



TEXAS FUNERAL SERVICE COMMISSION

FY19 - 4TH QUARTER NEWSLETTER

June 2019 - August 2019

July 3, 2019

I love summer! The sun, the heat, swimming, and, of course, air-conditioning! Summer means lazy days (for my kids especially), late nights and lots of swimming!

Some fun facts about all things summer did you know that watermelons aren't a fruit, but a vegetable? They belong to the cucumber family of vegetables. The Eiffel tower actually grows in the heat of the summer. Due to the iron expanding, the tower grows about 6 inches every summer. Frisbees, a summer picnic staple, were invented in the 1870's as a pie plate, but in the 1940's, college students began throwing them around instead! My least favorite thing about summer? Mosquitos - apparently they have existed on earth for more than 30 million years.

I think I mentioned in last year's July newsletter, but July is National Ice Cream month! I could eat ice cream for breakfast, lunch and dinner! My favorite is anything chocolate, but mint chocolate chip is a close runner up.

The agency did well during the recent Legislative Session . Our Sunset legislation - extending the agency for another 12 years - was enacted and the agency received additional funds to help it manage those Sunset recommendations. The additional appropriations will not result in an increase in licensing fees.

The agency is in the process of updating many of its administrative rules - be sure to review and comment if you have an opinion on what we are proposing.

As always, please feel free to share your thoughts and concerns with me.

Yours truly,

A handwritten signature in cursive script that reads "Janice".

Janice S. McCoy
Executive Director

Updates at the Commission

Fee Rule Changes Adopted

At its June meeting, the Commission adopted amendments to 22 Tex. Admin. Code Chapter 204 regarding its fee structure. The agency is amending its fees as a result of action by the Department of Information Resources (DIR). Under the adopted proposal, the fees paid by licensees will either decrease or stay the same. The rule will become final on July 12, 2019, and will take effect with September renewals and applications.

Sunset Update

HB 1540 is the legislation which adopts the Texas Sunset Advisory Commission recommendations and continues the agency for another 12 years. The bill was signed by the Governor on May 23, 2019. The agency continues to work to update its rules and policies to comply with the Sunset Advisory Commission's directives.

Facts About Funerals Brochure

As a result of the Sunset legislation, starting in September, establishments will no longer be required to purchase the *Facts About Funerals* brochure from the agency. The agency is in the process of updating the brochure to reflect changes required by Sunset and will upload a copy of the brochure to its website. A funeral establishment may download that brochure to provide to customers as required by Tex. Occ. Code 651.404.

The agency will continue to sell the brochure for those funeral homes which prefer the convenience of purchasing pre-printed brochures.

Commission Proposes Rule Changes

In response to the Sunset directives and in collaboration with stakeholders, the Commission has proposed amendments to its rules. These proposals will be published in an upcoming edition of the Texas Register for a 30-day public comment period. The text of the proposed amendments can be found on the agency's website at www.tfsc.texas.gov/news. The agency encourages everyone to review the changes and make comments - either positive or negative.

A summary of the proposal is outlined later in the newsletter. Issues that may be of more interest are highlighted, but please review the actual text of all the amendments found on the agency's website.

Upcoming Commission Meetings

The next TFSC meeting will occur on **Tuesday, September 10, 2019** at 9:00 a.m. in Room 2-225 of the William P. Hobby Building in Austin, Texas.

If you, as a licensee in good standing, are interested in giving the invocation at a future meeting, please contact the Executive Director at janice.mccoy@tfsc.texas.gov to have your name added to the agency's Invocation Registry.

Summary of Proposed Amendments to TFSC Rules

Chapter 203 Subchapter A - Licensing

- Rule §203.1, Funeral Director and Embalmer License Requirements and Procedure - The changes would clarify a licensee can renew a license up to 60 days prior to his/her expiration date and would provide the Executive Director could waive licensing requirements for certain military applicants under Tex. Occ. Code Chapter 55.
- Rule §203.3, Retired/Disabled License - The changes would remove language requiring certain applicants to take continuing education to conform to Rule §203.8 and would provide in rule the fee for these licenses is one-half the amount of an active license.
- Rule §203.4, Reciprocal License - The changes conform the rule to updates to Tex. Occ. Code 651.259 related to how and why the agency reviews criminal histories on out-of-state applicants and conforms the review to Rule §203.8. Additionally, the changes would provide the Executive Director could waive licensing requirements for certain military reciprocal applicants under Tex. Occ. Code Chapter 55.
- Rule §203.5, Provisional License - The changes would clarify how a person who is no longer officially enrolled in school but not yet a certified graduate could continue to hold a license. The changes would clarify that a licensee who entered the provisional program on an education waiver would only get additional months added to the 24-month maximum term for those months he/she was not enrolled in classes. The changes would clarify an applicant would only have to take the applicable examinations required by law based on the type of license being sought, and would clarify persons who submit to a criminal background check but fail to submit an application within 6 months may be required to re-submit to a subsequent criminal background check.
- Rule §203.8, Continuing Education - The changes would (1) allow the Commission to accept continuing education courses approved by the Academy of Professional Funeral Service Providers in lieu of agency review and approval as the Academy has more expertise in course approval; (2) provide the certificate of attendance must include whether the course was online or in person; (3) require all active licensees to take 16 hours of continuing education regardless of where they practice; (4) exempt persons in retired or disabled status from continuing education; (5) remove language stating it is the licensee's responsibility to track continuing education hours; (6) update mandatory continuing education on law to include content on Health & Safety Code Chapter 716, (7) remove content related to Health & Safety Code Chapter 715 from mandatory Vital Statistics continuing education; (8) **require four of the 16 required continuing education hours to be taken in person**; (9) remove the use of college courses as continuing education; (10) clarify instructors of continuing education could get two hours of continuing education per course; (11) provide licensees who supervise provisional licensees could earn 8 hours of continuing education, up from 4; (12) remove language allowing licensees not practicing in the state to complete only the mandatory continuing education; (13) remove language requiring retired, active/disabled, active licensees to take 10 hours of continuing education; (14) eliminate the ability to carry-over continuing education hours from one renewal period to another; (15) remove authority to pay non-compliance fee instead of taking continuing education; and (16) renumber language regarding continuing education requirements for military licensees without making any substantive changes.
- Rule §203.9, Licensure of Funeral Establishments and Commercial Embalming Establishments - The changes would require forms submitted during the establishment application process to have a placeholder to insert license number (when issued); and would

authorize the agency to cancel an establishment license if the renewal is not received within 90 days after the expiration date. The amendment also would require an applicant for a new funeral establishment to have paid all outstanding penalties, including all payments under a payment plan, before a new license will be issued.

- Rule §203.11, Establishment Names and Licensing – The changes would require an establishment to include the establishment’s license number on the establishment’s website’s contact page and would remove references to cemeteries from the rule as the Commission no longer has authority to regulate cemeteries.
- Rule §203.14, State Agency Action as a Basis for License Suspension, Revocation or Denial – The rule is proposed for repeal as the agency has determined it cannot take action under the rule until the agency first takes action under its enforcement process.

Chapter 203 Subchapter B – Duties of a Funeral Establishment/Licensee

- Rule §203.24, Display of License -- Changes to the rule would require the licenses on display at a funeral establishment be current (not expired); clarify that the licenses of temporary employees could be copies and do not have to be displayed; and clarify copies of licenses for both regular full time and regular part time employees no longer employed must be kept at the establishment for two years after employment ends.
- Rule §203.26, Presentation of Consumer Brochure – The changes would eliminate language requiring an establishment to purchase the consumer brochure from the Commission.
- Rule §203.27, Identification of Person Responsible for Making Arrangements – The changes would provide that a person should acknowledge his/her right to control the disposition of the deceased in writing, if possible.
- Rule §203.31, Facilities Necessary in a Preparation Room – The changes would provide the operating table must be non-porous instead of rust proof metal or porcelain and the preparation room be used only for purposes related to the care of the deceased instead of “not used for other purposes.” The proposed amendments also clarify the preparation room should not have any public restrooms, whether unenclosed or not. They require the preparation room to have appropriate personal protection equipment related to universal precautions. The proposed changes allow the Commission to require funeral establishments granted a preparation room exemption under §203.10 to have a room that conforms with some of the standards if human remains are ever present at the establishment.
- Rule §203.32, Requirements Relating to Embalming – The changes would eliminate the requirement clothing/personal effects be “thoroughly disinfected” and instead just state they should be “disinfected” as the Commission believes an item is either disinfected or it is not. The proposed amendment eliminates the specific requirement of one gallon of dilute solution per 50 pounds of body weight and instead allows for “sufficient” solution be used such that the embalmer is satisfied that the deceased will be presentable to the public.
- Rule §203.33, Required Documentation for Embalming – The changes would eliminate citations to other statutes that concern the disposal of unclaimed bodies by county officials and the Anatomical Board’s authority to receive unclaimed bodies. The proposed amendment also would allow a funeral establishment to include its logo on the Commission’s Authorization to Embalm Form.

- Rule §203.35, Location of Retained Records – The changes would permit a funeral establishment to release records to the person responsible for making arrangements for final disposition and not just to family members. With respect to petitions requesting an exemption from the requirement for the location of retained records by licensed establishments, the proposed amendments would require that records of different establishments not be commingled. The proposed changes provide an appeal process that an applicant whose petition for an exemption has been denied may follow. They also provide that a funeral establishment is authorized to maintain its records in a digital or electronic format, as long as it can print the records at the establishment.

Subchapter C – Enforcement

- Rule §203.41, Investigations – The changes would provide the investigator send a summary of the complaint instead of a copy of the complaint upon opening an investigation to ensure confidentiality of complainant during initial stages of investigation. It would allow the respondent to request a redacted copy of the complaint upon request.
- Rule §203.42, Notice and Hearings – The changes would list the types of informal methods a respondent could use to settle a complaint to include negotiation with the staff attorney or an informal settlement conference with the executive director, staff attorney, investigator; would provide an informal settlement conference must allow the complainant an opportunity to be present; and changes would clarify how a case is closed if a settlement is reached via informal methods.
- Rule §203.43, Administrative Penalties and Sanctions – The changes would allow the agency to adopt higher penalties for a violation if the respondent had multiple violations on his/her records even if the violations were not the same; and would authorize the Commission to require a respondent to pay a refund to a consumer in lieu of or in addition to an administrative penalty. Additionally, the sanction schedule is updated to reflect new violations added to statute by legislation.
- Rule §203.44, Procedures and Criteria for Inspections of Licensed Entities – The changes would delete references to cemeteries and eliminate Health & Safety Code Chapters 714 and 715 from inspection reviews as the Commission no longer has authority to regulate cemeteries. The amendments would **establish reasons for the Commission to perform risk-based inspections** to include previously found inspection violations, multiple enforcement violations, establishments with a change of ownership, and newly issued licenses. They would allow the Commission to inspect risk-based establishments annually; and would allow a risk-based establishment to be declassified as such if it has two consecutive inspections without violations and/ or it has no proven violations within a two-year period. Finally, the changes would renumber a provision that allows the Commission to inspect an establishment as a result of a complaint with the limited scope of proving/ disproving the complaint.
- Rule §203.45, Unprofessional Conduct – The changes would provide it is unprofessional conduct for all licensed entities not just funeral establishments to operate in an unsanitary manner; and would **provide it is unprofessional conduct to fail to make payment for services rendered on behalf of a consumer as the Commission believes the consumer ultimately could be harmed for the failure to pay.**
- Rule §203.47, Purchase Agreement (Statement of funeral goods and services selected) – The changes would provide update as directed by HB 1731 enacted by the 86th Legislature **regarding payments between funeral homes on behalf of a consumer being required to be**

included on a purchase agreement., specifically the charges related to removal, refrigeration, embalming (if authorized), transportation, and casket (if used).

Chapter 205 - Crematories & Cemeteries

- Chapter 205, Cemeteries and Crematories, is being amended to remove references to cemeteries as a direct result of HB 1540, passed by the 86th Texas Legislature which repeals the Commission's authority over cemeteries.
- Rule §205.1, Cemetery License Requirements and Procedure - The rule is proposed for repeal as a direct result of HB 1540, passed by the 86th Texas Legislature which repeals the Commission's authority over cemeteries.
- Rule §205.2 - Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress - The rule is proposed for repeal as a direct result of HB 1540, passed by the 86th Texas Legislature which repeals the Commission's authority over cemeteries.
- Rule §205.5, Acceptance of Remains - The changes would delete language prohibiting certain crematories from accepting human remains for cremation until the cremation is authorized by a justice of the peace/medical examiner and instead mirror statute to allow a crematory to accept human remains for refrigeration before receiving authority to cremate.

Chapter 206 - Guaranteed Student Loans

Chapter 206 is being repealed in its entirety as a result of action by the 86th Legislature (SB 37 by Senator Judith Zaffirini). This legislation prohibits licensing authorities from enacting rules that bar license holders who are in default on student loans from renewing their licenses. Therefore, this proposal would repeal the Commission's rule which allows the Commission to take such action.

FY 19 Third Quarter (March-April-May) Updates

Legal

During the third quarter, the staff attorney was asked to mediate 8 complaints in which staff found violations had occurred. All 8 complaints were successfully resolved with an Agreed Order between the Commission and the respondent for a total penalty amount of \$5,750. Two of the 8, resulted in a Letter of Warning. Seven cases were closed with respondent not contesting finding of violation for a total penalty amount of \$7,250.

The agency issued 7 cease and desist orders and repealed 5 during the same quarter. The cease and desist orders were issued for failure to renew license and failure to pay administrative penalties.

Enforcement

During the third quarter, the compliance division conducted 297 inspections of its licensed facilities - 260 funeral homes, 8 commercial embalming facilities, and 29 crematories. 121 of the entities were found to have deficiencies, but most were corrected within the 15-day allotted time frame. Four of the inspections were for new establishments - all funeral homes.

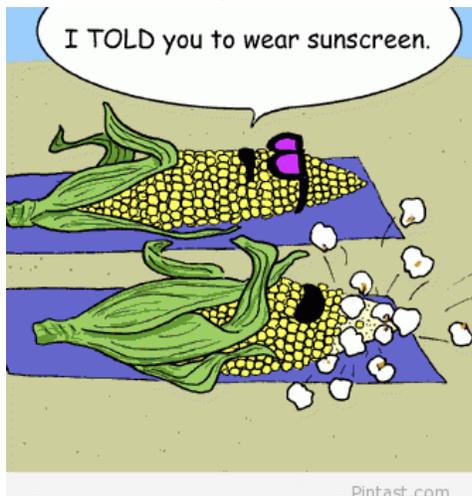
The compliance division received 45 new complaints during the third quarter. It resolved 38 complaints during the third quarter with 11 of the investigations resulting in disciplinary action. At the end of the quarter, there were 40 pending complaints. On average, it took 121 days to resolve a complaint.

Licensing

During the third quarter, the licensing division issued 130 new provisional licenses and 7 reciprocal licenses. A total of 545 individual licenses were renewed. There were 8 new entities licensed - 7 funeral homes and 1 crematory. The division renewed 389 entity licenses.

Just for Fun

Summer in Texas



Agency Contact Information

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Agency Directory

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** as of June 2019*