

# CEMETERY AND FUNERAL BUREAU

## Final Statement of Reasons

### **Effective Date**

The Cemetery and Funeral Bureau (Bureau) requests that the regulation become effective upon filing to align as closely as possible with the statutory implementation date of July 1, 2020, in Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018).

### **Subject Matter of Proposed Regulations:**

This final statement of reasons addresses the regulations applicable to cemetery related licenses contained in Article 3, of Division 23, of Title 16 of the California Code of Regulations (CCR).

Substantial Relationship Criteria, Criteria to Aid in Determining if Felony Financial Crimes Are Directly and Adversely Related to Fiduciary Qualifications, Functions, or Duties of a Cemetery Manager, and Rehabilitation Criteria for Denial of License, and Rehabilitation Criteria for Suspension, Revocation, or Reinstatement of License

**Sections Affected:** CCR, Title 16, Division 23, Article 3, Sections 2330, 2330.1, 2331, and 2331.1.

### **Updated Information**

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as though set forth herein.

The information contained therein is updated as follows:

Modifications were made to the originally approved and noticed text. Below is a description of the modifications that were made to the text.

## Section 2330

- A. Insertion in new subdivision (a) of “This section applies to all licenses, as defined in Section 23.7 of the Business and Professions Code, that are covered by this division, including, but not limited to, licenses for cemetery-related businesses or professions, cremation- or hydrolysis-related businesses or professions, or remains disposal.”

The Bureau proposes to relocate this text from former subdivision (a) to the beginning of the regulation to clarify the categories of licensees to whom the regulation applies.

- B. Re-numbering of subdivision (a) to (b)

This is necessitated by the creation of new subdivision (a).

- C. Deletion in new subdivision (b) of “, as defined in Section 23.7 of the Business and Professions Code, covered by this division, including, but not limited to, a license for a cemetery-related business or profession, a cremation- or hydrolysis-related business or profession, or remains disposal.”

The Bureau proposes to delete this text since it has been relocated to subdivision (a).

- D. Insertion in new subdivision (b) of “7691, 7711.3”

The Bureau proposes to add these sections to subdivision (b) so that references to substantial relationship are addressed together in one regulation. This amendment will add clarity to this subdivision. It requires the Bureau to apply the substantial relationship criteria in this regulation to suspension or revocation proceedings under Business and Professions Code (BPC) sections 7691 and 7711.3.

- E. Insertion in new subdivision (b) of “or pursuant to any section of the Cemetery and Funeral Act (Chapter 12 (commencing with Section 7600) of Division 3 of the Business and Professions Code) that cites Division 1.5 of the Business and Professions Code as providing grounds for denial, suspension, or revocation of a license.”

The Bureau proposes to add this text for clarity and require the Bureau to apply the substantial relationship criteria in this regulation to denial, suspension, or revocation proceedings under any statute in the Cemetery and Funeral Act that cites Division 1.5 of the BPC.

- F. Deletion in new subdivision (b) of “licensee” and insertion of “the practice or profession in which the applicant seeks licensure or in which the licensee is licensed”

The Bureau proposes to delete “licensee” and replace it with the referenced language for consistency with BPC section 480(a)(1) which requires the review of whether a criminal conviction is “related to the qualifications, functions, or duties of the business or profession for which the application is made.”

- G. Insertion in new subdivision (b) of “the applicant or”

The Bureau proposes to add “applicant” to clarify that this regulation establishes substantial relationship criteria for license denial proceedings, which concern applicants, not just disciplinary proceedings, which concern licensees.

- H. Re-numbering of subdivision (b) to (c) and re-numbering of subdivision (a) to (b) in new subdivision (c).

This is necessitated by the re-numbering of subdivisions in the regulation.

- I. Deletion in new subdivision (c)(3) of “licensee” and insertion of “practice or profession in which the applicant seeks licensure or in which the licensee is licensed.”

The Bureau proposes these amendments to clarify that the Bureau will evaluate a criminal conviction based on its relationship to a licensed practice, profession, or occupation, and not an individual applicant or licensee who may have qualifications, functions, or duties that are unrelated to the licensed practice, profession, or occupation.

- J. Renumbering of subdivision (c) to (d) and re-numbering of subdivision (a) to (b) in new subdivision (d).

This is necessitated by the re-numbering of subdivisions in the regulation.

- K. Deletion in new subdivision (d)(1) of “(Chapter 12 (commencing with Section 7600) of Division 3 of the Business and Professions Code).”

This deletion removes the full citation of the Act in subdivision (d)(1) because it is proposed to be added in subdivision(b) and is therefore unnecessary to repeat.

- L. Deletion in Authority Cited of sections 481 and 493 and deletion in Reference of section “493 and” and insertion of 493, 7639.08, 7653, 7691, 7711.3, 7711.5, and 7712.5.

The Bureau proposes delete these sections to Authority Cited since they are not properly cited as authority, and proposes the amendments to Reference to accurately reflect the sections the regulation, as modified, implements, interprets, and/or makes specific.

### Section 2331

- A. Insertion in new subdivision (a) of “This section applies to all licenses, as defined in Section 23.7 of the Business and Professions Code, that are covered by this division, including, but not limited to, licenses for cemetery-related businesses or professions, cremation- or hydrolysis-related businesses or professions, or remains disposal.”

The Bureau proposes to relocate this text from former subdivision (a) to the beginning of the regulation to clarify the categories of licensees to whom the regulation applies.

- B. Re-numbering of subdivision (a) to (b).

This is necessitated by the creation of new subdivision (a).

- C. Deletion in new subdivision (b) of “, as defined in Section 23.7 of the Business and Professions Code, covered by this division, including, but not limited to, a license for a cemetery-related business or profession, a cremation- or hydrolysis-related business or profession, or remains disposal,”

The Bureau proposes to relocate this text to subdivision (a).

- D. Insertion in new subdivision (b) of “, 7639.08(a), 7651.5(g), 7653(a), 7653.7(b), 7712.4, or 7712.5(a).”

The Bureau proposes to add these statutes to the subdivision to require the Bureau to apply the substantial relationship criteria in this regulation to denial of an application for a license under BPC sections 7639.08(a), 7651.5(g), 7653(a), 7653.7(b), 7712.4, or 7712.5(a).

- E. Deletion in new subdivision (b) of “was” and insertion of “has been.”

The Bureau proposes to delete “was” and replace it with “has been” because “has been” is used to refer to something which started in the past and is still continued in the present tense. “Was,” on the other hand, is used to refer to some action which was going on at some time in the past. The Bureau prefers to use “has been” to include the present tense so the relevant time period for a conviction includes up to the present.

F. Deletion in new subdivision (b) of “and is presently eligible for a license.”

The Bureau proposes to delete this phrase from subdivision (b) because “eligible” could be seen as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure. Deletion of this phrase will clarify the regulation.

G. Re-numbering of subdivision (b) to (c).

This is necessitated by the re-numbering of subdivisions in the regulation.

H. Insertion in new subdivision (c) of “If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (b), or the denial is based on professional misconduct, or the denial is based on one or more of the grounds other than a criminal conviction that are specified in Section 7612.5(c), 7639.08(a), 7651.5(g), 7653(a), 7653.7(b), or 7712.5(a) of the Business and Professions Code” and deletion of “, If subdivision (a) is inapplicable, or the bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a).”

The original text of subdivision (c) was unclear in specifying the circumstances when the regulation would apply. Instead of catch-all language, the Bureau proposes to delete the former preface to the regulation and enumerate each specific instance of when subdivision (b) would not apply, and proposes to include all of the specified categories.

I. Deletion in new subdivision (c) of “and is presently eligible for a license.”

The Bureau proposes to delete this phrase from subdivision (c) because “eligible” could be seen as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure. Deletion of this phrase will clarify the regulation.

J. Insertion in new subdivision (c)(1), (c)(2), and (c)(3) of “professional misconduct.”

The addition of “professional misconduct” to these subdivisions is made necessary by the addition of “professional misconduct” in subdivision (c).

K. Deletion in new subdivision (c)(2) of “under Section 480 of the Business and Professions Code.”

Because the Bureau proposes to add “professional misconduct” to subdivision (c), that necessitates the removal of this phrase because the amended subdivision now encompasses more than crimes and acts enumerated in section 480.

L. Re-numbering in new subdivision (c)(5) of (a)(1)-(5) to (b)(1) through (5).

This is necessitated by the re-numbering of subdivisions in the regulation.

M. Deletion in Authority Cited of 482, “and 9630,” and 7740 and insertion in Reference of 7639.08, 7651.5, 7653, 7653.7, 7712.4, and 7712.5.

The Bureau proposes delete these sections to Authority Cited since they are not properly cited as authority, and proposes the amendments to Reference to accurately reflect the sections the regulation, as modified, implements, interprets, and/or makes specific.

Section 2331.1

A. Creation of new subdivision (a), with title “Application of section” and insertion of “This section applies to all licenses, as defined in Section 23.7 of the Business and Professions Code, that are covered by this division, including, but not limited to, licenses for cemetery-related businesses or professions, cremation- or hydrolysis-related businesses or professions, or remains disposal.”

The Bureau proposes to relocate this text from former subdivision (a) to the beginning of the regulation to clarify the categories of licensees to whom the regulation applies.

B. Re-numbering of subdivision (a) to (b), with title “Suspension of revocation of a license,” and deletion in new subdivision (b)(1) of “ as defined in Section 23.7 of the Business and Professions Code, covered by this division, including, but not limited to, a license for a cemetery-related business or profession, a cremation- or hydrolysis-related business or profession, or remains disposal.”

The Bureau proposes to renumber the subdivision because of the creation of new subdivision (a), and adds a title to the subdivision for clarity regarding its contents. The Bureau proposes to delete this text since it has been relocated to subdivision (a).

C. Deletion in new subdivision (b)(1) of “and is presently eligible for a license”

The Bureau proposes to delete this phrase from subdivision (b) because “eligible” could

be seen as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure. Deletion of this phrase will clarify the regulation.

D. Re-numbering of subdivision (a)(1)-(5) to (b)(1)(A)-(E).

This is necessitated by the re-numbering of subdivisions in the regulation.

E. Deletion in new subdivision (b)(1)(D) of “applicant’s” and insertion of “licensee’s”

The Bureau proposes to replace “applicant’s” with “licensee’s” because the subdivision relates to suspension or revocation of a license, not denial of a license.

F. Re-numbering of subdivision (b) to (b)(2), insertion of “If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the bureau determines that the licensee did not make Cemetery and Funeral Bureau Modified Text Page 8 of 9 16 CCR §§ 2330, 2330.1, 2331, & 2331.1 Substantial Relationship & Rehabilitation Criteria (Cemetery) 5/19/2020 the showing of rehabilitation based on the criteria in paragraph (1), the suspension or revocation is based on a disciplinary action taken by another entity, as provided in Section 141 of the Business and Professions Code, for an act substantially related to the practice in which the licensee is licensed, or the suspension or revocation is based on one or more of the grounds other than a criminal conviction that are specified in Section 7612.5(c), 7637.4(c), 7637.5(b), 7637.7(b), 7637.8, 7637.10, 7652.7, 7653.2, 7653.35(a), 7653.4, 7653.6(b), 7672.4(a), 7672.6(b), 7672.7(b), 7713(b), or 7713.4 of the Business and Professions Code, Article 6 (commencing with Section 7686) of the Business and Professions Code, or Section 8113.6, 8574, 8778.5(c), or 8785 of the Health and Safety Code,” and deletion of “, If subdivision (a) is inapplicable, or the bureau determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a).”

The original text of subdivision (b)(2) was unclear in specifying the circumstances when the regulation would apply. Instead of catch-all language, the Bureau proposes to delete the former preface to the regulation and enumerate each specific instance of when subdivision (b)(1) would not apply, and proposes to include all of the specified categories.

G. Deletion in new subdivision (b)(2) of “and is presently eligible for a license.”

The Bureau proposes to delete this phrase from subdivision (b)(2) because “eligible” could be seen as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure. Deletion of this phrase will clarify the regulation.

H. Re-numbering of subdivision (b)(1)-(7) to (b)(2)(A)-(G).

This is necessitated by the re-numbering of subdivisions in the regulation.

I. Re-numbering and amendment in new subdivision (b)(2)(E) of “subdivision (a)(1)-(5)” to “paragraph (1)(A) through (E).”

This is necessitated by the re-numbering of subdivisions in the regulation.

J. Deletion in subdivision (c) of “Reinstatement” and insertion of “reinstatement.”

The Bureau proposes this amendment, so capitalization of subdivision headings is consistent throughout the regulation.

K. Re-numbering in subdivision (c) of “subdivisions (a) and (b)” to “subdivision (b)(1) and (2).”

This is necessitated by the re-numbering of subdivisions in the regulation.

L. Deletion in Authority Cited of “s 482” and “and 7740,” insertion in Reference of 141, 7612.5, 7637.4, 7637.5, 7637.7, 7637.8, 7637.10, 7652.7, 7653.2, 7653.35, 7653.4, 7653.6, 7672.4, 7672.6, 7672.7, 7713, and 7713.4, “Sections 8113.6, 8574, 8778.5, and 8785, Health and Safety Code,” and deletion of “and.”

The Bureau proposes delete these sections to Authority Cited since they are not properly cited as authority, and proposes the amendments to Reference to accurately reflect the sections the regulation, as modified, implements, interprets, and/or makes specific.

After consultation with the Office of Administrative Law, the Bureau made additional modifications to the text, which are summarized below:

A. Deletion in section 2331(b) of sections 7639.08(a), 7651.5(g), 7653(a), 7653.7(b), and addition of “s” and “and.”

The Bureau reconsidered whether these sections were properly cited in subdivision (b). Determining that they were not, the Bureau struck these sections.

B. Deletion in section 2331.1(b)(2) of section 7713.4.

The Bureau reconsidered whether this section was properly cited in subdivision (b)(2). Determining that it was not, the Bureau struck these sections.



### C. Deletion of 480 from Authority in section 2330.1.

The Bureau deleted section 480 from the Authority section of the Note as it was not properly cited as authority.

#### **Local Mandate**

A mandate is not imposed on local agencies or school districts.

#### **Objections or Recommendations/Responses**

The Bureau did not receive any comments during either the 45-day comment period or the 15-day comment period.

#### **Consideration of Alternatives**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

#### **Nonduplication Statement - 1 CCR § 12**

The proposed regulations partially duplicate or overlap a state or federal statute or regulation which is cited as “authority” and “reference” for the proposed regulations and the duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1(a)(3).

#### **Economic Impact**

The Bureau provides licensure to 13 different license categories in California, totaling approximately 13,500 licensees. This regulatory proposal pertains to cemetery-related licenses. These licensing categories include cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons and cremated remains disposers, crematories, crematory managers, cemetery manager, and private, nonreligious cemeteries.

To the extent that license applicants and licensees were convicted of a crime or were previously disciplined, the proposed regulations could impact individual licensees and businesses by authorizing individuals with criminal convictions to obtain licensure by the Bureau, if they have met the rehabilitative criteria, and the criminal convictions are substantially related, as established in the regulatory proposal.

The proposed regulations may have an impact on businesses within California, specifically crematories and cemeteries to the extent individual applicants are able to be licensed under the proposal. The types of businesses impacted from the proposed regulations range from small private businesses to corporations that own crematories and/or cemeteries.

However, because the Bureau historically denies a minimal number (range - zero to three) initial applications per year, as specified, the Bureau does not anticipate an increase in the number of new initial licensees resulting from the proposed regulations

### **Fiscal Impact**

The Bureau does not anticipate increased workload or costs resulting from the proposed regulations.

Because the Bureau historically denies a minimal number (range – zero to three) initial applications per year, no increase in the number of initial applications approved per year is anticipated. As a result, the proposed regulations are not anticipated to increase licensing and/or enforcement costs related to any expansion of the licensee population.