensees is insufficient to create a statewide adverse economic impact.
- Opting to start writing preneed contracts and accepting consumer monies is a voluntary business decision made by the licensed funeral establishments and therefore any business impact is a result of this choice and not the regulations.
- Existing law requires licensed funeral establishment to maintain records of preneed funeral agreements. The additional recordkeeping and information requirements add to existing requirements and are not anticipated to add significant additional costs to the funeral establishments.

Business Reporting Requirement

It is necessary for the health, safety, or welfare of the people of the state the regulation apply to businesses.

Cost Impact on Representative Private Person or Business:

The agency 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 the proposed regulations would not affect small businesses because this proposed regulation only applies to funeral establishments already licensed by the Bureau.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not create or eliminate jobs, will not create new businesses, or eliminate existing businesses, and will not affect the expansion of businesses currently doing business within the State of California.

As of July 2022, the Bureau is responsible for 1,101 licensed funeral establishments throughout California, but only 713 report having preneed trust funds.

This Bureau has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposed regulations are only applicable to funeral establishments which are already licensed by the Bureau.
- It will not create new businesses, eliminate existing businesses, or affect the expansion of businesses within the State of California because the proposed regulations are only applicable to funeral establishments which are already licensed by the Bureau. It does require some effort to comply with the added recordkeeping, notification, escheatment, and other compliance requirements. The Bureau does anticipate that it is significant enough to affect the expansion of businesses.
- This regulatory proposal will affect the health and welfare of California residents because funeral establishments holding consumer monies in preneed trust that should have been escheated will now be rightfully returned to the trustor or beneficiary. In addition, the regulations will provide more checks and balances to protect consumers when funeral establishments are ceasing business operations by ensuring that all preneed funds have been fully accounted for by cancellation, transfer, or escheatment.

- This regulatory proposal does not affect worker safety because it does not relate to worker safety.
- This regulatory proposal does not affect the state's environment because the regulations have no impact on the environment.

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 upon request from the Bureau at 1625 North Market Blvd., 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 that 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 website listed below.

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.

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

Alternative 1: Do nothing. This alternative was rejected because it would make the Bureau non-compliant with the statutory requirements of AB 293.

Alternative 2: Adopt new regulations and amend existing regulatory sections. This alternative was accepted as the most efficient option for the Bureau to enact AB 293.

Any interested person may submit comments to the Bureau in writing relevant to the above determinations at 1625 North Market Blvd., Suite S-208, Sacramento, California 95834.

CONTACT PERSON

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

Name: Carolina Sammons
Address: 1625 North Market Boulevard, Suite S-208 Sacramento, CA 95834
Telephone No.: (916) 574-7876
Fax No. (916) 928-7988
Email Address: carolina.sammons@dca.ca.gov

The backup contact person is:

Name: Gina Sanchez
Address: 1625 North Market Boulevard, Suite S-208 Sacramento, CA 95834
Telephone No.: (916) 574-7870
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Email Address: gina.sanchez@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Carolina Sammons at (916) 574-7876.

Website access: Materials regarding this proposal can be found at https://www.cfb.ca.gov/laws_regs/proposed_regs.shtml