
Texas Funeral Service Commission

Agency at a Glance

The Texas Funeral Service Commission (TFSC) regulates the funeral industry to protect the public from deceptive funeral practices. To accomplish its mission, the Commission:

- licenses funeral directors and embalmers, and ensures compliance with continuing education requirements;
- inspects and licenses funeral homes and commercial embalming establishments;
- registers cemeteries and crematories; and
- investigates and resolves complaints regarding the industry from consumers or initiated by the agency.

Key Facts

- **Funding.** In fiscal year 2002, TFSC operated on a \$1 million budget and collected \$1.2 million in revenue from industry fees.
- **Staffing.** The Commission has 12 employees, all of whom work in Austin.
- **Licensing and Registration.** The Commission licenses about 5,000 funeral directors or embalmers, and 1,280 funeral homes or embalming establishments. As of September 2002, the agency had also registered 178 cemeteries and crematories.
- **Complaints.** In fiscal year 2002, the agency reviewed 580 complaints. Of these complaints, 141 were carried over from fiscal year 2001 and 439 were filed in fiscal year 2002. Consumers generated about 70 percent of these complaints, with the remainder initiated by the agency.
- **Investigations.** Of the 580 complaints reviewed in fiscal year 2002, the staff administratively dismissed 128 after finding no fault, transferred 21 non-jurisdictional complaints to other agencies, and investigated the remaining 431.
- **Inspections.** In fiscal year 2002, the agency inspected approximately 962 funeral establishments. Inspections of funeral homes and embalming establishments must occur at least once every two years. Inspections of cemeteries and crematories occur only upon receipt of a complaint.
- **Sanctions.** In fiscal year 2002, the Commission took disciplinary action in 129 cases. Of those cases, sanctions included 12 losses of license and 24 administrative penalties. The rest of the sanctions were letters of warning or probated administrative penalties. The Commission collected \$54,766 in administrative penalties, all of which was transferred to General Revenue.

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Recommendations

1. Continue the Commission for 12 Years, and Require Earlier Consumer and Industry Input on Rules.
2. Give the Commission Greater Regulatory and Enforcement Authority Over Cemeteries and Crematories.
3. Consolidate the Authority to Address Consumer Complaints About Cemeteries Into TFSC.
4. Clarify TFSC's Authority to Fully Define Standards of Professional and Ethical Conduct.
5. Prohibit Certain Funeral Vendors or Service Providers from Making Misleading Statements.

Issue 1 | **Texas Has a Continuing Need for the Texas Funeral Service Commission, but the Agency Could Benefit From Earlier Input On Its Rules.**

Key Findings

- In 2001, the Legislature continued TFSC for a two-year “probationary” period and directed the Sunset Commission to evaluate the agency’s implementation of needed changes.
- The Commission has contracted for new information technology resources, improved its understanding and interpretation of its statute, and implemented most of the 2001 Sunset recommendations to improve its regulation of the funeral industry.

The Commission has made a commendable effort to comply with the legislative recommendations passed by the Legislature in 2001, as well as management actions adopted by the Sunset Commission. However, TFSC could further improve regulatory efforts by working earlier with both consumers and the funeral industry during development of its rules.

Recommendations**Change in Statute****1.1 Continue the Texas Funeral Service Commission for 12 years.**

This recommendation continues the Texas Funeral Service Commission (TFSC) for the standard 12-year period until 2015.

1.2 Require TFSC to develop guidelines for the early involvement of consumer and industry stakeholders in its rulemaking process.

This recommendation would require the Commission to develop guidelines for identifying persons affected by a proposed rule and for ensuring input from those persons before a proposed rule is published in the Texas Register. The Commission should use the Texas Department of Health’s stakeholder development process as a general model, and should consider establishing a special subcommittee of the full committee to handle rulemaking.

Issue 2 | **The Commission Lacks Needed Authority to Ensure That Cemeteries and Crematories Conduct Their Business in a Professional and Ethical Manner.**

The Commission registers cemeteries and crematories for the purpose of investigating consumer complaints about the delivery of services and treatment of a body up to and including final burial.

TFSC has no authority to regularly inspect cemeteries and crematories. In addition, the statute limits the Commission's authority regarding unethical behavior to such things as making a fraudulent statement or not providing a price list. Finally, crematory operators are not required to be trained in the ethics of the profession or how to operate a crematory. As a result, TFSC's authority to sanction unethical behavior of cemetery and crematory operators is restricted. For example, should a cemetery operator improperly cremate a body or provide the wrong ashes to a family, the Commission has no authority to take action.

Recommendation

Change in Statute

2.1 Give TFSC greater regulatory and enforcement authority over the practices of cemeteries and crematories, including regular inspections, broader authority over unethical conduct, and certification of crematory operators.

These changes would allow the Commission to more fully regulate cemeteries and crematories. TFSC would inspect cemeteries and crematories at regular intervals, based upon a risk assessment tool, just as TFSC currently inspects funeral and embalming establishments. Authorizing the inspections on a regular basis would help to ensure that consumers do not encounter unethical or inappropriate treatment at any point during their relationship with a cemetery or a crematory. In addition, requiring professional standards and training for crematory operators would help to ensure that Texas consumers have access to ethical cremation services and assure them that the body has been treated respectfully.

Issue 3 | State Law Splits Cemetery Regulation Between Three Separate Agencies Causing Confusion Regarding the Filing of Complaints, and Fails to Address Unethical Behavior After Burial.

Currently, three state agencies are responsible for regulating cemeteries in Texas. TFSC regulates funeral directors, embalmers, and funeral establishments. The agency also registers cemeteries and crematories, and investigates complaints against those facilities should they arise. The Texas Department of Banking (DOB) regulates the financial management of trust funds used to pay for perpetual care of cemeteries. Perpetual care contracts address maintenance of grave sites and cemetery property. A consumer has the right to complain to DOB, but only about the maintenance of the grave as specified in the contract. The Texas Department of Health (TDH) oversees, among other things, cemetery location, depth of graves, and paperwork retention requirements for cemeteries. This separation of cemetery regulation can confuse consumers about which agency to call to address their concerns and complaints about cemetery practices.

However, despite the fact that three separate agencies have varying regulatory responsibilities over cemeteries, no agency has the authority to investigate complaints and sanction unethical behavior, or

unauthorized handling of a body that results in damage to a casket or body after final burial. As a result, consumers have no recourse regarding complaints about unethical or unprofessional treatment after the funeral is completed.

Recommendations

Change in Statute

3.1 Transfer the authority over cemeteries found in Chapters 711, 714, and 715, Health and Safety Code from the Texas Department of Health to TFSC.

This recommendation would authorize the Commission to make and enforce rules previously promulgated by TDH, including regulations on where cemeteries may be located and authority over interment, disinterment, disposal, and transportation of bodies. TFSC would also have the authority to address and sanction consumer complaints related to provisions in these sections.

3.2 Extend TFSC's authority over cemeteries to include the proper treatment of the body or grave after final burial services have been completed, while leaving the financial oversight of perpetual care contracts with the Department of Banking.

This recommendation clarifies TFSC's authority to address consumer complaints regarding the treatment and handling of bodies and caskets after burial services have been completed, including graves in all types of cemeteries. However, this recommendation allows DOB to retain the authority to regulate the financial aspects of perpetual care contracts. Authorizing the Commission to investigate consumer complaints resulting from post-burial events further ensures that the State protects the rights of funeral industry consumers.

These recommendations would consolidate cemetery regulation into the state agency responsible for regulation of the funeral and cemetery industry, and remove from the consumer the burden of determining the state agency responsible for their complaints about cemetery practices.

Issue 4	The Commission's Ability to Ensure Ethical and Professional Conduct Among the Funeral Industry Has Been Hindered by Concerns That the Commission Does Not Have the Authority to Set Standards for Such Conduct in its Rules.
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Currently, TFSC's statute authorizes the Commission to establish proficiency, professionalism, and qualifications standards for funeral directors and embalmers. However, when the Commission attempted to promulgate rules on professionalism and ethics, the funeral industry expressed concern the Commission with overstepping its authority. As a result, the Commission has yet to adopt comprehensive rules to provide guidance on the ethical and professional behavior of its licensees.

Recommendation

Change in Statute

4.1 Clarify the Commission's authority to fully define in rules standards of professional and ethical conduct for the funeral industry.

This recommendation would clarify the Commission's authority to make rules setting standards of professionalism and ethical behavior for all funeral directors, embalmers, crematory operators, funeral and embalming establishments, cemeteries, and crematories. The new rules should include prohibitions of behavior that exhibit disrespect for a body, attempts by a licensee to coerce, harass, or threaten a complainant or witness in a complaint case, or unethical behavior such as forgery of a doctor's signatures on a death certificate.

Issue 5 | TFSC's Statute Does Not Clearly State Which Individuals Are Prohibited From Making Fraudulent Statements as Part of the Sale of Funeral Goods and Services.

Currently, the Occupations Code prohibits a person from making misleading or deceitful statements about funeral merchandise, or funeral, cemetery, and crematory services. Prohibited statements include making false claims about legal, religious, or cemetery requirements for burial; the preservative qualities of funeral merchandise or embalming services; and falsely claiming a license to practice. However, the statute does not specifically list all of the categories of licensed individuals governed under this prohibition. As a result, the Sunset Commission was concerned that TFSC may not have authority to enforce incidences of fraud by all vendors of goods and services.

Recommendation

Change in Statute

5.1 Prohibit all vendors of funeral goods and services that are regulated by TFSC from making fraudulent statements and false claims to consumers.

This recommendation would clarify the statute to specifically prohibit all licensed funeral industry professionals – funeral directors, embalmers, cemetery and crematory operators – from making fraudulent statements. However, individuals who sell caskets, gravestones, or other funeral merchandise, but are not regulated by the Commission, would not be subject to this prohibition.

Fiscal Implication Summary

Overall, these changes would have no fiscal impact on the State. Issue 2, which requires increased regulation of cemeteries and crematories, could result in increased inspection and investigation costs. However, increased licensing fees would cover these costs.