



REGULATORY AGENCY ACTION

require the use of refrigerant recycling equipment approved by BAR in the servicing of vehicle air-conditioners having chlorofluorocarbon refrigerants. This bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

RECENT MEETINGS:

At BEAR's November meeting, Mr. Busman stated that Bobbye Copeland of Pacific Bell had notified him that PacBell has chosen to place fillers throughout the PacBell yellow pages referring readers to the "Smart Shopper" pages, which list state agencies regulating professions advertising in the book. BEAR will be listed among these agencies, but will not be specifically mentioned elsewhere in the directory. Mr. Busman also mentioned that GTE's yellow pages has agreed to include a short paragraph underneath each relevant heading mentioning BEAR's existence and jurisdiction. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 57 for background information.)

At the November meeting, industry member Don Irwin stated a concern about the variety of telephone book headings that have been created by advertisers for servicing and repair. The list includes "Authorized Service," "Authorized Factory Service," and "Factory Authorized Service," among others. Mr. Irwin stated that there is no distinction among these headings; rather, they have been invented by advertisers to ensure that their name appears first under that particular heading. Mr. Irwin further alleged that the variety of headings only serves to confuse the consumer, and asked BEAR to establish specific headings to be used in the yellow pages. Ms. Wood stated that if the manufacturers and the industry can establish that a legitimate consumer problem exists, BEAR will be pleased to address the problem at that time.

The Board also mentioned that another potential jurisdictional conflict with BAR exists. The installation of cellular telephones in automobiles appears to fall into the same jurisdictional pocket as does the auto burglar alarm. (See *supra* MAJOR PROJECTS.) The Board stated that the issue will be postponed as developing technology seems to be making the units so small that installation may no longer be required in the near future.

At the close of the November meeting, the Board elected new officers for

1990. Public member Fay Wood will serve as President of the Advisory Board; and public member Myrna Powell was elected as Vice President. Myrna Powell will replace Fay Wood as the Chair of the Executive Committee; Tom Tsutoaka will represent the appliance industry and Armen Karagosian will represent the electronics industry on the Committee.

FUTURE MEETINGS:

May 25 in Lake Tahoe.
August 10 in Burlingame.
November 10 in Los Angeles.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

*Executive Officer: James B. Allen
(916) 445-2413*

The Board of Funeral Directors and Embalmers licenses funeral establishments and embalmers. It registers apprentice embalmers and approves funeral establishments for apprenticeship training. The Board annually accredits embalming schools and administers licensing examinations. The Board inspects the physical and sanitary conditions in funeral establishments, enforces price disclosure laws, and approves changes in business name or location. The Board also audits preneed funeral trust accounts maintained by its licensees, which is statutorily mandated prior to transfer or cancellation of a license. Finally, the Board investigates, mediates, and resolves consumer complaints.

The Board is authorized under Business and Professions Code section 7600 *et seq.* The Board consists of five members: two Board licensees and three public members. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce reasonably necessary rules and regulations; these regulations are codified in Chapter 12, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

Preneed Trust Regulatory Changes. At its September 28 meeting, the Board adopted final language for proposed amendments to sections 1265 and 1275, Chapter 12, Title 16 of the CCR, relating to the use of income from a preneed trust. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 57; Vol. 9, No. 2 (Spring 1989)

p. 56; and Vol. 8, No. 4 (Fall 1988) p. 55 for background information on these changes.) The proposed change to section 1265 would establish an annual fee for administering a trust of not more than 4% of the year-end trust balance, and eliminate an existing restriction on the use of income for actual trust expenses. Amended section 1275 would expand and clarify existing designation and disclosure requirements for guaranteed and nonguaranteed preneed trust agreements or contracts. The Board submitted its rulemaking file on the regulatory changes to the Office of Administrative Law (OAL) on December 15. At this writing, OAL has not yet completed its review.

"Constructive Delivery" of Merchandise Under a Preneed Trust. At its November 30 meeting, the Board held a public hearing on the proposed addition of section 1262 to Chapter 12, Title 16 of the CCR, to prohibit the practice of "constructive delivery" of merchandise purchased under a preneed trust arrangement. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 57 for background information.) The purpose of the proposed regulation is to prevent a licensee from circumventing the trusting requirements of a preneed funeral arrangement. Existing law (Business and Professions Code section 7735 *et seq.*) provides that all funds delivered to a funeral director to pay for funeral services and merchandise shall be held in trust for the purpose for which they were paid; that the trust shall be fully revocable (except in certain limited circumstances); and that the trustor shall be entitled to the return of the corpus of the trust and any accrued income upon cancellation of the trust. However, section 7741 provides that none of these provisions apply to, among other things, "merchandise that is delivered as soon as paid for." The statute provides no definition of this term.

Proposed regulatory section 1262 would define "delivery" to mean actual personal delivery of the merchandise to the purchaser; provide that any payments received for merchandise where actual personal delivery will be delayed shall be held in trust until the merchandise is actually in the possession of the purchaser; and specify that delivery of a warehouse receipt does not constitute "delivery of merchandise" under section 7741 of the Business and Professions Code.

"Constructive delivery" (that is,



delivery of a warehouse receipt for stored merchandise, usually a casket or container) has been used by Board licensees to evade otherwise applicable laws regarding preneed trust funds. Some licensees keep funds out of the preneed trust by selling relatively inexpensive merchandise to the consumer at an extremely high mark-up, such as a \$5 cremation container for \$300. The licensee then warehouses the merchandise and delivers a receipt to the consumer, who never actually sees what has been purchased. Delivery of the warehouse receipt is construed as "constructive delivery" of the merchandise and the money paid for the merchandise is not refundable, even if the consumer cancels a revocable preneed trust. The Board contends that actual and personal delivery of the merchandise will make consumers fully aware of what their money is actually buying and less willing to pay unwarranted and unreasonably inflated prices.

Another problem arises when a consumer cancels a preneed arrangement where merchandise has been warehoused but payment for the merchandise is not complete. In these cases, the consumer is told to complete the payments in order to receive the merchandise, which may have been sold at a highly inflated price. If this is not acceptable to the consumer, then the payments already made are forfeited. This practice would be prevented by the requirement that merchandise be actually and physically delivered to the consumer before funds paid for the merchandise are exempt from the trusting requirement.

The current "constructive delivery" practice and the need to prevent abuses was recognized at the November 30 hearing. However, many industry members present at the hearing expressed concerns about the language of the proposed regulation. First, licensees desired a clear, specific definition of the merchandise to be included within the proposed regulation. Under the proposed regulation, the term "merchandise" means "merchandise that is used or intended to be used in connection with a preneed arrangement." Licensees were concerned whether the phraseology will be interpreted broadly or narrowly.

Industry members also expressed concern over the likely effectiveness of the regulation. Some proposed that a simpler and clearer approach would be to exclude a specific amount of funds from the preneed trust, regardless of the

purpose of the excluded funds. This would eliminate the need to define and interpret the terms "merchandise" and "delivery." However, the consumer would always lose some money upon cancellation, regardless of whether any merchandise was ever purchased. Another alternative is to place all money into trust but allow the licensee to collect an origination fee at the time of the preneed arrangement. This would eliminate the licensee's incentive to keep as much money as possible out of the trust. One drawback is in determining how an origination fee should be calculated—whether fixed or pro rata, and the level or rate at which it should be set. Finally, some licensees stated that the proposed regulation would not stop those persons who desire to circumvent the policy of the regulation.

Based on the public comments, the Board decided to reconsider the language and effectiveness of the proposed regulation. The Board was scheduled to hold further discussion of the proposed regulation at its January meeting.

Preneed Trust Bookkeeping Regulations. At its September meeting, the Board approved draft language for proposed new section 1265.1 and an amendment to existing section 1267, Chapter 12, Title 16 of the CCR, relating to the accounting and bookkeeping practices of funeral establishments. The Board filed the required notice of the proposed regulatory changes with OAL and scheduled a public hearing for January 25 in San Francisco.

Section 1265.1 is intended to establish specific methods for posting income to preneed trust accounts during the year. The Board noted that no uniform method of accounting for and crediting trust income to individual trustor accounts currently exists. The Board also stated that no specific guidelines exist for the crediting of income and the assessment of fees for accounts that are serviced or cancelled during the year. Proposed section 1265.1 would require that income be posted monthly and prorated to individual accounts when received. In cases of serviced or cancelled accounts, income shall be credited through the last full month of the account, and fees charged on a prorated share of the annual fee based on the number of months the account was in trust during the year.

Section 1267 would be amended to clarify the basic requirements for maintaining accounting and bookkeeping

records. The proposed amendment would not alter the number or types of records to be maintained. The amended regulation would simply clarify which records are required and reemphasize that the records must be maintained in accordance with generally accepted accounting principles.

DCA Rejects Repeal of Notice Requirement. At its June 1989 meeting, the Board approved the repeal of regulatory section 1258, which requires prominent display of a notice on all caskets having or represented as having a sealing device. The notice serves as a disclosure to consumers regarding the lack of evidence of any preservative effect of a sealer casket on human remains. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 57 and Vol. 9, No. 2 (Spring 1989) p. 56 for background information.) The Board submitted the rulemaking file to the Director of the Department of Consumer Affairs (DCA) for approval. Upon review, the DCA Director disapproved the proposed repeal, concluding that the consumer education provided by the regulatory requirement offsets any minimal burden on the industry. The Board was scheduled to reconsider the proposed repeal at its January 25 meeting.

Approval of Embalming Schools. At the Board's September meeting, the Embalmer Licensing and Enforcement Committee reported on the accreditation of embalming schools. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 57 for background information.) The Committee is currently waiting for the revised version of the American Board of Funeral Service Education's (ABFSE) accreditation guidelines. The Committee plans to incorporate some of the provisions of the ABFSE's manual into its own proposed accreditation regulations. The Committee will continue to report its progress to the Board at future meetings.

Restructuring of Apprenticeship Program. At the Board's November meeting, the Embalmer Licensing and Enforcement Committee reported on its study of the current statutory requirements for embalmer licensing and the apprenticeship program. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 57 for background information.) The Committee reported that it intends to formulate proposals for legislative change in the areas of apprenticeship training and embalming licensing to establish more meaningful and credible programs. The Board instructed the Committee to continue its work and report back at a future meeting.



REGULATORY AGENCY ACTION

Assignment of Funeral Directors' Licenses. At its November meeting, the Board expressed concern that applications for license assignments were not being received by the Board prior to the effective date of the transfer. Section 1213 of Chapter 12, Title 16 of the CCR, requires notification to the Board no later than thirty days prior to the effective date of the transfer. Licensees have indicated that they are worried that notice to the Board will become public and therefore interfere with tentative business dealings. The Board established a special committee to review the notification requirement and the concerns of the licensees. The committee is to report back to the Board with proposed policy or rules on enforcement of the notification requirement.

LEGISLATION:

The following is a status update of bills described in detail in CRLR Vol. 9, No. 4 (Fall 1989) at pages 57-58:

SB 26 (Lockyer) would, among other things, amend section 7739 of the Business and Professions Code to provide that a person who willfully violates the laws regarding preneed trusts is guilty of a Class E felony, punishable by no more than six months in county jail or no more than a \$500 fine, or both. The bill is pending in the Assembly Public Safety Committee.

AB 459 (Frizzelle) would have provided that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fees and satisfaction of continuing education requirements. This bill was dropped by its author.

SB 722 (Stirling) would require a local registrar to issue a permit for the disposition of human remains immediately upon presentation to the local registrar of a certificate of death or fetal death, except when the certificate contains medical or other information indicating that the death is a case requiring investigation by the coroner pursuant to existing provisions of law and the certificate does not contain evidence that this information has been reported to the coroner, or the certificate does not establish the identity of the decedent, and the place, date, and time of death. *SB 722* is currently pending in the Assembly Judiciary Committee.

AB 2271 (Farr) would have allowed a trustor in a preneed funeral trust to elect, for any reason, that the trust is irrevocable. This bill died in committee.

RECENT MEETINGS:

At the Board's November meeting, the Publications Committee reported that the Board's proposed consumer information guide is currently being reviewed by the Department of Consumer Affairs. Distribution of the guide is not expected to occur until at least summer of 1990.

The Board also revised its policy regarding the issuance of press releases following formal disciplinary action. The Board decided that it will issue a press release and/or publish in its quarterly newsletter results of disciplinary actions at the time the actions become effective and final.

Finally, the Board assigned staff to prepare proposed written disciplinary guidelines to be used as an advisory tool when formulating disciplinary orders.

FUTURE MEETINGS:

June 18 in San Jose.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

Executive Officer: John E. Wolfe (916) 445-1920

The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geology Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board's regulations are found in Chapter 29, Title 16 of the California Code of Regulations (CCR).

This eight-member Board licenses geologists and geophysicists and certifies engineering geologists. In addition to successfully passing the Board's written examination, an applicant must have fulfilled specified educational requirements and have the equivalent of seven years of professional experience in his/her field. This requirement may be satisfied with a combination of education from a school with a Board-approved program in geology or geophysical science, and qualifying field experience.

The Board has the power to discipline licensees who act in violation of the Board's licensing statutes. The Board may issue a citation to licensees or unlicensed persons for violations of Board rules. These citations may be accompanied by an administrative fine

of up to \$2,500.

The Board is composed of five public members and three professional members. BRGG's staff consists of two full-time employees (Executive Officer John Wolfe and his secretary) and two part-time personnel. The Board's committees include the Professional Practices, Legislative, and Examination Committees. BRGG is funded by the fees it generates.

MAJOR PROJECTS:

Examinations. At BRGG's October 3 meeting, Executive Officer John Wolfe reported that 1,026 applicants qualified to take the September exam and a total of 874 applicants actually took the exam. This is the largest number of applicants ever tested at one time, and represents an increase of 355 examinees over the 1988 exam.

In setting the examination date for 1990, the Board again decided to administer only one exam. BRGG members expressed concern that it may be unfair to qualified applicants not to administer the test twice per year, as they have to wait longer to become licensed geologists. However, the current number of Board staff is insufficient to review the exams and complete other required work, especially with the large increase in examinees. One possible solution would be to move to multiple choice or machine-graded exams so grading would be less time-consuming, allowing for the administration of two exams each year. However, the Board feels that its current exam, which includes essay questions, is of very high quality, and moving to a machine-graded exam may compromise this quality. BRGG believes that the benefits of its current exam outweigh the benefits of administering a machine-graded exam twice per year. However, the Board asked the Examination Committee to address this issue and find ways in which the process can be improved.

National Exam Questionnaire. The American Institute of Professional Geologists (AIPG) is exploring the desirability and feasibility of creating a national examination for geologists which could be used as part of the registration/certification process. The AIPG sent state geology boards a questionnaire to determine interest in such a national exam, which is in a very preliminary stage at this point. While such an exam might reduce the workload on individual state boards, the BRGG sees