



Texas Funeral Service Commission Stakeholder Meeting

August 26, 2021 & September 16, 2021
Summary Meeting September 30, 2021

Agenda

Welcome & Introductions

Chapter 203 - Licensing and Enforcement – Specific Substantive Rules

Subchapter A – Licensing

Rule §203.1 – Funeral Director and Embalmer License Requirements and Procedure

- (a) A person may not engage in funeral directing or embalming in this state without holding a license issued by the Commission, unless the person is a mortuary student acting under the **direct** supervision and direction of a licensed funeral director or embalmer.
- (b) An applicant for a license shall meet the eligibility requirements of Occupations Code, §651.253.
- (c) The period of a license is two years beginning on the first day of the licensee's birth month. The initial licensing period may be less than two years.
- (d) The licensing fee must be paid before a license is issued. If the initial licensing period is less than two years, the licensing fee shall be prorated.
- (e) A person who does not receive a full license by exiting directly from the Commission's provisional license program or reciprocate from another state may apply for full licensure. The person must have been a provisional license holder in Texas no more than 24 months prior to application. The applicant shall complete an application, provide required proof of eligibility, pay an application fee, re-take and pass the State Mortuary Law Examination, and submit to a criminal background check.
- (f) **Renewal and Reinstatement** Procedures and Conditions.
 - (1) A license may be renewed beginning 60 days prior to its expiration if the licensee has paid the renewal fee and met the continuing education requirements of §203.8 of this title (relating to Continuing Education).
 - (2) A person whose license is expired for 90 days or less may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is 1 and 1/2 times the amount of the normal renewal fee.
 - (3) A person whose license is expired for more than 90 days but less than one year may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is two times the amount of the normal renewal fee.

- (4) A person whose license has been expired for one year or more may reinstate the license by meeting the following requirements:
 - (A) retaking and passing the State Mortuary Law Examination;
 - (B) payment of any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and
 - (C) Completion of the continuing education requirements of §203.8 of this title.
 - (D) Completion of a criminal background check
- (5) Notwithstanding paragraph (4) of this subsection, a person whose license has been expired for one year or more may reinstate the license without retaking the applicable examination if the person has been licensed and practicing in another state for the two years preceding the application for reinstatement. The applicant must pay a renewal fee that is equal to two times the normally required renewal fee.
- (6) Notwithstanding paragraph (4) of this subsection, the Executive Director may waive any prerequisite to obtaining a license to a person whose license has been expired for no more than five years who is also a military service member, military veteran or military spouse as defined by Occupations Code, Chapter 55.
- (g) A licensee serving as an active military service member as defined by Occupations Code, Chapter 55, is exempt from the payment of license fees for the duration of the holder's military service or for anytime the Commission considers advisable.

Rule §203.2 – Military Licensing

- (a) This subsection applies to a military service member, military veteran or military spouse as defined by Occupations Code Chapter 55.
- (b) The Commission shall issue an expedited license to an applicant described in subsection (a) of this section who:
 - (1) holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or
 - (2) within the five years preceding the application date held a license in this state.
- (c) The Executive Director may allow an applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Commission. In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Commission:
 - (1) education;
 - (2) continuing education;
 - (3) examinations (written and/or practical);
 - (4) letters of good standing;
 - (5) letters of recommendation;
 - (6) work experience; or
 - (7) other methods required by the Executive Director.
- (d) The Commission shall waive any application or examination fees for an applicant who is:
 - (1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

- (2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

Rule §203.3 – Retired/Disabled License

- (a) At the time of license renewal, any licensed Funeral Director, Embalmer or dual licensee aged 65 or older will be placed in a Retired, Active status. Upon written application to the Commission, a licensee may be placed in a Retired, Inactive status.
- (b) Upon written application to the Commission, any licensed Funeral Director, Embalmer or dual licensee with a disability of 75% or greater will be placed in a Disabled, Active or Disabled, Inactive status. Proof of disability will be required at the time of the application. If the Commission questions the validity of the certification, a certification from a second source may be required. Submission of required documentation does not imply a guarantee of acceptance of documentation or approval of the application.
- (c) Any individual holding an inactive license will be subject to disciplinary action if the individual performs any act of funeral directing and/or embalming.
- (d) Any individual holding an inactive license may convert at any time to either a Retired, Active or Disabled, Active license upon written notification to the Commission and payment of applicable licensing fees.
- (e) The fee for Retired, Active or Disabled, Active status is one-half the amount of the license renewal fee charged for active status.

Rule §203.4 – Reciprocal License

- (a) A person who holds a funeral director's license or an embalmer's license issued by another ~~state, country or territory~~ jurisdiction may reciprocate the license with the Commission.
- (b) Any applicant for a license under this section shall file a sworn application. The application must include the following information:
 - (1) a statement the applicant is the person who holds the license and the applicant's license is ~~current active~~ and in good standing;
 - (2) an affidavit made by the governmental entity or a registration officer of the state, country or territory that issued the license that verifies the license is active and the qualifications provided by the applicant are correct;
 - (3) a copy of a certified transcript showing the applicant graduated from an accredited college of mortuary science; and
 - (4) any other requirements necessary for licensure under Occupations Code §651.253.
- (c) An applicant under this section must show that the applicant has practiced for at least:
 - (1) one year in a ~~state~~ jurisdiction with license requirements similar to those of the Commission; or
 - (2) five years in a ~~state~~ jurisdiction that does not have license requirements similar to those of the Commission.
- (d) All applicants under this section shall sit for the State Mortuary Law Examination administered by the Commission. A passing score of at least 75% is required.
- (e) Each applicant shall submit to a criminal background check. An applicant is subject to the standards outlined by §203.16 of this title (relating to Consequences of Criminal Conviction).

- (f) The Executive Director shall waive licensure requirements under Occupations Code §651.253, if the applicant meets the licensure term under subsection (c)(1) of this section. The Executive Director may waive licensure requirements under Occupations Code §651.253, if the applicant meets the licensure term under subsection (c)(2) of this section.
- (g) The applicant shall pay a license fee in an amount set by the Commission.
- (h) The executive director may waive any prerequisite to obtaining a license under this section for an applicant who is licensed in a state-jurisdiction with substantially equivalent licensing requirements and who is a military service member, military veteran, or military spouse as defined by Occupations Code Chapter 55.

Rule §203.5 – Provisional License

- (a) An applicant for a provisional license must meet the eligibility requirements of Occupations Code, §651.302 and shall submit to a criminal background check. Upon written application, the Commission shall waive the requirements of Occupations Code, §651.302(a)(2) and (b)(2) for a period not to exceed 12 months to an applicant who is otherwise qualified. This education waiver may be granted only to a person who has never held a provisional license issued by the Commission or applied to a mortuary science school.
- (b) An applicant who is enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to a provisional license being issued. A provisional license holder who was granted an education waiver under Occupations Code §651.302(c) must have the college forward a letter of enrollment prior to a provisional license being renewed. An applicant or a provisional license holder who has completed coursework but is not a certified graduate may hold a provisional license if the person has the college forward a letter stating the person has filed for graduation and provide an expected graduation date within 3 months.
- (c) If a school or college of mortuary science loses its accreditation, a student who is enrolled and actively attending classes related to mortuary science will be considered to have graduated from an accredited school or college of mortuary science for the purpose of complying with Occupations Code §651.253, if the student graduates within 12 months of the loss of accreditation.
- (d) A provisional license holder may work only in a funeral establishment or commercial embalming establishment licensed by the Commission. All work must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license.
- (e) The provisional funeral director program may not be served in a commercial embalming establishment.
- (f) A provisional license holder must maintain employment with a funeral establishment or commercial embalming establishment, as applicable, throughout the provisional license period. A provisional license holder must notify the Commission where he/she is employed and if he/she changes employer. If the license holder is not employed, the Commission will cancel the provisional license.
- (g) A provisional license is valid for a term of 12 consecutive months. If a provisional license holder fails to complete the license requirements in the 12-month license period, the holder's license may be renewed for an additional 12 months, for a maximum term of 24 months.

- (h) Notwithstanding subsection (g) of this section, if a provisional license holder who was granted an education waiver under Occupations Code §651.302(c) fails to complete the license requirements in the maximum 24-month license period, the holder's license may be renewed for up to an additional 12 months, for a maximum term of 36 months. The license will be extended only for the number of months the provisional license holder was not enrolled in mortuary school.
- (i) Fees will not be refunded to a provisional license holder who fails to complete the program.
- (j) The Commission shall exit a provisional license holder from the program at any time during the license term if the license holder shows he/she has met the eligibility requirements of Occupations Code §651.253.
- (k) Upon the completion of the provisional license program, the provisional license holder shall submit the Commission promulgated Exit Application and all required documentation to the Commission. The Commission shall verify the information received to ensure the provisional licensee has met all requirements. All information submitted is subject to inspection.
- (l) Once the Commission confirms licensing requirements have been met, the Commission shall issue to the provisional license holder a written affidavit to be executed by the Funeral Director in Charge or the Embalmer in Charge, as applicable, which attests to the proficiency of the provisional license holder.
- (m) Prior to issuing a regular license, the Commission must receive the affidavit described by subsection (1) of this section and the fees required for regular licensure.
- (n) Examination Requirements.
 - (1) An applicant for full licensure as a funeral director from the certificate program must pass the Texas State Board Examination as described in Occupations Code, §651.255.
 - (2) An applicant for full licensure who holds an Associate of Applied Science degree is required to pass either or both of the examinations as described in Occupations Code, §§651.255 - 651.256, depending on the license type being sought.
 - (3) Prior to being issued a provisional license, an applicant must pass the State Mortuary Law Examination administered by the Commission. If a person fails to submit an application for licensure within 6 months of taking the Mortuary Law Examination, the score is invalidated and the person must retake and pass the exam prior to licensure.
 - (4) A passing score of at least 75% is required for each examination described in paragraphs (1) (3) of this subsection.
- (o) A person who fails to submit an application within 6 months after submitting to a criminal background check may be required to submit to a subsequent background check.

Rule §203.6 - Provisional License Case and Reporting Requirements

- (a) Forty five (45) cases are required for the provisional funeral director license program, at least 10 of which must be complete cases. A complete funeral directing case consists of all major actions from the time of first call through interment or other disposition of the body.
- (b) Forty five (45) cases are required for the provisional embalmer license program, at least 10 of which must be complete cases. A complete embalming requires the provisional embalmer to handle all major actions included in §203.32 of this title performed on a particular body.

- (c) It is the responsibility of the Funeral Director in Charge or the Embalmer in Charge, whichever is applicable, and the provisional licensee to schedule case work sufficient to fulfill the requirements of the provisional program.
- (d) Each case on a case report form shall be certified by the licensee under whom the provisional licensee performed the work. Both the supervising licensee and the provisional licensee are subject to disciplinary action if the information submitted to the Commission is not true and accurate.
- (e) The provisional licensee must file with the Funeral Director in Charge or the Embalmer in Charge, whichever is applicable, a report outlining the number of cases performed and the name of the funeral director or embalmer under whom the cases were supervised. If a provisional licensee adds/moves to a new funeral establishment or commercial embalming facility, a separate case report form must be started. If a Funeral Director in Charge or the Embalmer in Charge changes, a separate case report form must be started. All signed case report forms accumulated during the provisional period may be used to verify the total number of cases performed.
- (f) Provisional licensees shall retain copies of all case report forms with supporting documentation for two years from the completion date of the provisional program.
- (g) Of the 45 required cases, a provisional license holder may include up to 10 cases performed at an accredited mortuary college whether or not the person held a provisional license at the time the cases were performed and if the college certifies to the Commission that the cases were successfully completed.
- (h) Case Reporting for Military Provisional Licensees
 - (1) This subsection applies to an applicant who is military service member or military veteran as defined by Occupations Code, Chapter 55 and does not have an unacceptable criminal history as defined by §203.16(h) of this title.
 - (2) The Commission shall credit verified military service or training of the applicant described under paragraph (1) of this subsection toward the requirements outlined under this section.
 - (3) A Joint Services Transcript, or comparable document issued by the United States military, is required to verify military training or education.

Rule §203.7 - Provisional License ~~Reinstatement and~~ Reapplication

- (a) A person whose provisional license is cancelled for failure to timely renew the license as described in Occupations Code, §651.305 may apply for ~~reinstatement-renewal~~ no later than the date the license would have expired if the license had been timely renewed. The applicant must pay the renewal fee and penalty upon application. The ~~reinstated-renewed~~ provisional license has the same expiration date as if the license had been timely renewed.
- (b) A person whose provisional license is cancelled for failure to complete the program within the prescribed time may ~~apply-reapply~~ for a new provisional license. As an applicant for a new license, the person is required to submit to a new criminal background check and retake and pass the State Mortuary Law Examination. Casework completed under a previous license may not be counted toward the requirements of the new license unless the applicant petitions the Executive Director for a hardship exemption. The petition must demonstrate the personal situation and reasons why the casework should count. If the Executive Director determines that

the previously completed casework should not be counted under the new license, the Executive Director's decision may be appealed, in writing, and the appeal will be considered at the Commission's next regularly scheduled meeting.

~~(b)~~(c) For the purpose of this rule, reinstatement only applies to a license holder whose funeral director or embalmer license has been expired more than one year; reinstatement does not apply to the provisional license holder.

Rule §203.8 - Continuing Education

- (a) Each person holding an active license and practicing as a funeral director or embalmer in this state is required to participate in continuing education as a condition of license renewal.
- (b) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) Approved provider--Any person or organization conducting or sponsoring a specific program of instruction that has been approved by the Commission.
 - (2) Approved program--A continuing education program activity that has been approved by the Commission. The program shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of funeral directing and embalming by providing information relative to the funeral service industry and be open to all licensees.
 - (3) Hour of continuing education--A 50 minute clock hour completed by a licensee in attendance at an approved continuing education program.
- (c) Approval of continuing education providers
 - (1) A person or entity seeking approval as a continuing education provider shall file a completed application on a form provided by the Commission no later than 90 days prior to the event and include the continuing education provider fee and the fee for each course submitted. Governmental agencies are exempt from paying this fee.
 - (2) National or state funeral industry professional organizations may apply for approval of seminars or other courses of study given during a convention.
 - (3) An application for approval must be accompanied by a syllabus for each course to be offered which specifies the course objectives, course content and teaching methods to be used, ~~and~~ the number of credit hours each course is requesting to be granted, a sample of the course certificate that each participant will receive, a sample course evaluation, and a resume and description of the instructor's qualifications.
 - (4) A provider is not approved until the Commission accepts the application and issues a Provider Number for the provider and a course number for each course offered under that Provider Number. The Commission may refuse to approve a provider's application for any valid reason, as determined by the Commission.
 - (5) A Provider Number and course number are valid for one year, expiring on December 31st of each year, regardless of when the number was granted.
 - (6) The Commission may approve courses that have been approved by the Academy of Professional Funeral Service Practice, Inc. (APFSP). A provider submitting such a course may need to submit the materials required under subsection (c) (3) of this section.

(d) Responsibilities of approved providers

- (1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain:
 - (A) the name of the provider and approval number;
 - (B) the name of the participant;
 - (C) the title of the course or program, including the course or program number;
 - (D) the number of credit hours given;
 - (E) the date and place the course was held;
 - (F) the signature of the provider or provider's representative;
 - (G) the signature of the attendee, and
 - (H) if the course was in-person or on-line.
- (2) The provider shall provide a mechanism for evaluation of the program by the participants, to be completed at the time the program concludes.
- (3) The provider shall maintain the attendance records and evaluations for a minimum of two years after the course is presented. A copy of the evaluations and/or attendance roster shall be submitted to the Commission upon request.
- (4) The provider shall be responsible for ensuring that no licensee receives continuing education credit for time not actually spent attending the program.
- (5) The Commission may monitor any continuing education course with or without prior notice.

(e) Credit hours required

- (1) Licensed funeral directors and embalmers who actively practice in this state are required to obtain 16 hours of continuing education every two year renewal period. A licensee may receive credit for a course only once during a renewal period.
- (2) Persons in Retired or Disabled status are exempt from continuing education.
- (3) Persons in an active military status are eligible for exemption from the continuing education requirements upon request. A copy of the active duty orders must be included in the request. Upon release from active duty and return to residency in the state, the individual shall meet the continuing education requirements before the next renewal period after the release and return.

(f) The following are mandatory continuing education hours and subjects for each renewal period:

- (1) Ethics--two credit hours--this course must at least cover principals of right and wrong, the philosophy of morals, and standards of professional behavior.
- (2) Law Updates--two credit hours--this course must at least cover the most current versions of Occupations Code, Chapter 651, and the Rules of the Commission.
- (3) Vital Statistics Requirements and Regulations--two credit hours--this course must at least cover Health and Safety Code, Chapters 193, 711 – 715, and Tex. Admin. Code, Title 25, Chapter 181.

(g) The 16 hours of continuing education may be taken through Internet/online presentation.

(h) The Commission will grant the following credit hours toward the continuing education requirements for license renewal. ~~The credit hours outlined in this section are eligible to be counted toward the four hours of required in-person continuing education.~~

- (1) A person is eligible for a maximum of eight credit hours per renewal period for provisional licensee supervision, regardless of the number of provisional licensees supervised.
 - (2) A presenter or instructor of approved continuing education is eligible for a maximum of two credit hours per renewal period per course for instruction, regardless of the number of times the course is presented.
 - (3) A person is eligible for a maximum of four credit hours per renewal period for attendance at Commission meetings and stakeholder meetings, provided the licensee signs in and is present during the entirety of the meeting.
- (i) Exemptions.
- (1) An individual whose renewal date is 12 months or less following initial licensure is not required to obtain continuing education hours prior to renewal of the license. An individual whose renewal date is more than 12 months following first licensure is required to complete the mandatory continuing education outlined in subsection (f) of this section.
 - (2) The Executive Director may authorize full or partial hardship exemptions from the requirements of this section based on personal or family circumstances and may require documentation of such circumstances.
 - (A) The hardship request must be submitted in writing at least 30 days prior to the expiration of the license.
 - (B) Hardship exemptions will not be granted for consecutive licensing periods.
 - (j) The Commission will not renew the license of an individual who fails to obtain the required 16 hours of continuing education, except as provided by paragraph (2) of this subsection.
 - (k) Any licensee receiving or submitting for credit continuing education hours in a fraudulent manner shall be required to obtain all continuing education on site and not online for two consecutive renewal periods and shall be subject to any applicable disciplinary action.

Rule §203.9 – Licensure of Funeral Establishments and Commercial Embalming Establishments

(a) New License Applications.

- (1) Applications for licensure must be submitted on forms developed by the Commission. Applications shall be accompanied by applicable licensing fees, purchase agreement forms, all price lists, and embalming case report forms to be used, if applicable, which reflect the establishment's name and provide a placeholder for the establishment's license number.
- (2) The passage of an inspection is mandatory for a new establishment seeking its initial licensure and for previously licensed establishments that have changed physical location. If the inspection was completed within the previous six months, the mandatory TFSC inspection may be waived if the only change to the establishment is a name change.
- (3) The license shall be issued to the establishment's owner.
- (4) A change of establishment name or physical address requires the submission of a new establishment license application.

- (5) A new license will not be issued unless all fees have been paid. Prior to a new license being issued under paragraph (4) of this subsection, any outstanding penalties of the previous establishment must be paid unless the penalties are the subject of an administrative hearing or judicial review.
- (6) A license expires on the last day of the month 12 months from the date of issue.
- (b) Renewal Applications
- (1) The renewal period of a license is 12 months.
- (2) A late renewal fee will be assessed for an application for renewal on the first day after the license expires. ~~which has been postmarked after its renewal date.~~
- (3) Establishments may be inspected upon the submission of a renewal application.
- (4) A renewal license will not be issued unless all fees and outstanding penalties, if any, have been paid or the Commission's records reflect that the applicant is current on a payment plan or that penalties previously assessed are the subject of an administrative hearing or judicial review.
- (5) The Commission may investigate any circumstances involved with the renewal of any license as provided for in Occupations Code Chapter 651.
- (6) A license will be cancelled if the application for renewal is not received within 90 days of the expiration date of the license.
- (c) A funeral establishment or commercial embalming facility may effect a change of ownership by either submitting a new license application under subsection (a) of this section or by notifying the Commission, on a form prescribed by the Commission, within 30 days. In submitting the form, the new owner must attest to the information contained on the form and must submit any documentation required by the Commission. The Commission may assess a fee to accompany the form attesting to the ownership fee. The fee may not exceed half the cost of applying for a new establishment license.
- ~~(d)~~ The Commission may refuse to issue a new license or to renew an outstanding license or may revoke an establishment's license if it determines that the license application or the change of ownership affidavit contains materially false information or that a person whose individual license to practice funeral directing or embalming is currently suspended or revoked owns the establishment or an interest in the establishment.
- ~~(d)~~(e) A trade embalming service must have a registered business license with the state of Texas and be registered with the Commission. The trade embalming service must keep a log of all preparations preformed for a period of two years; available for inspection by the Commission, upon request.

Rule §203.10- Preparation Room Exemption

- (a) A funeral establishment may request, in writing, the Executive Director exempt a funeral establishment from the requirement of having a physical preparation room. The Executive Director may grant the request only if the establishment is within 50 miles of another funeral establishment that contains a physical preparation room and has the same ownership.
- (b) The funeral establishment seeking the exemption must attest that no embalming services will be performed at the exempt establishment.

- (c) An applicant for an exemption may appeal, in writing, the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

Rule §203.11 – Establishment Names and Advertising

- (a) Each application for licensure shall contain the name to be used on the license.
- (b) Upon receiving an application for a new establishment license, the Commission shall review establishment names in its database. The Commission shall issue the license in the requested name when all licensing requirements are satisfied, unless the Commission determines that the name is deceptively or substantially similar to the name of another licensed establishment in the same county, metropolitan area, municipality, or service area. In these instances, the Executive Director shall deny a license for a name that is deceptively or substantially similar to the name of another establishment, unless that establishment agrees in writing to the name's use.
- (c) An establishment's licensed name may be changed by following the procedure outlined in §203.9 of this title (relating to Licensure of Funeral Establishments and Commercial Embalming Establishments) and by satisfying the requirements of subsection (b) of this section.
- (d) An applicant for approval of a new or changed name may appeal the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.
- (e) All forms of advertising ~~on a website~~ controlled by an entity licensed by the Commission must operate as follows:
 - (1) The licensed name of the entity, or a registered trademark or registered trade name belonging to the licensed entity and the establishment's license number must appear on ~~the contact information page~~ all forms of advertising.
 - (2) Irrespective of the name on the website advertising, provisions must be made ~~on the website~~ so that an individual who wishes to enter into a funeral-related transaction must not be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the Commission.
 - (3) All locations advertised shall be licensed by the Commission.
- (f) No funeral establishment, commercial embalming establishment, or crematory shall advertise in a manner which is false, misleading, or deceptive.
- (g) A cremation society's website and any advertising shall be linked with a licensed funeral establishment ~~or licensed crematory establishment~~. The licensed funeral establishment and its location shall be provided on the website or advertising.

Rule §203.12 - Temporary Operation Authorization - - Damaged Establishments

- (a) The Commission may grant a temporary operation authorization to a funeral establishment, commercial embalming facility, or crematory to operate at a temporary location if the licensed location is damaged by fire, flood, or other natural disaster.
- (b) The temporary location must meet all the requirements for establishments under Occupations Code, Chapter 651, and the Rules of the Commission.

- (c) The application for a temporary operation authorization shall be in writing, shall detail the circumstances which prevent the conduct of business at the licensed location, and shall provide an estimated date by which the licensed location will be made ready for operation.

Rule §203.13 - Franchise Tax

- (a) Any taxable entity, as defined under Tax Code, Section 171.0002, contracting with the Commission and/or any taxable entity that is an applicant for a license or permit issued by the agency must certify in writing, on a form provided by the agency, that its right to transact business in Texas is active, that it is exempt from payment of the franchise tax or that it is an out-of-state entity that is not subject to the franchise tax.
- (b) The making of a false statement as to franchise tax status on any license or permit application shall be grounds for disciplinary action.
- (c) The making of a false statement as to franchise tax status with regards to a state contract shall be grounds for cancellation of the contract at the option of the agency by treating the statement as a material breach of contract.

Rule §203.14 - State Agency Action as a Basis for License Suspension, Revocation or Denial

- (a) Any licensed establishment, funeral director or embalmer shall be subject to license suspension, license revocation or denial of license renewal upon a verified showing by any state agency with statutory authority that such licensee is delinquent or in default of an obligation to, a guarantee by, or an interest protected by the state.
- (b) Any licensee subject to action under this section by the Commission shall be afforded an opportunity for a hearing before SOAH in the same manner as other licensees subject to Commission action unless such hearing has been provided under other applicable laws.

Rule §203.15 - Required Notification of Criminal Conviction

- (a) An applicant for licensure shall disclose in writing to the Commission any conviction against him or her related to the occupations of funeral directing or embalming as defined by §203.16(h) of this title at the time of application.
- (b) A current licensee shall disclose in writing to the Commission any conviction against him or her related to the occupations of funeral directing or embalming as defined by §203.16(h) of this title at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier.
- (c) Upon notification of a conviction, the Commission shall request that the person respond by filing information demonstrating why the Commission should not deny the application or take disciplinary action against the person, if already licensed. The response must be filed within 21 days of the date of receipt of notice from the Commission. An applicant for licensure is responsible for filing documentation that will allow the Commission to take action under §203.16 of this title.

(d) Failure to notify the Commission of a criminal conviction may result in an administrative penalty or sanction for the license holder.

Rule §203.16 - Consequences of Criminal Conviction

- (a) The Commission may suspend or revoke a license or deny a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of an occupation required to be licensed by Occupations Code, Chapter 651 (Chapter 651).
- (b) The Commission may not consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision.
- (c) The Commissioners may place an applicant or licensee who has been convicted of an offense on probation by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.
- (d) If the Commissioners suspend or revoke a license or deny a person from getting a license, the Commission must notify the person of the decision in writing. That notice must explain any factor(s) considered under Subsection (f) or (g) of this section that served as the basis for the action and notify the licensee or applicant he or she has the right to appeal that decision to SOAH.
- (e) The Commission shall immediately revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. A person in prison is ineligible for licensure. Revocation or denial of licensure under this subsection is not subject to appeal at SOAH.
- (f) The Commission shall consider each of the following factors in determining what crimes directly relates to the duties and responsibilities of an occupation required to be licensed under Chapter 651, and therefore are included in subsection (h) of this section:
 - (1) the nature and seriousness of the crime;
 - (2) the relationship of the crime to the purposes for requiring a license to engage in the occupations of funeral directing and/or embalming;
 - (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as the person previously had been involved;
 - (4) the relationship of the crime to the ability, capacity, required to perform the duties and discharge the responsibilities of the licensed occupation; and
 - (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.
- (g) If a person has been convicted of a crime enumerated under Subsection (h) of this section or a crime that otherwise directly relates to the duties and responsibilities of the occupation required to be licensed under Chapter 651, the Commission shall consider the following in determining, whether to take action authorized by Texas Occupations Code Section 53.021.
 - (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person when the crime was committed;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person before and after the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
 - (6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

- (7) other evidence of the person's fitness including letters of recommendation
- (h) The following crimes are directly related to the duties and responsibilities of the occupation required to be licensed under Chapter 651, the Commission shall consider the following determining whether to take action authorized by Texas Occupations Code Section 53.021:
 - (1) Class B misdemeanors classified by Occupations Code §651.602:
 - (A) acting or holding oneself out as a funeral director, embalmer, or provisional license holder without being licensed under Chapter 651 and the Rules of the Commission;
 - (B) making a first call in a manner that violates Occupations Code
 - (C) engaging in a funeral practice that violates Chapter 651 or the Rules of the Commission; or
 - (D) violating Finance Code, Chapter 154, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation;
 - (2) the commission of acts within the definition of Abuse of Corpse under Penal Code, §42.08, because those acts indicate a lack of respect for the dead;
 - (3) an offense listed in Article 42A.054, Code of Criminal Procedure as provided by Occupations Code §53.021(a)(2);
 - (4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure as provided by Occupations Code §53.021(a)(3);
 - (5) the following crimes because these acts indicate a lack of respect for human life and dignity:
 - (A) Murder;
 - (B) Assault;
 - (C) Sexual Assault;
 - (D) Kidnapping;
 - (E) Injury to a Child;
 - (F) Injury to an Elderly Person;
 - (G) Child Abuse;
 - (H) Harassment; or
 - (I) Arson;
 - (6) the following crimes because these acts indicate a lack of principles needed to practice funeral directing and/or embalming:
 - (A) Robbery;
 - (B) Theft;
 - (C) Burglary;
 - (D) Forgery;
 - (E) Perjury;
 - (F) Bribery;
 - (G) Tampering with a governmental record; or
 - (H) Insurance claim fraud; and
 - (7) the following crimes because these acts indicate a lack of fitness to practice funeral directing and/or embalming:

- (A) delivery, possession, manufacture or use of or the illegal dispensing of a controlled substance, dangerous drug, or narcotic; or
 - (B) multiple (more than two) convictions for driving while intoxicated or driving under the influence.
- (i) Multiple violations of any criminal statute shall be reviewed by the Commission because multiple violations may reflect a pattern of behavior that renders the applicant unfit to hold a funeral director's and/or embalmer's license.
 - (j) The Commission may not consider a person to be convicted of an offense if the judge deferred further proceedings without entering an adjudication of guilt, placed the person on community supervision, and dismissed the proceedings at the end of the community supervision. However, if the Commission determines that the licensure of the person as a funeral director and/or embalmer would create a situation in which the person has the opportunity to repeat the prohibited conduct, the Commission shall consider a person to have been convicted regardless of whether the proceedings were dismissed after a period of deferred adjudication if:
 - (1) the person was charged with any offense described by Article 62.001(5) Code of Criminal Procedure;
 - (2) the person has not completed the term of community supervision or the person completed the period of supervision less than five years before the date of application; or
 - (3) a conviction of the offense would make the person ineligible for the license by operation of law.
 - (k) Prior to taking action against a person as authorized by Texas Occupations Code §53.021, the Commission shall provide written notice to the person that includes a statement that the final decision of the Commission will be based on factors listed under Subsection (f) or Subsection (g) and the person has the responsibility to provide evidence regarding those factors. The notice shall allow the person no less than 30 days from receiving the notice to submit any relevant evidence or information.

Rule §203.17 - Criminal History Evaluation Letter

- (a) Prior to submitting an application for licensure, a person may request the Commission issue a criminal history evaluation letter regarding the person's eligibility for a license if the person is enrolled or planning to enroll in an educational program that prepares a person for an initial license. (b) A person may request a criminal history evaluation letter if he or she has reason to believe the Commission may determine that he or she is ineligible for a license due to a conviction or deferred adjudication for a felony or misdemeanor offense outlined in §203.16(h) of this title. The request must state the basis for the potential ineligibility.
- (c) The Commissioners must consider the application for a criminal history evaluation letter at the next regularly scheduled Commission meeting if all requested information is received in a timely manner.
- (d) If the Commissioners determine that a ground for ineligibility does not exist, the Commission shall notify the requestor in writing of the Commission's determination of eligibility. The motion for eligibility is subject to the criminal behavior known to the Commission as of the date of the determination. Any future criminal behavior could impact the issuance of a license.

- (e) If the Commissioners determine that a ground for ineligibility does exist, the Commission shall notify the requestor in writing of the Commission's determination of ineligibility.
- (f) The Commission may charge a person requesting an evaluation under this section a fee. Fees must be in an amount sufficient to cover the cost of administering this section.
- (g) The Commissioners may issue a probated license to an applicant who is not ineligible under subsection (d) of this section, but has been convicted of an offense by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order. Once the terms of the probated license have been satisfied, the person shall be licensed as any other licensee who had not been on probation.
- (h) The Commission shall revoke, without hearing, a probated license if the license holder commits a new offense; commits an act or omission that causes the person's community supervision, mandatory supervision, or parole to be revoked, if applicable; or violates Occupations Code, Chapter 651, or the Rules of the Commission.
- (i) A person who is on community supervision, mandatory supervision, or parole and who is issued a license under this section shall provide to the Commission the name and contact information of the probation or parole department to which the person reports. The Commission shall notify the probation or parole department that a license has been issued.

Rule §203.18 -Reissuance of Revoked Funeral Director and/or Embalmer License

- (a) A person whose license to practice funeral directing and/or embalming has been revoked may, after at least three years from the effective date of such revocation, petition the Commission for reissuance of the license, unless another time is provided in the revocation order.
- (b) The petition shall be in writing.
- (c) The Commissioners may grant or deny the petition. If the petition is denied by the Commissioners, a subsequent petition may not be considered by the Commissioners until 12 months have lapsed from the date of denial of the previous petition.
- (d) The petitioner or his legal representative may appear before the Commissioners to present the request for reissuance of the license.
- (e) The petitioner shall have the burden of showing good cause why the license should be reissued.
- (f) In considering a petition for reissuance, the Commissioners may consider the petitioner's:
 - (1) moral character;
 - (2) employment history;
 - (3) status of financial support to his family;
 - (4) participation in continuing education programs or other methods of staying current with the practice of funeral directing and/or embalming;
 - (5) criminal history record, including felonies or misdemeanors relating to the practice of funeral directing, embalming and/or moral turpitude;
 - (6) offers of employment as a funeral director and/or embalmer;
 - (7) involvement in public service activities in the community;
 - (8) compliance with the provisions of the Commission Order revoking or canceling the petitioner's license;

- (9) compliance with provisions of Occupations Code, Chapter 651, regarding unauthorized practice;
 - (10) history of acts or actions by any other state and federal regulatory agencies; or
 - (11) any physical, chemical, emotional, or mental impairment.
- (g) In considering a petition for reissuance, the Commissioners may also consider:
- (1) the nature and seriousness of the crime for which the petitioner's license was cancelled or revoked;
 - (2) the length of time since the petitioner's license was cancelled or revoked as a factor in determining whether the time period has been sufficient for the petitioner to have rehabilitated himself to be able to practice funeral directing or embalming in a manner consistent with the public health, safety and welfare;
 - (3) whether the license was submitted voluntarily for cancellation or revocation at the request of the licensee; or
 - (4) other rehabilitative actions taken by the petitioner.
- (h) If the Commissioners grant the petition for reissuance, the petitioner must:
- (1) take and pass the State Mortuary Law Examination;
 - (2) pay a fee that is equal to two times the normally required renewal fee; and
 - (3) satisfy continuing education requirements of §203.8 of this title. The Commissioners may require the petitioner to complete additional training to assure the petitioner's competency to practice funeral directing and/or embalming.
- (i) The Commissioners may place the licensee on probation for a period of not less than two years by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.