
**SUMMARY OF SUNSET STAFF
RECOMMENDATIONS**

SUMMARY

More than 192,000 people died in Texas in 2016 — about 540 each day.¹ State regulation of the funeral and death care industry has always focused on the health and welfare of the living. However, this regulation is inseparable from the cultural, spiritual, and religious contexts that surround an individual's final disposition. The Texas Funeral Service Commission (TFSC) regulates about 4,500 individuals and 1,600 businesses that provide funeral and death care services to protect the public from deceptive trade practices and ensure every person's final disposition is conducted professionally and ethically.

In 1999, TFSC was struggling to manage its internal operations, let alone fulfill basic regulatory duties. The Sunset review in 2001 affirmed the seriously defective state of the agency, but, following a two-year probationary period, the Sunset Commission and Legislature determined to give the agency an opportunity to change. Since that time, stable leadership and guidance have turned the agency around. Sunset staff found that despite limited resources, TFSC largely achieves its licensing and regulatory functions, and effectively monitors and enforces legal and professional standards for licensees. With the agency now on the right track, the Sunset review focused on the changes pertinent to the agency's future success. As with other occupational licensing agencies, Sunset staff considered if the agency's processes could benefit from applying standard best practices in enforcement and licensing functions. For example, the agency lacks key enforcement tools for protecting consumers who have been financially defrauded, and several unnecessary licensing requirements and antiquated processes limit the agency's ability to modernize its operations.

Sunset staff also considered and determined TFSC's regulation continues to serve a defined public interest. Although the same public health concerns that initiated regulation of embalmers in 1903 have lessened, TFSC continues to protect consumers through its regulation of funeral directors, embalmers, and death care service businesses — funeral homes, commercial embalming facilities, and crematories. However, TFSC's regulation of a small number of non-perpetual care cemeteries subject to state oversight is unnecessary to protect the public, and involvement in private cemetery-related disputes is an unusual and unwarranted use of state resources.

Finally, Sunset staff considered organizational alternatives to regulating the funeral and death care industry, including consolidating TFSC's functions within other regulatory agencies. However, the review found TFSC cooperates well with other state agencies involved in the funeral and death care industry, such as the Texas Department of Insurance and Texas Department of Banking, avoiding duplication. Also, the agency does not demonstrate any significant

Despite limited resources, TFSC largely achieves its mission.

structural or functional problems. Ultimately, Sunset staff determined any potential benefits from transferring or merging the agency's functions would be limited and do not justify changes at this time.

The following material summarizes Sunset staff recommendations on the Texas Funeral Service Commission.

Issues and Recommendations

Issue 1

The Agency's Enforcement Processes Cannot Ensure Fair Treatment of Licensees and Complainants.

A regulatory agency should have clear procedures and rules for conducting inspections that address public safety concerns and promote fair treatment and timely compliance of regulated entities. While the agency conducts inspections annually for most funeral and death care service businesses, the review found the agency does not have a risk-based inspection process to prioritize inspections that pose the greatest risk to the public and lacks objective guidelines for evaluating sanitation requirements. Also, a lack of established procedures and some nonstandard enforcement practices affect the fair and efficient resolution of complaints. Finally, providing the agency additional enforcement tools, such as refund authority and access to death records information, and posting more detailed disciplinary history on the agency's website, would help better protect consumers.

Key Recommendations

- Require TFSC, along with the Department of State Health Services, to establish and enforce sanitation standards for funeral establishments and death care service businesses and coordinate access to death records information.
- Authorize TFSC to order refunds to consumers.
- Direct the agency to establish a risk-based, biennial approach to inspections.
- Direct the agency to adopt rules for informal settlement conferences.
- Direct the agency to provide more detailed disciplinary information on its website.

Issue 2

Key Elements of the Agency's Licensing Functions Do Not Conform to Common Standards.

In reviewing the agency's licensing functions, the review found certain processes do not match model standards or common practices observed through Sunset staff's experience reviewing regulatory agencies. Specifically, some licensure requirements are overly restrictive, such as prescriptive business requirements for preparation rooms and burdensome annual renewal periods, creating barriers to licensure. Additionally, the agency has not modernized its licensing processes and currently does not accept applications or initial licensing fees online. Several licensing provisions in the agency's statute, rules, and procedures

are also atypical and could potentially affect the fair and effective treatment of licensees, like informal procedures for crediting military experience and a lack of review of continuing education courses.

Key Recommendations

- Authorize TFSC to determine the criteria for preparation room exemptions.
- Direct TFSC to develop standard procedures for evaluating experience for military service members, military veterans, and military spouses.
- Provide TFSC general fee-setting authority to fully recover its costs, and direct the agency to accept all license applications and fee payments online.
- Direct TFSC to review and evaluate continuing education courses.

Issue 3

The Agency's Regulation of Cemeteries Is Not Necessary to Protect the Public.

In 2001, TFSC received authority to regulate non-exempt, non-perpetual care cemeteries, which totaled only five of the estimated 50,000 cemeteries in Texas in fiscal year 2017. Sunset staff found regulation of these cemeteries is no longer needed and should be discontinued. Existing criminal laws better protect consumers from fraudulent cemetery practices, and enforcement and complaint data has not shown any meaningful action taken against the few cemeteries within the agency's jurisdiction. Further, Sunset staff identified that there is no need for the agency to play a role in cemetery access mediations, which unnecessarily expends state resources in resolving private disputes.

Key Recommendations

- Discontinue TFSC's regulation of non-perpetual care cemeteries.
- Replace the member of the TFSC commission who must be a cemetery owner or operator with a public member.
- Direct the agency to discontinue its involvement in mediating cemetery access disputes.

Issue 4

Texas Has a Continuing Need for the Texas Funeral Service Commission, but Opportunities Exist to Improve Public Participation.

Regulation of the funeral and death care service industry by TFSC continues to serve a meaningful public interest by ensuring funeral directors, embalmers, and death care businesses provide professional and ethical services to consumers. Sunset staff concluded that no substantial benefits would result from changes to TFSC's organizational structure or from merging TFSC's various functions, but identified opportunities to improve public participation in and transparency of the agency's operations.

Key Recommendations

- Continue the Texas Funeral Service Commission for 12 years.
- Modify the agency's biennial reporting requirement to increase transparency by reporting on licensing, inspection, enforcement, and other activities.

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¹ "Compressed Mortality File 1999-2016 on CDC WONDER Online Database, released June 2017," Centers for Disease Control and Prevention, National Center for Health Statistics, Compressed Mortality File 1999-2016 Series 20 No. 2U, 2016, as part of the Vital Statistics Cooperative Program, last accessed July 17, 2018, <http://wonder.cdc.gov/cmf-icd10.html>.

