

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

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 a hearing to be held at:

Cemetery and Funeral Bureau
1625 North Market Boulevard
1st Floor Hearing Room
Sacramento, CA 95834
Date: Wednesday, April 8, 2020
Time: 10:00 am-11:00 am

Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on Tuesday, April 7, 2020, or must be received by the Bureau at the hearing.

The Bureau, upon its own motion or at the request 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 481, 482, 493 and 7606 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 141, 475, 480, 481, 482, 488, 490, 492, 493 and 7606 of said Code, the Bureau is considering changes to Division 23 of Title 16 of the California Code of Regulations (CCR) as described in this Notice.

INFORMATIVE DIGEST

Background:

The death care industry transacts business with consumers at a time when they are emotionally vulnerable, which is why the Bureau makes consumer protection its highest priority. The Bureau achieves its goal of consumer protection through the following primary methods: issuing and renewing licenses; overseeing funeral and cemetery trust funds; investigating consumer complaints; conducting inspections; and disciplining licensees for violations of its laws and regulations under the Cemetery and Funeral Act (Chapter 12 (commencing with section 7600) of Division 3 of the Business and Professions Code) (Act), Division 12 (commencing with section 1202) of Title 16 of the CCR, regulating funeral- and embalming-related businesses and professions (the Funeral Regulations), and Division 12 (commencing with section 1202) of Title 16 of the CCR, regulating cemetery-related businesses or professions, cremation- or hydrolysis-related businesses and professions, and remains disposal (the Cemetery Regulations).

In addition, the Bureau licenses, regulates, and investigates consumer complaints against, 13 different license categories in California, totaling approximately 13,500 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.

BPC section 7606 authorizes the Bureau to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Act. Additionally, as required under Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), the primary purpose of this proposal is to implement, interpret, and make specific the provisions of BPC sections 141, 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria.

The Bureau is proposing the following changes:

Amend Substantial Relationship and Rehabilitation Criteria to Apply to All Licensees under the Cemetery Regulations:

The proposed regulation would amend 16 CCR sections 2330 and 2331 to apply to all holders of a license, as defined in BPC section 23.7, under the Cemetery Regulations, instead of only “cemetery broker[s] or salesperson[s].”

Amend 16 CCR Section 2330 (Substantial Relationship Criteria):

16 CCR section 2330 establishes the criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of a cemetery broker or salesperson and therefore grounds for denial, suspension, or revocation of a cemetery broker or salesperson license pursuant to BPC section 480 or 490. The proposed regulation, for purposes of denial, suspension, or revocation of a license, would expand the application of this section, as stated above, to include all licensees, as defined in BPC section 23.7, under the Cemetery Regulations; clarify that the criteria in this section also apply to a determination of whether professional misconduct or disciplinary action taken by another state, by any agency of the federal government, or by another country, as described in BPC section 141, are grounds for denial, suspension, and revocation of a license; and require the Bureau, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would specify that substantially related crimes, professional misconduct, or acts would include violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of the Act, conviction of crimes or acts involving dishonesty, misrepresentation, fraud, or deceit, and related crimes, as specified, and conviction of any crime or act involving fiscal dishonesty.

Add Section 2330.1 to Article 3 of Division 23 of Title 16 of the CCR (Criteria to Aid in Determining if Felony Financial Crimes are Directly and Adversely Related to Fiduciary Qualifications, Functions, and Duties of a Cemetery Manager):

As required by AB 2138, the proposed regulation sets forth the criteria to aid the Bureau in determining if felony financial crimes are directly and adversely related to the fiduciary qualifications, functions, and duties of a cemetery manager under the Act, and therefore excluded from the statute of limitations, effective July 1, 2020, that, with certain exceptions, prevents the Bureau from denying a license based on a criminal conviction if the applicant was convicted or, if incarcerated, released from incarceration, more than seven years before the

application date. (BPC, § 480, subd. (a)(1)(B)(v), as added by AB 2138, § 4.) In addition, the proposal would enumerate specific felony financial crimes that the Bureau has determined are directly and adversely related to the fiduciary qualifications, functions, or duties of a cemetery manager, including felony financial crimes involving acts of dishonesty, misrepresentation, deceit, fraud, or theft, as specified.

Amend 16 CCR 2331 (Rehabilitation Criteria for Denial of License):

The proposed regulation would clarify that the Bureau, when considering a license denial on the ground that the applicant was convicted of a crime, would have to determine whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal would require the Bureau to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial was based on something other than a crime.

Add Section 2331.1 to Article 3 of Division 23 of Title 16 of the CCR (Rehabilitation Criteria for Suspension, Revocation, or Reinstatement of License):

The proposed regulation would clarify that the Bureau, when considering the suspension or revocation of a license on the ground that the licensee was convicted of a crime, would have to determine whether the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal would require the Bureau to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified and why. The proposal would require a broader set of rehabilitation criteria to be considered for licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the suspension or revocation was based on something other than a crime.

This proposal would also move the criteria for a Petition for Reinstatement from existing 16 CCR section 2330, into the newly proposed 16 CCR 2331.1. The Bureau would then evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in this section.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF PROPOSAL

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Bureau's use of their criminal histories. Further, by reducing barriers to licensure, the Bureau anticipates benefits to consumers who may have greater access to licensed professionals.

Consistency and Compatibility with Existing State Regulations

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.

FISCAL IMPACT ESTIMATES

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

The Bureau anticipates that there may be an increased cost to the state as a result of amending and adopting the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Bureau staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved.

Cost or 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 businesses, including the ability of California businesses to compete with businesses in other states.

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

Cost Impact on Representative Private Person or Business:

The Bureau estimates that there will be no increased costs for businesses or individuals to comply with the proposed regulations, as there would be fewer restrictions for individuals with criminal convictions to obtain licensure.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The proposed regulations may affect small businesses, who would have a greater pool of licensed professionals from which to hire.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

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

Benefits of Regulation:

The Bureau has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, which may benefit the health and welfare of California's consumers. Cemetery and Funeral businesses may benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state's environment.

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.

The following alternatives were considered:

- Option 1: To pursue a regulatory change that requires the Bureau to find rehabilitation if the applicant completed their terms of their criminal probation or parole. Courts give little weight to the fact that an applicant or licensee did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Bureau believes that reviewing each individual on the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Bureau rejected this option.
- Option 2: To do nothing, meaning the Bureau would not adopt the regulations. The Bureau opted not to pursue this option because per AB 2138, the Bureau is mandated to adopt proposed regulations by July 1, 2020.

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.

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 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 website listed below.

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: Cheryl Jenkins
Address: 1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834
Telephone No.: (916) 574-8203
Fax No. (916) 928-7988
Email Address: cheryl.jenkins@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 www.cfb.ca.gov.